No.

IN THE SUPREME COURT OF THE UNITED STATES

In Re:

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD AND MICHAEL WARD

Petitioners,

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her capacity as Secretary of State of the State of Arizona,

Respondents

On Petition For Extraordinary Writ of Mandamus From The United States District Court For The District of Arizona

APPENDIX

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CLOSED,STD

U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:20-cv-02321-DJH

Bowyer et al v. Ducey et al
Assigned to: Judge Diane J Humetewa
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 12/02/2020
Date Terminated: 12/09/2020
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
12/02/2020	1	COMPLAINT. Filing fee received: $ 402.00, receipt number 0970-18933281 filed by Greg Safsten, James R Lamon, Michael John Burke, Tyler Bowyer, Kelli Ward, Christopher M King, Nancy Cottle, Robert Montgomery, Salvatore Luke Scarmardo, Michael Ward, Sam

		Moorhead, Jake Hoffman, Loraine Pellegrino, Anthony Kern. (Kolodin, Alexander) (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit 1 - 3, # 3 Exhibit 4 - 8, # 4 Exhibit 9 - 11, # 5 Exhibit 12 - 13, # 6 Exhibit 14 - 15, # 7 Exhibit 16 part 1, # 8 Exhibit 16 part 2, # 9 Exhibit 17 - 18, # 10 Exhibit 19 - 23)(ARC) (Entered: 12/02/2020)
12/02/2020	2	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Attachments: # 1 Text of Proposed Order)(ARC) (Entered: 12/02/2020)
12/02/2020	3	SUMMONS Submitted by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Attachments: # 1 Summons)(ARC) (Entered: 12/02/2020)
12/02/2020	4	Filing fee paid, receipt number 0970-18933281. This case has been assigned to the Honorable James A Teilborg. All future pleadings or documents should bear the correct case number: CV-20-2321-PHX-JAT. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (ARC) (Entered: 12/02/2020)
12/02/2020	5	NOTICE TO FILER OF DEFICIENCY re: 3 Summons Submitted filed by Salvatore Luke Scarmardo, Robert Montgomery, Anthony Kern, Michael Ward, Tyler Bowyer, James R Lamon, Greg Safsten, Sam Moorhead, Nancy Cottle, Christopher M King, Kelli Ward, Loraine Pellegrino, Michael John Burke, Jake Hoffman. Unable to issue summons. Summons must list attorney information on form where indicated. ***FOLLOW-UP ACTION REQUIRED:*** Please refile corrected document. Deficiency must be corrected within one business day of this notice. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (ARC) (Entered: 12/02/2020)
12/02/2020	6	NOTICE TO FILER OF DEFICIENCY re: 1 Complaint filed by Salvatore Luke Scarmardo, Robert Montgomery, Anthony Kern, Michael Ward, Tyler Bowyer, James R Lamon, Greg Safsten, Sam Moorhead, Nancy Cottle, Christopher M King, Kelli Ward, Loraine Pellegrino, Michael John Burke, Jake Hoffman. Document not in compliance with LRCiv 7.1(a)(3) - Party names must be capitalized using proper upper and lower case type. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (ARC) (Entered: 12/02/2020)
12/02/2020	7	ORDER that this matter is reassigned to the Honorable Diane J. Humetewa, United States District Judge. All further pleadings and papers submitted for filing shall bear the following complete case number: CV-20-2321-PHX-DJH. Signed by Senior Judge James A Teilborg on 12/2/20. (EJA) (Entered: 12/02/2020)
12/02/2020	8	NOTICE of Errata re: 2 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction by Plaintiffs Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward.. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	9	SUMMONS Submitted by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	10	Summons Issued as to Doug Ducey. (EJA). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to

		appear on the document. (Entered: 12/02/2020)
12/02/2020	11	ORDER: IT IS ORDERED setting a Telephonic Status Conference for Thursday, December 3, 2020 at 2:00 PM before Judge Diane J Humetewa. Participating counsel will receive dial-in instructions via separate electronic communication. IT IS FURTHER ORDERED that Plaintiffs shall serve Defendants with the Complaint (Doc. 1) and Summons, Motion for Temporary Restraining Order (Doc. 2), and a copy of this Order by 8:00 p.m. on December 2, 2020. IT IS FURTHER ORDERED that proof of service shall be filed with this Court by noon on December 3, 2020. IT IS FURTHER ORDERED that if any member of public or the media wishes to listen to the hearing, they shall email AZD-PIO@azd.uscourts.gov to obtain dialing instructions. **Pursuant to Local Rule 43.1, participants are reminded that audiotaping court proceedings is prohibited.** ORDERED by Judge Diane J Humetewa on 12/2/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/02/2020)
12/02/2020	12	SUMMONS Submitted by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	13	Summons Issued as to Katie Hobbs. (BAS). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 12/02/2020)
12/02/2020	14	MOTION to Seal Document by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Text of Proposed Order)(Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	15	SEALED LODGED Proposed Exhibit 1 Unredacted re: 14 MOTION to Seal Document . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	16	SEALED LODGED Proposed Exhibit 4 Unredacted re: 14 MOTION to Seal Document . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	17	SEALED LODGED Proposed Exhibit 12 Unredacted re: 14 MOTION to Seal Document . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	18	SEALED LODGED Proposed Exhibit 13 Unredacted re: 14 MOTION to Seal Document . Document to be filed by Clerk if Motion or Stipulation to Seal is granted. Filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/02/2020)

12/02/2020	19	NOTICE of Appearance by Roopali H Desai on behalf of Katie Hobbs. (Desai, Roopali) (Entered: 12/02/2020)
12/02/2020	20	SERVICE EXECUTED filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward: Declaration of Service re: Complaint, Motion for TRO, Proposed Order upon Anni Foster General Counsel for Doug Ducey on 12/02/2020. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	21	SERVICE EXECUTED filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward: Declaration of Service re: Complaint, Motion for TRO, Proposed Order upon Ariel Morin for Katie Hobbs on 12/02/2020. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	22	SERVICE EXECUTED filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward: Declaration of Service re: Summons and Order for 2pm Hearing for 12/3/2020 upon Anni Foster General Counsel for Doug Ducey on 12/02/2020. (Kolodin, Alexander) (Entered: 12/02/2020)
12/02/2020	23	SERVICE EXECUTED filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward: Declaration of Service re: Summons and Order for 2pm Hearing for 12/3/2020 upon Maryn Herberg for Katie Hobbs on 12/02/2020. (Kolodin, Alexander) (Entered: 12/02/2020)
12/03/2020	24	NOTICE of Appearance by Brett William Johnson on behalf of Doug Ducey. (Johnson, Brett) (Entered: 12/03/2020)
12/03/2020	25	NOTICE of Appearance by Howard Kleinhendler on behalf of Tyler Bowyer. (Kleinhendler, Howard) (Entered: 12/03/2020)
12/03/2020	26	MOTION to Intervene by Arizona Democratic Party. (Attachments: # 1 Text of Proposed Order)(Danneman, Alexis) (Entered: 12/03/2020)
12/03/2020		Remark: Pro hac vice motion(s) granted for Justin A Nelson on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/03/2020)
12/03/2020		Remark: Pro hac vice motion(s) granted for Stephen Edward Morrissey on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/03/2020)
12/03/2020		Remark: Pro hac vice motion(s) granted for Sidney Katherine Powell on behalf of Plaintiffs Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/03/2020)
12/03/2020	27	MOTION to Intervene by Maricopa County Board of Supervisors, Adrian Fontes. (Liddy, Thomas) (Entered: 12/03/2020)
12/03/2020	28	MINUTE ENTRY for proceedings held before Judge Diane J Humetewa: Telephonic

		Status Conference held on December 3, 2020 As set forth on the record, Defendants shall file their Response/Motion to Dismiss to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction (Doc 2) by 10 00 PM on December 4, 2020 A Reply to the Motion (Doc. 2) and the Response to the Motion to Dismiss is due by 10:00 PM on December 5, 2020 A Reply to the Motion to Dismiss is due by 10 00 PM on December 6, 2020. LATER (off the record): IT IS ORDERED setting a Temporary Restraining Order Hearing for Tuesday, December 8, 2020 at 9 15 AM in Courtroom 604, 401 West Washington Street, Phoenix, AZ 85003 before Judge Diane J Humetewa. A maximum of two (2) counsel are permitted in person for named Plaintiffs and Defendants All other participating counsel will appear telephonically and will receive dial-in instructions via separate electronic communication Each named party will have one (1) hour to present their case. The parties are to meet and confer as to whether agreement can be reached as to admissibility of witness affidavits and/or declarations The named parties will have 20 minutes each to argue the Motion to Dismiss, and five (5) minutes for rebuttal. If necessary, the Court may extend the time of hearing to Wednesday, December 9, 2020 at 9:00 AM. IT IS FURTHER ORDERED that if any member of the public or the media wishes to listen to the hearing, they shall email AZD PIO@azd uscourts gov to obtain dialing instructions. **Pursuant to Local Rule 43.1, participants and listeners are reminded that audiotaping court proceedings is prohibited.** TELEPHONIC APPEARANCES Howard Kleinhendler, Sidney Powell, Julia Haller, Peter Haller, Alexander Kolodin, and Lin Wood for Plaintiffs. Brett Johnson, Colin Ahler, and Anni Foster for Defendant Ducey Justin Nelson, Stephen Morrissey, Davida Brook, and Andrew Gaona for Defendant Hobbs. Roy Herrera, John Devaney, and Alexis Danneman for Intervenor Arizona Democratic Party (Court Reporter L Schroeder) Hearing held 2:00 PM to 2:36 PM. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry (LFIG) (Entered 12/03/2020)
12/03/2020	29	RESPONSE in Opposition re: 26 MOTION to Intervene filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Exhibit Exhibit 1) (Kolodin, Alexander) (Entered: 12/03/2020)
12/04/2020	30	NOTICE TO FILER OF DEFICIENCY re: 24 Notice of Appearance/Association of Counsel filed by Doug Ducey Document not in compliance with LRCiv 7 1(a)(3) Party names must be capitalized using proper upper and lower case type. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (EJA) (Entered: 12/04/2020)
12/04/2020	31	REPLY to Response to Motion re: 26 MOTION to Intervene filed by Arizona Democratic Party. (Danneman, Alexis) (Entered: 12/04/2020)
12/04/2020	32	ORDER: This matter is before the Court on the Motion of the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes (Doc. 27) to intervene in this matter. Therein, the Court finds that all elements of Rule 24 (a)(2) have been satisfied and that intervention is warranted. Therefore, the Court grants the Motion (Doc. 27). Maricopa County may respond to the TRO and/or file a Motion to Dismiss with the same deadlines set by the Court for the other Defendants to respond (Doc. 28). The Court is aware that a Motion to Intervene has been filed by the Arizona Democratic Party (Doc. 26), but does not rule on that Motion herein. ORDERED by Judge Diane J Humetewa on 12/4/20. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (EJA) (Entered: 12/04/2020)

12/04/2020		Remark: Pro hac vice motion(s) granted for Davida Brook on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020		Remark: Pro hac vice motion(s) granted for Howard Kleinhendler on behalf of Plaintiffs Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020		Remark: Pro hac vice motion(s) granted for Marc E Elias, Bruce Van Spiva, Laura C Hill on behalf of Intervenor Arizona Democratic Party. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020	33	MOTION for Issuance of Pre-Hearing Order by Katie Hobbs. (Attachments: # 1 Exhibit 1, # 2 Text of Proposed Order)(Desai, Roopali) (Entered: 12/04/2020)
12/04/2020		Remark: Pro hac vice motion(s) granted for Stephen Lee Shackelford, Jr on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020		Remark: Pro hac vice motion(s) granted for L Lin Wood on behalf of Plaintiffs Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020		Remark: Pro hac vice motion(s) granted for John M Devaney on behalf of Intervenor Arizona Democratic Party. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/04/2020)
12/04/2020	34	RESPONSE in Opposition re: 33 MOTION for Issuance of Pre-Hearing Order filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/04/2020)
12/04/2020	35	ORDER: IT IS ORDERED that Plaintiffs shall provide full and complete witness disclosures by Saturday, December 5, 2020, at 12:00 PM. Defendants and Intervenors shall provide full and complete witness disclosures by Sunday, December 6, 2020, at 12:00 PM. Witness admissibility issues should be resolved by stipulation. All parties must disclose and exchange exhibits by Sunday, December 6, 2020 at 3:00 PM. The parties shall ensure that copies of all exhibits must be produced to the Court by Monday, December 7, 2020 at 12:00 PM. Document admissibility issues should be resolved by stipulation. ORDERED that the parties' objections to witnesses and exhibits shall be filed with the Court, as described herein, by Monday, December 7, 2020 at 12:00 PM. IT IS FURTHER ORDERED that any witness or exhibit not disclosed to the other party or to the Court will not be admitted at the hearing. Signed by Judge Diane J Humetewa on 12/4/2020. (See Order for details.) (LFIG) (Entered: 12/04/2020)
12/04/2020	36	* MOTION to Dismiss Case and RESPONSE in Opposition to 2 Plaintiffs' MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Adrian Fontes, Maricopa County Board of Supervisors. (Liddy, Thomas) *Modified to add text and document link on 12/7/2020 (SLQ). (Entered: 12/04/2020)
12/04/2020	37	*MOTION to Dismiss Case and RESPONSE to 2 Plaintiffs' MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Arizona Democratic Party.

		(Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5) (Danneman, Alexis) *Modified to add text and document link on 12/7/2020 (SLQ). (Entered: 12/04/2020)
12/04/2020	38	* MOTION to Dismiss for Failure to State a Claim , MOTION to Dismiss for Lack of Jurisdiction and RESPONSE to 2 Plaintiffs' MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Doug Ducey. (Attachments: # 1 Exhibit Exhibits A-B)(Johnson, Brett) *Modified text and added document link on 12/7/2020 (SLQ). (Entered: 12/04/2020)
12/04/2020	39	NOTICE re: Notice and Certification of Conferral Regarding Motion to Dismiss by Doug Ducey re: 38 MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction *and Response to Plaintiffs' Motion for TRO and Preliminary Injunction* . (Johnson, Brett) (Entered: 12/04/2020)
12/04/2020	40	* MOTION to Dismiss Case - *Defendant Secretary of State Katie Hobbs' Combined Motion to Dismiss and RESPONSE in Opposition to 2 MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction by Katie Hobbs. (Attachments: # 1 Exhibit Index plus A, # 2 Exhibit B, # 3 Exhibit C)(Nelson, Justin) *Modified to add text and document link on 12/7/2020 (SLQ). (Entered: 12/04/2020)*
12/04/2020	59	NOTICE TO FILER OF DEFICIENCY re: 41 Notice (Other) filed by Katie Hobbs, 55 Reply filed by Katie Hobbs, 33 MOTION for Issuance of Pre-Hearing Order filed by Katie Hobbs, 49 Notice (Other) filed by Katie Hobbs, 57 Notice (Other) filed by Katie Hobbs, 40 MOTION to Dismiss Case - *Defendant Secretary of State Katie Hobbs' Combined Motion to Dismiss and Opposition to Motion for TRO/Preliminary Injunction* filed by Katie Hobbs. Document not in compliance with LRCiv 7.1(a)(3) - Party names must be capitalized using proper upper and lower case type. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (SLQ) (Entered: 12/07/2020)
12/05/2020	41	NOTICE re: Supplemental Authority by Katie Hobbs . (Attachments: # 1 Exhibit A) (Desai, Roopali) (Entered: 12/05/2020)
12/05/2020	42	NOTICE of Service of Discovery filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/05/2020)
12/05/2020	43	ORDER: IT IS ORDERED the Hearing set for Tuesday, December 8, 2020 at 9:15 AM on Plaintiffs' Motion for Temporary Restraining Order (Doc. 28) is hereby converted to Oral Argument on the pending Motions to Dismiss (Docs. 36 , 37 , 38 , and 40). The Court will permit remote appearances by video-teleconference. Counsel that will appear remotely shall confer and designate one counsel per side to contact the Court's IT department at av_support@azd.uscourts.gov no later than 12:00 PM on Monday, December 7, 2020 for instructions, and a test connection if any, shall be completed by no later than close of business on that date. IT IS FURTHER ORDERED the Hearing on Plaintiffs' Motion for Temporary Restraining Order (Doc. 2) is **reset** to Thursday, December 10, 2020 at 9:30 AM. IT IS FURTHER ORDERED the remainder of the order at Doc. 28 is AFFIRMED. ORDERED by Judge Diane J Humetewa on 12/5/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/05/2020)
12/05/2020	44	REPLY to Response to Motion re: 2 MOTION for Temporary Restraining Order MOTION for Preliminary Injunction, 38 MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction *and Response to Plaintiffs' Motion for TRO and Preliminary Injunction*, 37 MOTION to Dismiss Case *and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction*, 40 MOTION to Dismiss

		Case - *Defendant Secretary of State Katie Hobbs' Combined Motion to Dismiss and Opposition to Motion for TRO/Preliminary Injunction*, 36 MOTION to Dismiss Case *and Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Exhibit Exhibits 1 - 5)(Kolodin, Alexander) (Entered: 12/05/2020)
12/05/2020	45	MOTION to Strike 37 MOTION to Dismiss Case *and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction* by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Text of Proposed Order) (Kolodin, Alexander) (Entered: 12/05/2020)
12/05/2020	46	MOTION Modification of Hearing Schedule re: 28 Status Conference, Set/Reset Hearings, Set/Reset Motion and R&R Deadlines/Hearings, Common Prompts (Text Only) by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Text of Proposed Order)(Kolodin, Alexander) (Entered: 12/05/2020)
12/06/2020	47	NOTICE re: Service of Defendant Governor Duceys Combined Exhibit and Witness List for December 10, 2020 Hearing by Doug Ducey . (Johnson, Brett) (Entered: 12/06/2020)
12/06/2020	48	Exhibit List *and Witnesses and Providing Copies of Exhibits* by Adrian Fontes, Maricopa County Board of Supervisors. (Liddy, Thomas) (Entered: 12/06/2020)
12/06/2020	49	*NOTICE of Service of Discovery re: Rule 26 Expert Disclosures and Witness Disclosures for December 10, 2020 Hearing by Katie Hobbs . (Brook, Davida) *Modified to correct event; attorney noticed on 12/7/2020 (SLQ). (Entered: 12/06/2020)
12/06/2020	50	NOTICE re: Service of Defendant Arizona Secretary of State Katie Hobbs Exhibit List and Providing Copies of Exhibits by Katie Hobbs . (Brook, Davida) (Entered: 12/06/2020)
12/06/2020	51	ORDER: IT IS ORDERED that Plaintiffs' Motion for Modification of Hearing Schedule (Doc. 46), in which they seek to have three hours to present expert witnesses during the Oral Argument set for Tuesday, December 8, 2020 on Defendants' pending Motions to Dismiss, is **DENIED.** IT IS FURTHER ORDERED the December 8, 2020 hearing will solely be on the arguments presented in the Motions to Dismiss (*See* Doc. 43). ORDERED by Judge Diane J Humetewa on 12/6/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/06/2020)
12/06/2020	52	REPLY to Response to Motion re: 37 MOTION to Dismiss Case *and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction* filed by Arizona Democratic Party. (Danneman, Alexis) (Entered: 12/06/2020)
12/06/2020	53	*REPLY TO RESPONSE to Motion re: 38 MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss for Lack of Jurisdiction filed by Doug Ducey. (Johnson, Brett) *Modified to correct event; attorney noticed on 12/7/2020 (SLQ). (Entered: 12/06/2020)
12/06/2020	54	*REPLY to RESPONSE to 36 MOTION to Dismiss by Intervenor Parties Adrian Fontes, Maricopa County Board of Supervisors. (Liddy, Thomas) *Modified to correct event; attorney noticed on 12/7/2020 (SLQ). (Entered: 12/06/2020)
12/06/2020	55	*REPLY to RESPONSE re: 40 MOTION to Dismiss Case by Defendant Katie Hobbs. (Attachments: # 1 Exhibit Index and Exhibit A, # 2 Exhibit B)(Nelson, Justin) *Modified

		to correct event; attorney noticed on 12/7/2020 (SLQ). (Entered: 12/06/2020)
12/06/2020	60	NOTICE TO FILER OF DEFICIENCY re: 48 Exhibit List filed by Maricopa County Board of Supervisors, Adrian Fontes. Document not in compliance with LRCiv 5.5(g) - Documents signed by an attorney shall be filed using that attorney's ECF log-in and password and shall not be filed using a log-in and password belonging to another attorney. Document(s) signed by attorney Joseph Vigil but submitted using the log-in and password belonging to attorney Thomas Liddy. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (SLQ) (Entered: 12/07/2020)
12/07/2020	56	MOTION for Hearing or Conference re: Hearing on Plaintiffs' Motion for Preliminary Injunction by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Text of Proposed Order)(Kolodin, Alexander) (Entered: 12/07/2020)
12/07/2020	57	NOTICE re: Second Notice of Supplemental Authority by Katie Hobbs . (Attachments: # 1 Exhibit A)(Nelson, Justin) (Entered: 12/07/2020)
12/07/2020	58	MOTION Intervenor-Defendant Maricopa County's Motion for Judicial Notice by Adrian Fontes, Maricopa County Board of Supervisors. (Attachments: # 1 Text of Proposed Order Exhibit A & B)(Liddy, Thomas) (Entered: 12/07/2020)
12/07/2020	61	OBJECTION *to Plaintiffs' Witnesses and Exhibits* by Intervenor Arizona Democratic Party. (Attachments: # 1 Exhibit, # 2 Exhibit)(Danneman, Alexis) (Entered: 12/07/2020)
12/07/2020	62	MOTION to Strike *Plaintiffs' Witnesses and Exhibits* by Katie Hobbs. (Desai, Roopali) (Entered: 12/07/2020)
12/07/2020	63	OBJECTION *to Plaintiffs Exhibit and Witness List for December 10 Hearing* by Defendant Doug Ducey. (Johnson, Brett) (Entered: 12/07/2020)
12/07/2020	64	ORDER: IT IS ORDERED that Intervenor-Defendant Maricopa County's Motion for Judicial Notice (Doc. 58) is granted pursuant to Fed. R. Evid. 201. ORDERED by Judge Diane J Humetewa on 12/7/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/07/2020)
12/07/2020		Remark: Pro hac vice motion(s) granted for John Michael Geise on behalf of Intervenor Arizona Democratic Party. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/07/2020)
12/07/2020	65	MOTION in Limine re: Motion To Exclude The Testimony And Reports Of Plaintiffs Experts by Katie Hobbs. (Desai, Roopali) (Entered: 12/07/2020)
12/07/2020	66	MOTION in Limine re: Objections to Defense Experts by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/07/2020)
12/07/2020	67	NOTICE TO FILER OF DEFICIENCY re: 57 Notice (Other) filed by Katie Hobbs. Document not in compliance with LRCiv 7.1(a)(3) - Party names must be capitalized using proper upper and lower case type. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (SLQ) (Entered: 12/07/2020)
12/07/2020	68	ORDER: This matter is before the Court on Plaintiffs' Motion for "Hearing or Conference" (Doc. 56) related to their Motion for TRO and Preliminary Injunction (Doc. 2). IT IS ORDERED the Motion (Doc. 56) is denied. Therein, Plaintiffs request the Court hold a hearing on their Motion for Preliminary Injunction "on December 8, 2020 after oral

		arguments on the motions to dismiss." (Doc. 56). Plaintiffs filed a Motion for TRO and Preliminary Injunction as a single filing on December 2, 2020 (Doc. 2). As the parties are aware, the Court originally set a hearing on that Motion (Doc. 2) for December 8, 2020, later converting that hearing to an Oral Argument on the Motions to Dismiss (Doc. 43). The Court reiterated this ruling (Doc. 51) in denying a Motion (Doc. 46) from Plaintiffs requesting to present three hours of expert witness testimony related to the TRO at the Oral Argument on the Motions to Dismiss. A hearing on the TRO is currently scheduled to take place on **Thursday, December 10, 2020 at 9:30 AM.** The Court clarifies that the Hearing on December 10, 2020 will encompass Plaintiffs' Motion for TRO and Preliminary Injunction (Doc. 2), to the extent that Motion argues for a Preliminary Injunction. **IT IS FURTHER ORDERED the Court will not hear any witness testimony at the hearing on the Motions to Dismiss.** ORDERED by Judge Diane J Humetewa on 12/7/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/07/2020)
12/07/2020	69	ORDER: The Court being fully apprised of the briefing on the Motions to Dismiss in this matter, and in the interest of judicial economy, IT IS ORDERED setting the following argument schedule for the Oral Argument on the Motions to Dismiss set for December 8, 2020: Defendants shall collectively have 20 minutes to argue their Motions to Dismiss. Defendants, including Intervenor Defendants (Ducey, Hobbs, Fontes, and Maricopa County Board of Supervisors), shall confer and designate one attorney to present oral argument on behalf of Defendants. Plaintiffs shall have 20 minutes in response, and shall designate one attorney to make their oral argument. Defendants will be allowed a 5 minute rebuttal, argued by a single attorney. Moreover, IT IS FURTHER ORDERED denying the Motion to Intervene by the Arizona Democratic Party (Doc. 26), and likewise, the Court will not consider its Motion to Dismiss (Doc. 37), with a written order to follow. IT IS FURTHER ORDERED denying Plaintiffs' Motion to Strike (Doc. 45) as moot. ORDERED by Judge Diane J Humetewa on 12/7/2020. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/07/2020)
12/07/2020	70	RESPONSE to Motion re: 14 MOTION to Seal Document filed by Katie Hobbs. (Desai, Roopali) (Entered: 12/07/2020)
12/07/2020	71	NOTICE of Service of Discovery filed by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Kolodin, Alexander) (Entered: 12/07/2020)
12/07/2020	72	*RESPONSE in Opposition to 58 County's MOTION for Judicial Notice by Plaintiffs Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward. (Attachments: # 1 Exhibit)(Kolodin, Alexander) *Modified to correct event; attorney noticed on 12/8/2020 (SLQ). (Entered: 12/07/2020)
12/07/2020	73	*SUPPLEMENT to Governor Ducey's Objections to Plaintiff's Exhibit and Witness List for December 10 Hearing re: 63 Objection by Defendant Doug Ducey. (Johnson, Brett) *Modified text on 12/8/2020 (SLQ). (Entered: 12/07/2020)
12/08/2020	74	MINUTE ORDER: The Court has received inquiries from the public who wish to listen to the December 8, 2020, hearing. Although the standard is that federal district courts may not broadcast their proceedings, the Executive Committee of the Judicial Conference recently issued a guidance document that "approve[s] a temporary exception to the policy to allow a judge to authorize the use of teleconference technology to provide the public and the media audio access to court proceedings while public access to federal courthouses generally, or with respect to a particular district, is restricted due to health and safety

		concerns during the Coronavirus Disease (COVID-19) pandemic." Given this development, public access to the December 8, 2020 hearing will be permitted. Members of the public or of the media seeking access are to call: **1-844-291-5495 and enter access code: 5609904 when prompted. Pursuant to Local Rule 43.1, participants and listeners are reminded that recording court proceedings is prohibited.** This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/08/2020)
12/08/2020	75	NOTICE of Supplemental Authority by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward . (Attachments: # 1 Exhibit Exhibit 1)(Kolodin, Alexander) *Modified text on 12/8/2020 (SLQ). (Entered: 12/08/2020)
12/08/2020	76	NOTICE re: Notice of Location of Briefing Distinguishing Ward v. Jackson by Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M King, James R Lamon, Robert Montgomery, Sam Moorhead, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, Michael Ward re: 44 Reply to Response to Motion . (Kolodin, Alexander) (Entered: 12/08/2020)
12/08/2020	77	TRANSCRIPT REQUEST (3rd PARTY/MEDIA) by Alexander Hosenball of ABC News for proceedings held on 12/08/2020, Judge Diane J Humetewa hearing judge(s). (RAP) (Entered: 12/08/2020)
12/08/2020	78	NOTICE of Errata re: 65 MOTION in Limine re: Motion To Exclude The Testimony And Reports Of Plaintiffs Experts by Defendant Katie Hobbs.. (Attachments: # 1 Exhibit 1-11) (Desai, Roopali) (Entered: 12/08/2020)
12/08/2020	79	NOTICE re: Notice of Exhibit Submission by Katie Hobbs . (Attachments: # 1 Exhibit A) (Nelson, Justin) (Entered: 12/08/2020)
12/08/2020		Remark: Pro hac vice motion(s) granted for Elizabeth B Hadaway on behalf of Defendant Katie Hobbs. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (BAS) (Entered: 12/08/2020)
12/08/2020	80	MINUTE ENTRY for proceedings held before Judge Diane J Humetewa: Oral Argument re: Defendants' Motions to Dismiss (Docs. 36 , 37 , 38 , and 40) held on 12/8/2020. Argument heard. Order to follow. APPEARANCES: Julia Haller, Alexander Kolodin, Emily Newman and Christopher Viskovic for Plaintiffs. Justin Nelson, Stephen Morrissey, Stephen Shackelford, Roopali Desai, and Davida Brook for Defendant Hobbs. Brett Johnson, Colin Ahler and Anni Foster for Defendant Ducey. Thomas Liddy, Emily Craiger, Joseph LaRue, and Joseph Vigil for Intervenor Defendants Fontes and Maricopa County Board of Supervisors. (Court Reporter E. Cruz-Lauer.) Hearing held 9:21 AM to 10:36 AM. Members of the public or of the media seeking access to the hearing set for Thursday, December 10, 2020 at 9:30 AM are to call: 1-844-291-5495 and enter access code: 5609904 when prompted. **Pursuant to Local Rule 43.1, participants and listeners are reminded that recording court proceedings is prohibited.** This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (LFIG) (Entered: 12/08/2020)
12/08/2020	81	NOTICE re: of Supplemental Authority by Adrian Fontes, Maricopa County Board of Supervisors . (Attachments: # 1 Exhibit Ward v. Jackson Decision Order (Ariz. S. Ct., December 8, 2020))(LaRue, Joseph) (Entered: 12/08/2020)

12/08/2020	82	NOTICE TO FILER OF DEFICIENCY re: 81 Notice (Other) filed by Maricopa County Board of Supervisors, Adrian Fontes. Document not in compliance with LRCiv 5.5(g) - Documents signed by an attorney shall be filed using that attorney's ECF log-in and password and shall not be filed using a log-in and password belonging to another attorney. Document(s) signed by attorney Thomas Liddy but submitted using the log-in and password belonging to attorney Joseph LaRue. ***No further action is required***. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (SLQ) (Entered: 12/09/2020)
12/08/2020	83	NOTICE OF FILING OF OFFICIAL TRANSCRIPT of *VIDEO TELECONFERENCE - ORAL ARGUMENTS* proceedings held on 12/08/2020, before Judge DIANE J. HUMETEWA. [Court Reporter: Elva Cruz-Lauer, RMR, CRR, Telephone number (602) 322-7261]. The ordering party will have electronic access to the transcript immediately. All others may view the transcript at the court public terminal or it may be purchased through the Court Reporter/Transcriber by filing a Transcript Order Form on the docket before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 12/29/2020. Redacted Transcript Deadline set for 1/8/2021. Release of Transcript Restriction set for 3/8/2021. (RAP) (Entered: 12/09/2020)
12/09/2020	84	ORDER: IT IS HEREBY ORDERED that Defendants' Governor Doug Ducey, Secretary of State Katie Hobbs, and Intervenor Defendants Maricopa County Board of Supervisors and Adrian Fontes' Motions to Dismiss (Docs. 36 , 38 , and 40) are **GRANTED.** ORDERED that all remaining pending motions (Docs. 14 , 62 , 65 and 66) are **denied as moot,** and the hearing on Plaintiffs' TRO and Preliminary Injunction set for December 10, 2020 is **vacated.** IT IS FURTHER ORDERED that this matter is dismissed, and the Clerk of Court is kindly directed to terminate this action. Signed by Judge Diane J Humetewa on 12/9/2020. (See Order for details.) (LFIG) (Entered: 12/09/2020)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD Plaintiffs, v. DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State Defendants.	Case No. **COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF** (Election Matter) (TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020.

NATURE OF THE ACTION

1. This civil action brings to light a massive election fraud, of the Election and Electors Clauses, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment, of the U.S. Constitution and multiple violations of the Arizona election laws. These violations occurred during the 2020 General Election throughout the State of Arizona, as set forth in the affidavits of eyewitnesses and the voter data cited, the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses.

2. The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle. The fraud was executed by many means, but the most fundamentally troubling, insidious, and egregious ploy was the systemic adaptation of old-fashioned "ballot-stuffing." It has now been amplified and rendered virtually invisible by computer software created and run by domestic and foreign actors for that very purpose. This Complaint details an especially egregious range of conduct in Maricopa County and other Arizona counties using employing Dominion Systems, though this conduct occurred throughout the State at the direction of Arizona state election officials.

3. The multifaceted schemes and artifices implemented by Defendants and their collaborators to defraud resulted in the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots in the State of Arizona, that collectively add up to multiples of Biden's purported lead in the State of 10,457 votes.

4. While this Complaint, and the eyewitness and expert testimony incorporated herein, identify with specificity sufficient ballots required to set aside the 2020 General Election results, the entire process is so riddled with fraud, illegality, and statistical impossibility that this Court, and Arizona's voters, courts, and legislators, cannot rely on, or certify, any numbers resulting from this election. Accordingly, this Court must set aside the results of the 2020 General Election and grant the declaratory and injunctive relief

requested herein.

Dominion Voting Systems Fraud and Manipulation

5. The fraud begins with the election software and hardware from Dominion Voting Systems Corporation ("Dominion") used in Maricopa County. The Dominion systems derive from the software designed by Smartmatic Corporation, which became Sequoia in the United States.

6. Smartmatic and Dominion were founded by foreign oligarchs and dictators to ensure computerized ballot-stuffing and vote manipulation to whatever level was needed to make certain Venezuelan dictator Hugo Chavez never lost another election. *See* Ex. 1, Redacted Declaration of Dominion Venezuela Whistleblower ("Dominion Whistleblower Report"). Notably, Chavez "won" every election thereafter.

7. As set forth in the Dominion Whistleblower Report, the Smartmatic software was contrived through a criminal conspiracy to manipulate Venezuelan elections in favor of dictator Hugo Chavez:

> Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic. The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against persons running the Venezuelan government to votes in their favor in order to maintain control of the government. In mid-February of 2009, there was a national referendum to change the Constitution of Venezuela to end term limits for elected officials, including the President of Venezuela. The referendum passed. This permitted Hugo Chavez to be re-elected an unlimited number of times. . . .
>
> Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record

of that voter's identity. Smartmatic created and operated the entire system. *See Exh. 1.* ¶¶ 10 & 14.

8. A core requirement of the Smartmatic software design ultimately adopted by Dominion for Arizona's elections was the software's ability to hide its manipulation of votes from any audit. As the whistleblower explains:

> Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that accomplished that result for President Chavez. *Id.* ¶15.

9. The design and features of the Dominion software do not permit a simple audit to reveal its misallocation, redistribution, or deletion of votes. First, the system's central accumulator does not include a protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the system utilize unprotected logs. Essentially this allows an unauthorized user the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log election events that do not reflect actual voting tabulations—or more specifically, do not reflect the actual votes of or the will of the people.[2]

10. This Complaint will show that Dominion violated physical security standards by connecting voting machines to the Internet, allowing Dominion, domestic third parties

[2] *See* Ex. 7, August 24, 2020 Declaration of Harri Hursti, ¶¶45-48 (expert testimony in Case 1:17-cv-02989 in the U.S. District Court for the Northern District of Georgia). The Texas Secretary of State refused to certify Dominion for similar reasons as those cited by Mr. Hursti. *See* Ex. 11A, 11B, State of Texas Secretary of State, Elections Division, Report of Review of Dominion Voting Systems Democracy Suite 5.5-A at 2 (Jan. 24, 2020).

or hostile foreign actors to access the system and manipulate election results, and moreover potentially to cover their tracks due to Dominion's unprotected log. Accordingly, a thorough forensic examination of Dominion's machines and source code is required to document these instances of voting fraud, as well as Dominion's systematic violations of the Voting Rights Act record retention requirements through manipulation, alteration, destruction and likely foreign exfiltration of voting records. See 52 U.S.C. § 20701.

11. These and other problems with Dominion's software have been widely reported in the press and been the subject of investigations. In using Dominion Voting Systems Democracy Suite, Arizona officials disregarded all the concerns that caused Dominion software to be rejected by the Texas Board of elections in 2020 because it was deemed vulnerable to undetected and non-auditable manipulation. Texas denied Certification because of concerns that it was not safe from fraud or unauthorized manipulation. (See Exhs 11A&11B).

12. An industry expert, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has recently observed, with reference to Dominion Voting machines: "I figured out how to make a slightly different computer program that just before the polls were closed, it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with a screwdriver."[3]

13. Further, Dominion's documented, and intentional, security flaws facilitated foreign interference in the 2020 General Election. For example, in the accompanying redacted declaration of a former electronic intelligence analyst with 305th Military Intelligence with experience gathering SAM missile system electronic intelligence, the Dominion software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020. (See Ex. 12, copy of redacted witness affidavit).

[3] Andrew W. Appel, *et al.*, "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019),(attached hereto as Ex. 10 ("Appel Study")).

14. Because this Complaint concerns mainly federal questions, it was not styled as a Statement of Contest within the meaning of ARS §§ 16-671 - 16-678.

15. Nonetheless, the factual basis of this Complaint would also support an election contest under Arizona law since A.R.S. § 16-672 allows for contests on the grounds of misconduct, offenses against the elective franchise, on account of illegal votes, and by reason of erroneous count of votes.

16. Similarly, the relief sought is in accord with Arizona law. A.R.S. § 16-676 provides clear remedies in the event of a successful contest, providing that the results of an election may either be annulled and set aside, A.R.S. § 16-676(B), or, if it appears that the winner was other than the person certified, the erroneously declared winner's certificate of election can be revoked A.R.S. § 16-676(C).

17. In the event that the election is annulled and set aside, there would certainly not be time to hold a new election, especially given the issues identified herein. However, it would be eminently proper for the question of the choice of electors to then revert to the legislature, for "[t]here is no doubt of the right of the legislature to resume the power [to appoint electors] at any time, for it can neither be taken away nor abdicated." *Bush v. Gore*, 531 U.S. 98, 104, 121 S. Ct. 525, 529-30, 148 L.Ed.2d 388, 398 (2000) (citing with approval *McPherson v. Blacker*, 146 U.S. 1, 35, 13 S. Ct. 3, 10, 36 L.Ed. 869, 877 (1892)).

18. Furthermore, this Court need not be concerned with whether such weighty questions can be addressed on an expedited timeline, because Arizona law provides very aggressive deadlines for the resolution of elections challenges. Specifically, Arizona law provides for election challenges to be resolved on the merits within 10 days of filing. A.R.S. § 16-676(A).

Expert Witness Testimony on Widespread Voting Fraud

19. This Complaint presents expert witness testimony demonstrating that several thousands of illegal, ineligible, duplicate or purely fictitious votes must be thrown out, in particular:

A. Unreturned mail ballots unlawfully ordered by third parties (average for Dr. Briggs Error #1): 219,135

B. Returned ballots that were deemed unreturned by the state (average for Dr. Briggs Error #2): 86,845

C. Votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 5,790.

D. "Excess votes" to historically unprecedented, and likely fraudulent turnout levels of 80% or more in over half of Maricopa and Pima County precincts: 100,724.

E. And Plaintiffs can show Mr. Biden received a statistically significant Advantage, based on fraud, from the use of Dominion Machines in a nationwide Study, which conservatively estimates Biden's advantage at 62,282 Votes.

20. Except for the estimate of illegal out-of-state votes, each of these experts has identified distinct sources of illegal votes in sufficient numbers (*i.e.*, greater than Biden's purported margin of 10,457 votes), not only to affect, but to change the result of the 2020 General Election in Arizona. Taken together, the irregularities, anomalies and physical and statistical impossibilities, account for at least 412,494 illegal ballots that were counted in Arizona. This provides the Court with sufficient grounds to set aside the results of the 2020 General Election and provide the other declaratory and injunctive relief requested herein.

21. The specific factual allegations of fraud and statutory and constitutional violations are set forth in greater detail below. Section I describes specific violations of Arizona law. Section II provides expert witness testimony quantifying the number of illegal votes due to distinct categories of voting fraud and other unlawful conduct. Section III provides fact and expert witness testimony, as well as summaries of other publicly available evidence (including judicial and administrative proceedings) regarding Dominion voting systems' voting fraud in Arizona during the 2020 General Election, the security flaws that allow election workers, or even hostile foreign actors, to manipulate Arizona election results, and the history of Dominion and its executives demonstrating that

Dominion had the specific intent to interfere, and change the results of, the 2020 General Election.

JURISDICTION AND VENUE

22. This Court has subject matter under 28 U.S.C. § 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

23. This Court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932).

24. The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P.

25. This Court has jurisdiction over the related Arizona constitutional claims and state-law claims under 28 U.S.C. § 1367.

26. Venue is proper because a substantial part of the events or omissions giving rise to the claim occurred in the District of Arizona. 28 U.S.C. § 1391(b) & (c).

27. Because the United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers have no authority to unilaterally exercise that power, much less flout existing legislation.

THE PARTIES

28. Each of the following Plaintiffs is a registered Arizona voter and a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Arizona: Tyler Bowyer, a resident of Maricopa County; Nancy Cottle, a resident of Maricopa County; Jake Hoffman, a resident of Maricopa County; Anthony Kern, a resident of Maricopa County; James R. Lamon, a resident of Maricopa County; Samuel Moorhead, a resident of Gila County; Robert Montgomery, a resident of Cochise County; Loraine Pellegrino, a

resident of Maricopa County; Greg Safsten, a resident of Maricopa County; Kelli Ward, a resident of Mohave County; and Michael Ward, a resident of Mohave County.

29. Plaintiff Michael John Burke is a registered Arizona voter residing in Pinal County. Mr. Burke is the Republican Party Chairman for Pinal County.

30. Plaintiff Christopher M. King is a registered Arizona voter residing in Pima County. Mr. Burke is the Republican Party Vice Chairman for Pima County.

31. Plaintiff Salvatore Luke Scarmado is a registered Arizona voter residing in Mohave County. Mr. Burke is the Republican Party Chairman for Mohave County.

32. Presidential Electors "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of state officials implementing or modifying State election laws); *see also McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam).

33. Plaintiffs bring this action to prohibit certification of the election results for the Office of President of the United States in the State of Arizona and to obtain the other declaratory and injunctive relief requested herein. Defendants certified those results on November 30, 2020, indicating a plurality for Mr. Biden of 10,457 votes out of 3,420,565 cast.

34. The Defendants are Arizona Governor Doug Ducey, and Arizona Secretary of State Katie Hobbs.

35. Defendant Governor Doug Ducey is named as a defendant in his official capacity as Arizona's governor.

36. Defendant Secretary of State Katie Hobbs is named as a defendant in her official capacity as Arizona Secretary of State, who serves as the chief election officer in the State of Arizona.

STATEMENT OF FACTS

37. Plaintiffs bring this action under 42 U.S.C. §§ 1983 and 1988, to remedy deprivations of rights, privileges, or immunities secured by the Constitution and laws of the United States and to contest the election results, and the corollary provisions under the Arizona Constitution.

38. The United States Constitution sets forth the authority to regulate federal elections. With respect to congressional elections, the Constitution provides:

39.

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.
> U.S. CONST. art. I, § 4 ("Elections Clause").

40. With respect to the appointment of presidential electors, the Constitution provides:

> Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.
> U.S. CONST. art. II, § 1 ("Electors Clause").

41. None of Defendants is a "Legislature" as required under the Elections Clause or Electors Clause to set the rules governing elections. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley*, 285 U.S. 365. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." Id. at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 135 S. Ct. 2652, 2668 (U.S. 2015).

42. While the Elections Clause "was not adopted to diminish a State's authority to determine its own lawmaking processes," *Ariz. State Legislature,* 135 S. Ct. at 2677, it does hold states accountable to their chosen processes when it comes to regulating federal elections, *id.* at 2668. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush,* 531 U.S. at 113 (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

43. Secretary Hobbs certified the Presidential Election results on November 30, 2020. The Presidential election results in Arizona show a difference of 10,457 "tallied" votes in favor of former Vice-President Joe Biden over President Trump.

44. The specific factual allegations of fraud and statutory and constitutional violations are set forth in greater detail below. Section I describes specific violations of Arizona law. Section II provides expert witness testimony quantifying the number of illegal votes due to distinct categories of voting fraud and other unlawful conduct. Section III provides fact and expert witness testimony, as well as summaries of other publicly available evidence (including judicial and administrative proceedings) regarding Dominion voting systems' voting fraud in Arizona during the 2020 General Election, the security flaws that allow election workers, or even hostile foreign actors, to manipulate Arizona election results, and includes a summary of information relating to the motive and opportunity, and a pattern of behavior to prove that Dominion and its executives demonstrating that Dominion had the specific intent to interfere, and change the results of, the 2020 General Election.

45. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to enjoin the certification of the election results and invalidate the election results...

I. VIOLATIONS OF ARIZONA ELECTION LAW

A. Arizona Election Law

46. Pursuant to A.R.S. § 16-550(A), the county recorder or other officer in charge of elections shall compare the signatures on the early ballot affidavit with the signature of the elector on the elector's registration record. If the signature is inconsistent, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter and allow the voter to correct or confirm the inconsistent signature.

47. Pursuant to A.R.S. § 16-625, the officer in charge of elections shall ensure that electronic data from and electronic or digital images of ballots are protected from physical and electronic access, including unauthorized copying or transfer, and that all

security measures are at least as protective as those prescribed for paper ballots.

B. Fact Witness Testimony of Arizona Law Violations

1. Poll Watchers Failed to Adequately Verify Signatures on Ballots.

48. Affiant Burns stated that, while she was not permitted to be within viewing range of computer screens or monitors, she did have an opportunity to view "High Confidence" signatures following a brief power outage. *Id.* Upon seeing these, she was "disturbed … that the signatures were not even close to the signatures that they were 'comparing' the ballot signature to," and because she was told by the one poll worker with whom she was allowed to speak that "these signatures were counted." *(See Exh. 21)*

2. Biased and Partisan Maricopa County Poll Referees.

49. Affiant Low expressed concern that "the two Maricopa County *referees*, who [were] called upon to settle any unresolved disputes between the adjudicators, were registered 'Independent Party' members." (See Exh. 20, Low aff. ¶7) (emphasis in original). When asked about that, they told Mr. Low that "this *set up* was laid out per Arizona Statute." *Id.* (emphasis in original).

Due to the high likelihood of the Dominion machine rejecting ballots, a "set up" like the one discussed above, impacts the outcome of the results of theelection. The machines make determinations on what ballots to invalidate or validate based on an algorithm that operates offshore before tallying the votes locally..

To begin, the judges that adjudicate ballots must be evenly distributed amongst the major parties per A.R.S. § 16-531(A). There should be zero tolerance of fraud like this in any election system.

3. Irregularities Involving Dominion Voting Machines & Employees.

50. Affiant Low and fellow poll watcher Greg Wodynski repeatedly asked the Dominion employee (named "Bruce") at their polling location as to whether the Dominion machines were connected to the internet and how data was backed up. The Dominion employee repeatedly denied that the machines were connected to the Internet, *id.* ¶11, but "admitted that he took a complete copy of the voter files, being stored in the Dominion

system out of the building with him every night as a form of a 'back up' copy." *Id.* ¶22.

51. Low's fellow poll watcher, Affiant Gregory Wodynski, provides more detail on these regularities. First, Dominion employees and supervisors informed Mr. Wodynski "that about 12% of mail in ballots were being rejected and needed human intervention in the adjudication process," which "amounted to tens of thousands of ballots that required intervention" in the days he was an observer. Ex. 22, Wodynski aff at ¶9. Mr. Wodynski confirms that "Bruce" stated that "he would perform a manual daily system backup to an external hard drive," *id.* ¶10, and that "he made a daily second disk backup to a new spare hard drive[] … [that] were being physically moved off site to another building outside the MTEC building," but would not say where. *Id.* ¶11. Bruce further stated "**there was NO CHAIN OF CUSTODY on data backup hard drives leaving the MTEC facility on a daily basis for an undisclosed location.**" *Id.* (emphasis in original).

52. Mr. Wodynski also testified to a conversation with Dominion employee Bruce of the "the specifics of a process where he was manually manipulating stored scanner tabulation data files," which "he described as a processing issue at the numerous adjudication computer workstations." *Id.* ¶12. Bruce claimed that this was to split large files into small files for adjudication. *Id.* ¶13. Mr. Wydnoski was concerned because this "**was a human intervention process and therefore creating a potential for intention or non-intentional errors or lost ballot files.**" *Id.*

4. Problems with Certification of Dominion Voting Machines.

53. Affiant Linda Brickman, the 1st Vice-Chair of the Maricopa County Republican Committee, oversaw the Secretary of State certification of Dominion voting machines on November 18, 2020. Ex. 23, Brickman Aff at 1. Mr. Brickman observed the following problems:

- Signature verification standards were constantly being lowered by Supervisors in order to more quickly process that higher amount of early and mail-in ballots (from approx. 15 points of similarities, to a minimum of 3, lowered to 1, and ultimately to none – "Just pass each signature verification through") …

- Challenged signatures on envelopes where the signature was a completely different person than the name of the listed voter, was let through and approved by supervisors.

- Challenged runs or batches of envelopes for signature verification observed by me to be the exact same handwriting on the affidavit envelopes on numerous envelopes. When I asked if the County Attorney would be alerted for possible ballot fraud, I was told no, but supervisors would take care of it. …

- In the Duplication room, I observed with my Democratic partner the preparation of a new ballot since the original may have been soiled, damaged, or ripped, and wouldn't go through the tabulator. I read her a Trump/Republican ballot and as soon as she entered it into the system the ballot defaulted on the screen to a Biden/Democratic ballot. We reported this to supervisors, and others in the room commented that they had witnessed the same manipulation. We were never told what, if any, corrective action was taken.

- Election Office Observers – when it became apparent that more and more early and mail-in ballots would need to be processed, I mentioned that the current rule of the number of observers per party was not adequate (1 per party, unless all parties agreed to more). And since the Governor refused to call the Legislature into session for any reason, and little incentive for the Democrats to agree to a higher adequate number, there was no way 1 observer per Party, forced to the back of a room, or behind a see-through wall, had a legitimate opportunity to see what elections workers were seeing in real time and doing, especially where up to 20 or more workers processing tasks, sometimes in 10 seconds or less! And I personally observed most observers acting "clueless", and do not believe any of them even realized the challenges I made and referenced above.

- And lastly, one of the most egregious incidents in both the Duplication and Adjudication rooms which I worked, I observed the problem of Trump votes with voters checking the bubble for a vote for Trump, but ALSO, writing in the name "Donald Trump" and checking the bubble next to his hand written name again, as a duplicated vote, counting as an "OVERVOTE," which means – no vote was counted at all, despite the policy having been changed to allow these overvotes. Supervisors contradicted their own policies where the intent was clear. Ray Valenzuela, Director of Elections, told me openly at the morning of the Dominion Certification (November 18, 2020), that this was incorrect, the Supervisors were terribly mistaken and as an Adjudicator, I was instructed incorrectly, and these many votes SHOULD HAVE BEEN COUNTED AND NOT TURNED AWAY AS AN OVERVOTE.

Id. at 5-6.

II. EXPERT WITNESS TESTIMONY: EVIDENCE OF WIDESPREAD VOTER FRAUD

1. In Arizona 86,845 Mail-In Ballots Were Lost, and 219,135 More Were Fraudulently Recorded for Voters who Never Requested Mail-In Ballots.

54. The attached report of William M. Briggs, Ph.D. ("Dr. Briggs Report") summarizes the multi-state phone survey that includes a survey of Arizona voters collected by Matt Braynard, which was conducted from November 15-17, 2020. *See* Ex., Dr. Briggs Report at 1, and Att. 1 ("Briggs Survey"). The Briggs Survey identified two specific errors involving unreturned mail-in ballots that are indicative of voter fraud, namely: "**Error #1:** those who were recorded as receiving absentee ballots ***without*** requesting them;" and "**Error #2:** those who returned absentee ballots but whose votes went missing (*i.e.*, marked as unreturned)." *Id.* Dr. Briggs then conducted a parameter-free predictive model to estimate, within 95% confidence or prediction intervals, the number of ballots affected by these errors are from a total population of 518,560 unreturned mail-in ballots for the State of Arizona.

55. With respect to **Error #1**, Dr. Briggs' analysis estimated that **208,333 to 229,337 ballots** out of the total 518,560 unreturned ballots were recorded for voters who had **not** requested them. *Id.* All of these absentee ballots were sent to someone besides the registered voter named in the request, and thus could have been filled out by anyone and then submitted in the name of another voter. *Id.* (Ballots ordered by third parties that were voted, those would no longer be in the unreturned pool and therefore cannot be estimated from this data set.)

56. With respect to **Error #2**, he found **78,714 to 94,975 ballots** out of 518,560 unreturned ballots recorded for voters who **did return their ballots, but were recorded as being unreturned.** *Id.* These absentee ballots were either lost or destroyed (consistent with allegations of Trump ballot destruction) and/or were replaced with blank ballots filled

out by election workers, Dominion or other third parties.

57. Taking the average of the two types of errors together, **303,305 ballots, or 58% of the total, are disenfranchisement and unlawful.***Id.* These errors are not only conclusive evidence of widespread fraud by the State of Arizona, but they are fully consistent with the evidence about Dominion presented in Section III below insofar as **these unreturned absentee ballots represent a pool of blank ballots that could be filled in by third parties to shift the election to Joe Biden,** and also present the obvious conclusion that there must be absentee ballots unlawfully ordered by third parties that were returned.

58. Dr. Briggs' finding that 58% of "unreturned ballots" suffer from one of the two errors above is consistent with his findings in the four other States analyzed (Georgia 39%, Michigan 45%, Pennsylvania 37%, and Wisconsin 45%). His analysis also provides further support that these widespread "irregularities" or anomalies were one part of a much larger multi-state fraudulent scheme to rig the 2020 General Election for Joe Biden.

2. Evidence That At Least 5,790 Ineligible Voters Who Have Moved Out-of-State Illegally Voted in Arizona.

3. Evidence compiled by Matt Braynard using the National Change of Address ("NCOA") Database shows that 5,085 Arizona voters in the 2020 General Election moved out-of-state prior to voting, and therefore were ineligible. Mr. Braynard also identified 744 Arizona voters who subsequently registered to vote in another state and were therefore ineligible to vote in the 2020 General Election. The merged number is 5,790 ineligible voters whose votes must be removed from the total for the 2020 General ElectionEstimate of Illegal or Fictitious Votes Due to Dominion Voting Fraud and Manipulation.

59. Expert witness Russell James Ramsland, Jr. identifies two types of statistical anomalies that he concludes are the result of voting fraud. (*See* Ex. 17). First, as in other States Mr. Ramsland has analyzed (Georgia, Michigan and Wisconsin), Mr. Ramsland

finds historically unprecedented levels of turnout in specific counties or precincts. Using publicly available data, Mr. Ramsland determined that 66 percent of Pima County precincts (164 of 248) had turn out above 80%, and at least 36 had turnout above 90%, and that 54 percent of Maricopa County precincts (300 of 558) had turnout of 80% or more, and at least 30 over 90%. *Id.* ¶14. The report concludes that these extraordinary, and likely fraudulent, turnout levels "compels the conclusion to a reasonable degree of professional certainty that the vote count in Arizona, in particular for Maricopa and Pima counties for candidates for President contain at least 100,724 illegal votes that must be disregarded. *Id.*¶14.

60. Mr. Ramsland also identifies an impossibility: "an improbable, and possibly impossible spike in processed votes," *id.* ¶16, like those also found in Georgia, Michigan and Wisconsin. Specifically, at 8:06:40 PM on November 3, 2020, there was a spike of 143,100 votes for Biden in Maricopa and Pima Counties. *Id.* Mr. Ramsland believes that the spike in Arizona, like those in the other three States he analyzed could have been manufactured by Dominion voting machines through a method described in greater detail in Section III below. *Id.*

61. The summation of sections A through C above provide the following conclusions for the reports cited above, respectively.

- Returned ballots that were deemed unreturned by the state (average for Briggs Error #1): 219,135.
- Unreturned mail ballots unlawfully ordered by third parties (average for Briggs Error #1): 86,845.
- Votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 5,790.
- "Excess votes" to historically unprecedented, and likely fraudulent turnout levels of 80% or more in over half of Maricopa and Pima

County precincts: 100,724.

62. In Conclusion, the Reports cited above show a total amount of illegal votes identified that amount to 412,494 or over 40 times the margin by which candidate Biden leads President Trump in the state of Arizona.

III. FACTUAL ALLEGATIONS REGARDING DOMINION VOTING SYSTEMS

5. The State of Arizona used Dominion Voting Systems in Maricopa County. Dominion's Results for 2020 General Election Demonstrate Dominion Manipulated Election Results.

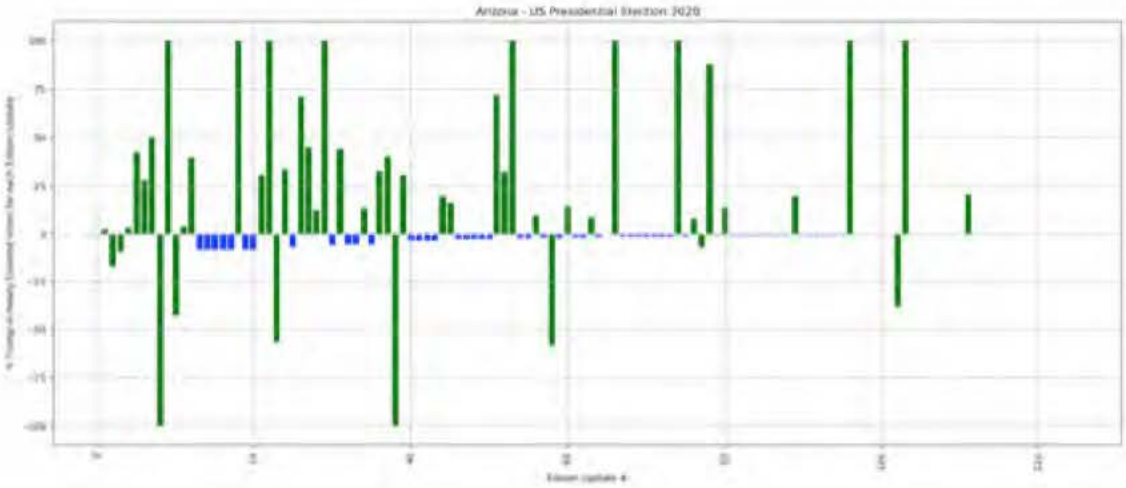
63. ***/***

64. Mr. Ramsland analyzed the Edison data reported to, and posted by, the New York Times, and concludes that this data "strongly suggests" the use of an "additive algorithm" (referred to as "ranked choice voting algorithm" ("RCV") in Dominion's user guide), combined with blank ballots loaded by the election workers or system operators, to manipulate votes in Arizona.[6]

65. Mr. Ramsland cites two specific examples from the Edison data demonstrating Dominion's algorithmic vote manipulation. The figure below, reproduced from his testimony, graphs the Edison data on election night for Arizona, where the blue bars "indicate the percentage of the batch that went for Biden," while the red trend lines and arrows "indicate the impossible consistencies" in that vote percentage. *Id.* ¶15. In other words, the blue bars and the horizontal trend lines show that "the percentage of the votes submitted in each batch that went towards candidate [Biden] remain unchanged for a series of time and for a number of *consecutive* batches …" *Id.* Mr. Ramsland concludes

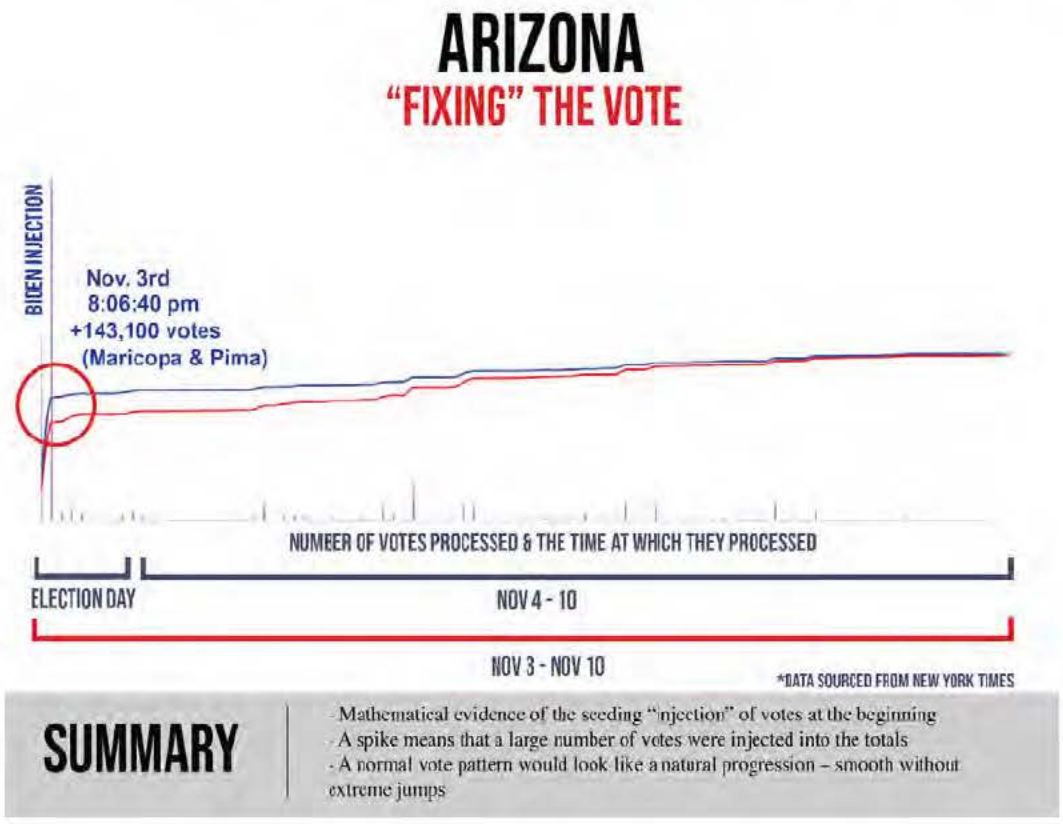
[6] *See* Ex. 17, ¶15 (quoting Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2, which reads in part, "**RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.**") Using the RCV method allows the operator to enter "blank ballots … into the system and treated as 'write-ins.' Then the operator can enter an allocation of the write-ins among candidates as he or she wishes. The result then awards the winner based on "points" that the algorithm computes, not actual voter votes." *Id.*

that the probability of such a consistent percentage in multiple consecutive batches "approaches zero," and "makes clear an algorithm is allocating votes based on a percentage." *Id.*



Impossible consistency in percentage of votes counted

66. The second example analyzed by Mr. Ramsland is "the improbable, and



possibly impossible spike in processed votes" for Biden, namely, the insertion of 143,100 Biden votes in Maricopa and Pima Counties at 8:06:40 PM on November 3, 2020. *See id.* ¶16.

This spike, cast largely for Biden, could easily be produced in the Dominion EMS control system by pre-loading batches of blank ballots in files such as Write-Ins or other adjudication-type files then casting them almost all for Biden using the Override Procedure (to cast Write-In, Blank, or Error ballots) that is available to the operator of the system. A few batches of blank ballots electronically pre-loaded into the adjudication files could easily produce a processed ballot stream this extreme so that actual paper ballots would not be needed until later to create "corroboration" for the electronic count. *Id.*

6. Administrative and Judicial Decisions Regarding Dominion's Security Flaws.

67. **Texas.** Texas, through its by the Secretary of State, denied certification to nearly the same Dominion Democracy Suite on January 24, 2020, specifically because the "examiner reports raise concerns about whether Democracy Suite 5.5-A system … **is safe from fraudulent or unauthorized manipulation**."[7]

68. **Wisconsin.** In 2018, Jill Stein was in litigation with Dominion Voting Systems ("DVS") after her 2016 recount request pursuant to WISCONSIN STAT.§5.905(4) wherein DVS obtained a Court Order requiring confidentiality on information including *voting counting source code*, which Dominion claims is proprietary – and must be kept secret from the public. (*See* unpublished decision, Wisconsin Court of Appeals, No. 2019AP272 issued April 30, 2020). Rather than engaging in an open and

[7] See attached hereto, as Exh. 11, State of Texas Secretary of State, Elections Division, *Report of Review of Dominion Voting Systems Democracy Suite 5.5-A* at 2 (Jan. 24, 2020) (emphasis added).

transparent process to give credibility to Wisconsin's Dominion-Democracy Suite voting system, the processes were hidden during the receipt, review, opening, and tabulation of those votes in direct contravention of Wisconsin's Election Code and Federal law.

69. **Georgia.** Substantial evidence of this vulnerability was discussed in Judge Amy Totenberg's October 11, 2020 Order in the USDC N.D. Ga. case of *Curling, et al. v. Kemp, et. al*, Case No. 1:17-cv-02989 Doc. No. 964. *See*, p. 22-23 ("This array of experts and subject matter specialists provided a huge volume of significant evidence regarding the security risks and deficits in the system as implemented in both witness declarations and live testimony at the preliminary injunction hearing."); p. 25 ("In particular, Dr. Halderman's testing indicated the practical feasibility through a cyber attack of causing the swapping or deletion of specific votes cast and the compromise of the system through different cyber attack strategies, including through access to and alteration or manipulation of the QR barcode.") The full order should be read, for it is eye-opening and refutes many of Dominion's erroneous claims and talking points.

70. The Secretary of State appoints a committee of three people to test different voting systems. The committee is required to submit their recommendations to the Secretary of state who then makes the final decision on which voting system(s) to adopt. **A**.R.S. § 16-442(A) and (C)In explaining that "In summary, [the court] rejected the Secretary's argument that her certification of voting machines for use in Arizona is **a** political question that is inappropriate for judicial review." In doing so, the court explained the application of HAVA because Arizona requires that its voting systems are HAVA compliant which includes accreditation pursuant to HAVA. *Chavez v. Brewer*, 222 Ariz. 309, 317, 214 P.3d 397, 405, 2009). During the subsequent four years, the Arizona Legislature amended and enacted several statutes to effectuate HAVA. Among these changes, the legislature amended Arizona Revised Statutes (**A**.R.S.) section **16-442**(**A**) to require that the secretary of state determine the voting machines that are "certified for use" in elections. 2003 Ariz. Sess. Laws, ch. 260, § 9 (1st Reg. Sess.). The

legislature also amended the process for selecting electronic voting machines by requiring that the secretary of state certify only voting machines that "comply with [HAVA]" and requiring that all election machines or devices be "tested and approved by **a** laboratory that is accredited pursuant to [HAVA]." *Id.;* **A**.R.S. § **16-442**(B) (2006). The legislature also authorized the secretary of state to revoke the certification of any voting system that fails to meet the new standards. 2003 Ariz. Sess. Laws, ch. 260, § 9; 2005 Ariz. Sess. Laws, ch. 144, § 2; **A**.R.S. § **16-442**(**C**), (D).

Chavez v. Brewer, 222 Ariz. 309, 312, 214 P.3d 397, 400, (App. 2009).

Dominion Voting Systems is not currently certified pursuant to the EAC Voting Systems

71. A District Judge found that Dominion's BMD ballots are not voter verifiable, and they cannot be audited in a software independent way. The credibility of a BMD ballot can be no greater than the credibility of Dominion's systems, which copious expert analysis has shown is deeply compromised. Similar to the issues in Arizona and Wisconsin, Judge Totenberg of the District Court of Georgia Northern District held:

> Georgia's Election Code mandates the use of the BMD system as the uniform mode of voting for all in-person voters in federal and statewide elections. O.C.G.A. § 21-2-300(a)(2). The statutory provisions mandate voting on "electronic ballot markers" that: (1) use "electronic technology to independently and privately mark a paper ballot at the direction of an elector, interpret ballot selections, ... such interpretation **for elector verification**, and print **an elector verifiable paper ballot**;" and (2) "produce paper ballots which are marked with the elector's choices **in a format readable by the elector**" O.C.G.A. § 21-2-2(7.1); O.C.G.A. § 21-2-300(a)(2). Plaintiffs and other voters who wish to vote in-person are required to vote on **a system that does none of those things**. Rather, the evidence shows that the Dominion BMD system does **not produce a voter-verifiable paper ballot or a paper ballot marked with the voter's choices in a format readable by the voter because the votes are tabulated solely from the unreadable QR code**.
>
> See Order, pp. 81-82. (Emphasis added).

72. This case was later affirmed in a related case, in the Eleventh Circuit in 2018 related to Georgia's voting system in *Common Cause Georgia v. Kemp*, 347 F. Supp. 3d

1270 (11th Cir. 2018). The Court found that:

> In summary, while further evidence will be necessary in the future, the Court finds that the combination of the statistical evidence and witness declarations in the record here (and the expert witness evidence in the related *Curling* case which the Court takes notice of) persuasively demonstrates the likelihood of Plaintiff succeeding on its claims. Plaintiff has shown a substantial likelihood of proving that the Secretary's failure to properly maintain a reliable and secure voter registration system has and will continue to result in the infringement of the rights of the voters to cast their vote and have their votes counted. *Id.at* 1294-1295.

73. The expert witness in the above litigation in the United States District Court of Georgia, Case 1:17-cv-02989-AT, Harri Hursti, specifically testified to the acute security vulnerabilities, *see* Ex. 107, wherein he testified or found:

A. "The scanner and tabulation software settings being employed to determine which votes to count on hand marked paper ballots are likely causing clearly intentioned votes to be counted" "The voting system is being operated in Fulton County in a manner that escalates the security risk to an extreme level" "Votes are not reviewing their BMD printed ballots, which causes BMD generated results to be un-auditable due to the untrustworthy audit trail." 50% or more of voter selections in some counties were visible to poll workers. Dominion employees maintain near exclusive control over the EMS servers. "In my professional opinion, the role played by Dominion personnel in Fulton County, and other counties with similar arrangements, should be considered an elevated risk factor when evaluating the security risks of Georgia's voting system." *Id.* ¶26.

B. A video game download was found on one Georgia Dominion system laptop, suggesting that multiple Windows updates have been made on that respective computer.

C. There is evidence of remote access and remote troubleshooting which presents a grave security implication.

D. Certified identified vulnerabilities should be considered an "extreme security risk."

E. There is evidence of transfer of control the systems out of the physical perimeters and place control with a third party off site.

F. USB drives with vote tally information were observed to be removed from the presence of poll watchers during a recent election.

G. "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access are extreme and destroy the credibility of the tabulations and output of the reports coming from a voting system." *Id.* ¶49.

7. Foreign Interference/Hacking and/or Manipulation of Dominion Results.

a. The Origins of Dominion Voting Systems

74. Smartmatic and its inventors have backgrounds evidencing foreign connections with countries such as Serbia. Upon information and belief, the inventors listed below have such connections:

Applicant: SMARTMATIC, CORP.

Inventors**:** Lino Iglesias, Roger Pinate, Antonio Mugica, Paul Babic, Jeffrey Naveda, Dany Farina, Rodrigo Meneses, Salvador Ponticelli, Gisela Goncalves, Yrem Caruso[8]

75. Another Affiant witness testifies that in Venezuela, she was in official position related to elections and witnessed manipulations of petitions to prevent a removal of President Chavez and because she protested, she was summarily dismissed. She explains the vulnerabilities of the electronic voting system and Smartmatica to such manipulations. (See Ex. 17, Cardozo Aff. ¶8).

b. US Government Advisory on Vulnerability to Foreign Hackers.

76. In October of 2020 The FBI and CISA issued a JOINT CYBERSECURITY ADVISORY ON October 30, 2020 titled: **Iranian Advanced Persistent Threat Actor Identified Obtained Voter Registration Data**

[8] *See* Patents Assigned to Smartmatic Corp., *available at:* https://patents.justia.com/assignee/smartmatic-corp

> This joint cybersecurity advisory was coauthored by the Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI). CISA and the FBI are aware of an Iranian advanced persistent threat (APT) actor targeting U.S. state websites to include election websites. CISA and the FBI assess this actor is responsible for the mass dissemination of voter intimidation emails to U.S. citizens and the dissemination of U.S. election-related disinformation in mid-October 2020.[1] (Reference FBI FLASH message ME-000138-TT, disseminated October 29, 2020). Further evaluation by CISA and the FBI has identified the targeting of U.S. state election websites was an intentional effort to influence and interfere with the 2020 U.S. presidential election.

(See CISA and FBI Joint Cyber Security Advisory of October 30, 2020, a copy attached hereto as Ex. 18.)

c. Expert Witness Testimony on Dominion Vulnerability to Foreign Interference and Ties to Hostile Foreign Governments

77. A PhD Declarant analyzed the cumulative vote percentages sorted by ward or precinct sizes. This concept was previously used throughout the report on voter irregularities in lulu Fries'dat and Anselmo Sampietro's "*An electoral system in crisis"* at http://www. electoralsystemincrisis.org/. In Fries' dat's report there was an anomalous dependency on precinct size in many of the 2016 primary elections. The larger precincts had introduced the use of voting machines. However, one could also theorize the opportunity for cheaters to cheat in small precincts, where there may be less oversight. Normally, we would expect the cumulative vote percentage to converge to an asymptote, and bounce around the mean until convergence. An example of this can be found from the 2000 Florida Democratic presidential primary between Gore and Bradley. (*See* Exh. __, at p. 8). This is shown in Figure 8, and is taken from Fries' dat's report:

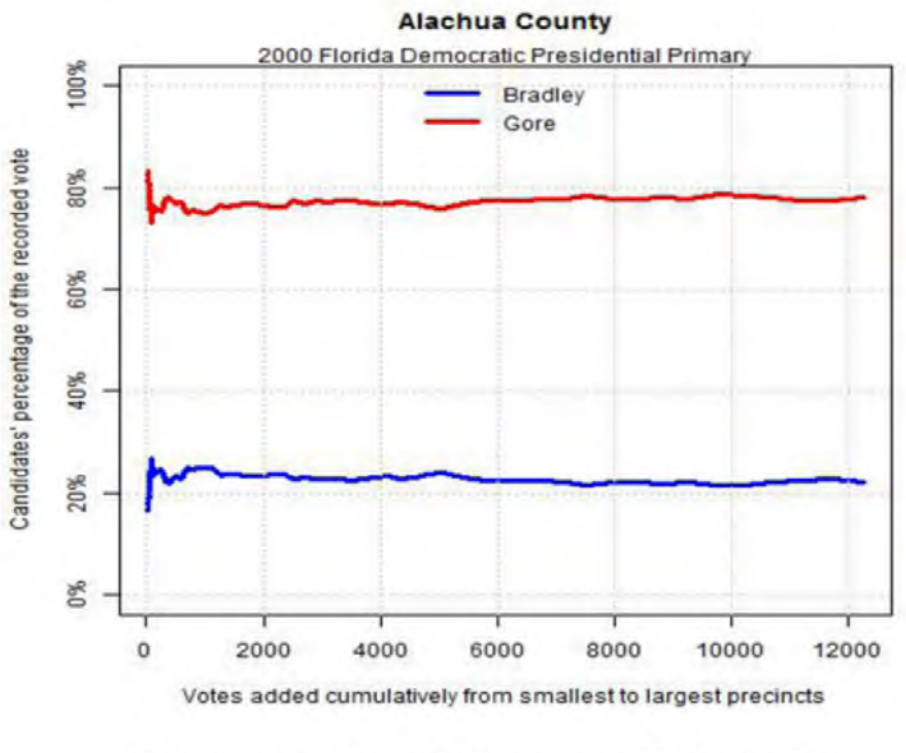


Figure 8: Baseline Cumulative Fractions Sorted by Precinct Size

(*See* Exh. __, at p. 9).

The Declarant then analyzed Maricopa county in Arizona, in addition to other swing states. The data was obtained from the Maricopa county recorder website at https://recorder.maricopa.gov/media/ArizonaExportByPrecinct_110320.txt

The Declarant sorted precincts by size and tallied the cumulative vote percentages. It should rapidly approach an asymptote, but again in Figure 18 we see an anomaly. The Biden percentage is higher in the smaller precincts, primarily at the expense of Trump, again suggesting vote switching, since the 3rd party percentages immediately approach the asymptote.

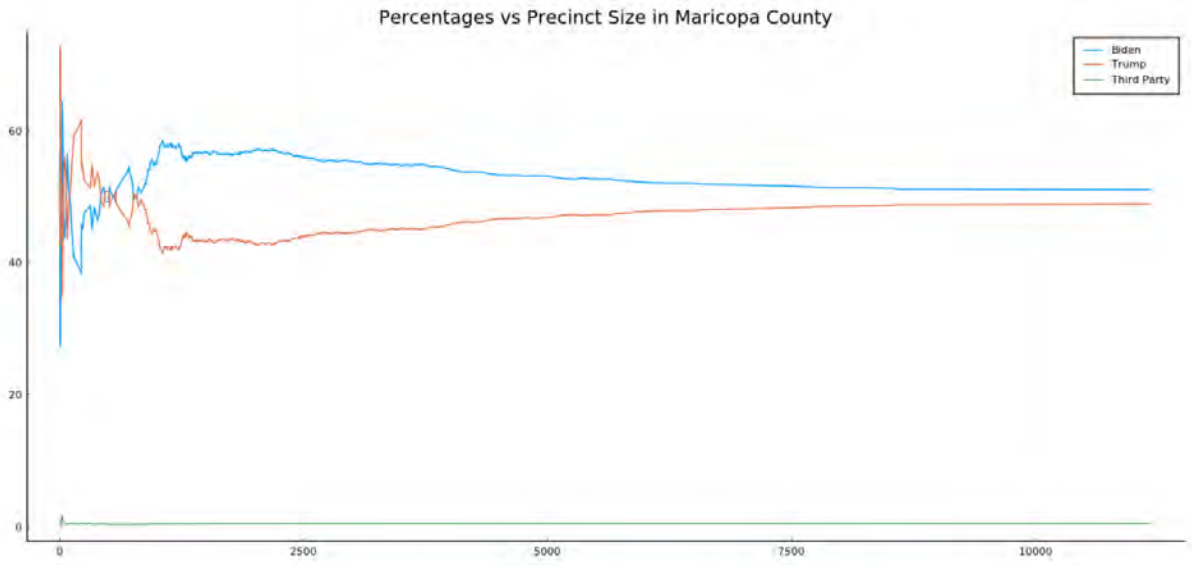


Figure 18: Maricopa County Arizona Percentage vs Precinct Size

(*See* Exh. 19, at p. 14).

In Figure 19 the Declarant focuses on the third-party percentages, which we see are indeed independent of precinct size and converge quickly to the asymptote. This is about what we would expect if the third-party candidates were counted fairly. It is in sharp contrast to the precinct size dependency and slow convergence of the Trump and Biden percentages.

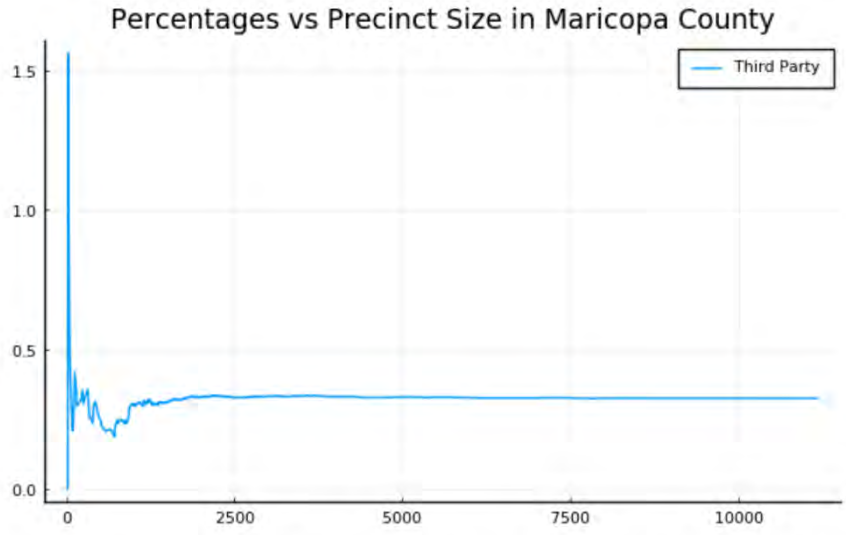


Figure 19: Third Party Percentages vs Size in Maricopa County

(*See* Exh. 19, at p. 15).

78. An analysis of the Dominion software system by a former US Military Intelligence expert subsequently found that the Dominion Voting system and software are accessible - and was compromised by rogue actors, including foreign interference by Iran and China. (*See* Ex. 12, Spider Declaration (redacted for security reasons).)

79. The expert does an analysis and explains how by using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, Dominion allowed foreign adversaries to access data and intentionally provided access to Dominion's infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. *Id*. Several facts are set forth related to foreign members of Dominion Voting Systems and foreign servers as well as foreign interference.).

80. Another Declarant first explains the foundations of her opinion and then addresses the concerns of foreign interference in our elections through hardware components from companies based in foreign countries with adverse interests. (*See* Ex. 13). She explains that Dominion Voting Systems works with SCYTL, and that votes on route, before reporting, go to SCYTL in foreign countries. On the way, they get mixed and an algorithm is applied, which is done through a secretive process.

> The core software used by ALL SCYTL related Election Machine/Software manufacturers ensures "anonymity" Algorithms within the area of this "shuffling" to maintain anonymity allows for setting values to achieve a desired goal under the guise of "encryption" in the trap-door… *Id*.

81. The Affiant goes on to explain the foreign relationships in the hardware used by Dominion Voting Systems and its subsidiary Sequoia and explains specifically the port that Dominion uses, which is called Edge Gateway and that is a part of Akamai Technologies based in Germany and China.

82. This Declarant further explains the foundations of her opinion and then

addresses the concerns of foreign interference in our elections through hardware components from companies based in foreign countries with adverse interests.

> The concern is the HARDWARE and the NON – ACCREDITED VSTLs as by their own admittance use COTS. The purpose of VSTL's being accredited and their importance is ensuring that there is no foreign interference / bad actors accessing the tally data via backdoors in equipment software. The core software used by ALL SCYTL related Election Machine/Software manufacturers ensures "anonymity". **Algorithms within the area of this "shuffling" to maintain anonymity allows for setting values to achieve a desired goal under the guise of "encryption" in the trap-door…**
>
> (See Id. at ¶32).

83. Scytle, contracts with the AP – which receives the results tallied by SCYTL on behalf of Dominion. (See Exh. 13 at par. 33). This becomes highly relevant since SCYTLE is complete offshore. (See Exh. 13 at par.44) And where the ballots go through a process described in three categories for a ballot cast, Step 1 involves Configuring the Data; Step 2 involves Cleansing which means determining which ballots are valid and which are not; and Step 3 involves "Shuffling" where the ballots get mixed and the algorithm is applied to distribute the votes. It is when the algorithm is applied, that happens secretly and the parameters of that algorithm are only known to SCYTL and Dominion. (See Exh. 13, pars. 44-50) – and where it gets encrypted as "ciphertexts."

> Certification Program, nor is its' provider. China is not currently the only nation involved with COTS system provided to election machines or the networking, so is Germany via a LAOS founded Chinese linked cloud service company that works with SCYTL named Akamai Technologies – that have their offices in China and are linked to the server for Dominion Software. (See Exh. 13 at par. 36))

Mathematical evidence of the seeding "injection" of votes can be seen from the data feed on November 3, 2020 for Maricopa and Pima counties, where a spike can be seen which means a large number of votes were injected into the totals. (See Exh. 13 at par. 69).

84. The Affiant explains the use of an algorithm and how it presents throughout the statement, but specifically concludes that,

> **The "Digital Fix" observed with an increased spike in VOTES for Joe Biden can be determined as evidence of a pivot**. Normally it would be assumed that the algorithm had a Complete Pivot. Wilkinson's demonstrated the guarantee as:
>
> $$\frac{\|U\|_\infty}{\|A\|_\infty} \leq n^{\frac{1}{2}\log(n)}$$
>
> Such a conjecture allows the growth factor the ability to be upper bound by values closer to n. Therefore, complete pivoting can't be observed because there would be too many floating points. Nor can partial as the partial pivoting would overwhelm after the "injection" of votes. Therefore, external factors were used which is evident from the "DIGITAL FIX." (*See Id*. at pars. 67-69)
>
> "The algorithm looks to have been set to give Joe Biden a 52% win even with an initial 50K+ vote block allocation was provided initially as tallying began (as in case of Arizona too). In the am of November 4, 2020 the algorithm stopped working, therefore another "block allocation" to remedy the failure of the algorithm. This was done manually as ALL the SYSTEMS shut down NATIONWIDE to avoid detection."
>
> (*See Id*. at par. 73)

85. And Russ Ramsland can support that further by documenting the data feed that came from Dominion Voting Systems to Scytl based on certain available data, that it was reported with decimal points, which is contrary to one vote as one ballot: **"The fact that we observed raw vote data coming directly that includes decimal places establishes selection by an algorithm, and not individual voter's choice. Otherwise, votes would be solely represented as whole numbers (votes cannot possibly be added up and have decimal places reported)."**

8. Additional Independent Findings of Dominion Flaws.

86. Further supportive of this pattern of incidents, reflecting an absence of mistake, Plaintiffs have since learned that the "glitches" in the Dominion system, that have the uniform effect of hurting Trump and helping Biden, have been widely reported in the press and confirmed by the analysis of independent experts.

1.Central Operator Can Remove, Discard or Manipulate Votes.

87. Mr. Watkins further explains **that the central operator can remove or discard batches of votes.** "After all of the ballots loaded into the scanner's feed tray have been through the scanner, the "ImageCast Central" operator will remove the ballots from the tray then have the option to either "Accept Batch" or "Discard Batch" on the scanning menu …. " (Ex. 14, Watkins aff. ¶11). ¶8.

88. Mr. Watkins further testifies that the user manual makes clear that the system allows for threshold settings to be set to find all ballots get marked as "problem ballots" for discretionary determinations on where the vote goes stating:

> 9. During the ballot scanning process, the "ImageCast Central" software will detect how much of a percent coverage of the oval was filled in by the voter. The Dominion customer determines the thresholds of which the oval needs to be covered by a mark in order to qualify as a valid vote. If a ballot has a marginal mark which did not meet the specific thresholds set by the customer, then the ballot is considered a "problem ballot" and may be set aside into a folder named "NotCastImages".
>
> 10. Through creatively tweaking the oval coverage threshold settings, and advanced settings on the ImageCase Central scanners, it may be possible to set thresholds in such a way that a non-trivial amount of ballots are marked "problem ballots" and sent to the "NotCastImages" folder.
>
> 11. The administrator of the ImageCast Central work station may view all images of scanned ballots which were deemed "problem ballots" by simply navigating via the standard "Windows File Explorer" to the folder named

> "NotCastImages" which holds ballot scans of "problem ballots". It may be possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system. Id. ¶¶ 9-11.

89. The Voting Rights Act, 52 U.S.C. §10101(e), provides, in relevant part: … When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election;

a. The VRA, 52 U.S.C. § 10307, also provides, in relevant part, that,

b. No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

c. Federal law also requires the states to maintain uniform voting standards. Section 301 of the Help America Vote Act of 2002 [HAVA], (Pub. L. 107–252, 116 Stat. 1704, codified at 42 U.S.C. § 15481.

d. Each voting system used in an election for Federal office shall meet the following requirements: (6) Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. 42 U.S.C. §15481(a)(6)

e. State laws define a "vote" as a "ballot" that clearly indicates the intent of the voter to choose a candidate. "Ballot" means a ballot label, sheet of paper or

> envelope on which votes are recorded. The term also includes a sheet or card, filmstrip or other device listing or containing information relative to offices, candidates and referenda which is placed, projected or composed on the board or screen inside a voting machine. Wis. Stat. § 5.02Every ballot, except a voting machine ballot, shall bear substantially the following information on the face: "Notice to electors: This ballot may be invalid unless initialed by 2 election inspectors. If cast as an absentee ballot, the ballot must bear the initials of the municipal clerk or deputy clerk. Wis. Stat. Ann. § 5.54 (emphasis in originalFederal law also requires the states to maintain uniform voting standards. Section 301 of the Help America Vote Act of 2002 [HAVA], (Pub. L. 107–252, 116 Stat. 1704, codified at 42 U.S.C. § 15481. Among other things, it provides that, "Each voting system used in an election for Federal office shall meet the following requirements: … (6) Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State." 42 U.S.C. §15481(a)(6)

2.Dominion – By Design – Violates Federal Election & Voting Record Retention Requirements.

90. The Dominion System put in place by its own design violates the intent of Federal law on the requirement to preserve and retain records – which clearly requires preservation of all records requisite to voting in such an election.

> **§ 20701.** Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation
>
> Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the

> Commonwealth of Puerto Rico are voted for, **all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election,** except that, when required by law, such records and papers may be delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

See 52 USC § 20701.

3.Dominion Vulnerabilities to Hacking.

91. Plaintiffs have since learned that the "glitches" in the Dominion system -- that have the uniform effect of hurting Trump and helping Biden -- have been widely reported in the press and confirmed by the analysis of independent experts, a partial summary of which is included below.

> (1) Users on the ground have full admin privileges to machines and software. The Dominion system is designed to facilitate vulnerability and allow a select few to determine which votes will be counted in any election. Workers were responsible for moving ballot data from polling place to the collector's office and inputting it into the correct folder. Any anomaly, such as pen drips or bleeds, is not counted and is handed over to a poll worker to analyze and decide if it should count. This creates massive opportunity for improper vote adjudication. (Ex. 14 Watkins aff. ¶¶8 & 11).
>
> (2) Affiant witness (name redacted for security reasons), in his sworn testimony explains he was selected for the national security guard detail of the President of Venezuela, and that he witnessed the creation of Smartmatic for the purpose of election vote manipulation:
>
> I was witness to the creation and operation of a sophisticated electronic

> voting system that permitted the leaders of the Venezuelan government to manipulate the tabulation of votes for national and local elections and select the winner of those elections in order to gain and maintain their power. Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic which included … The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes against persons running the Venezuelan government to votes in their favor in order to maintain control of the government. (*Id.* ¶¶6, 9, 10).

92. Specific vulnerabilities of the systems in question that have been well documented or reported include:

A. Barcodes can override the voters' vote: As one University of California, Berkeley study shows, "In all three of these machines [including Dominion Voting Systems] the ballot marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can make the paper ballot (to add votes or spoil already-case votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection." (See Ex. 10, Appel Study).

B. Voting machines were able to be connected to the internet by way of laptops that were obviously internet accessible. If one laptop was connected to the internet, the entire precinct was compromised.

C. October 6, 2006 – **Congresswoman Carolyn Maloney calls on Secretary of Treasury Henry Paulson to conduct an investigation into Smartmatic based on its foreign ownership and ties to Venezuela.** (See Ex. 15). Congresswoman Maloney wrote that "It is undisputed that Smartmatic is foreign owned and it has acquired Sequoia … Smartmatic now acknowledged that Antonio Mugica, a Venezuelan businessman has a controlling interest in Smartmatica, but the company has not revealed who all other Smartmatic owners are. *Id.*

D. Dominion "got into trouble" with several subsidiaries it used over alleged cases of fraud. One subsidiary is Smartmatic, a company "that

has played a significant role in the U.S. market over the last decade."[9] Dominion entered into a 2009 contract with Smartmatic and provided Smartmatic with the PCOS machines (optical scanners) that were used in the 2010 Philippine election, the biggest automated election run by a private company. The automation of that first election in the Philippines was hailed by the international community and by the critics of the automation. The results transmission reached 90% of votes four hours after polls closed and Filipinos knew for the first time who would be their new president on Election Day. In keeping with local Election law requirements, Smartmatic and Dominion were required to provide the source code of the voting machines prior to elections so that it could be independently verified. *Id.*

E. Litigation over Smartmatic "glitches" alleges they impacted the 2010 and 2013 mid-term elections in the Philippines, raising questions of cheating and fraud. An independent review of the source codes used in the machines found multiple problems, which concluded, "The software inventory provided by Smartmatic is inadequate, … which brings into question the software credibility."[10]

F. Dominion acquired Sequoia Voting Systems as well as Premier Election Solutions (formerly part of Diebold, which sold Premier to ES&S in 2009, until antitrust issues forced ES&S to sell Premier, which then was acquired by Dominion). This map illustrates 2016 voting machine data—meaning, these data do not reflect geographic aggregation at the time of acquisition, but rather the machines that retain the Sequoia or Premier/Diebold brand that now fall under Dominion's market share. Penn Wharton Study at 16.

G. In late December of 2019, three Democrat Senators, Warren, Klobuchar, Wyden and House Member Mark Pocan wrote about their 'particularized concerns that secretive & "trouble -plagued companies"' "have long skimped on security in favor of convenience," in the context of how they described the voting machine systems that three large vendors – Election Systems & Software, Dominion Voting Systems, &

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[9] *Voting Technology Companies in the U.S. – Their Histories and Present Contributions,* Access Wire, (Aug. 10, 2017)*, available at:* https://www.accesswire.com/471912/Voting-Technology-Companies-in-the-US--Their-Histories.

[10] *Smartmatic-TIM Running Out of Time to Fix Glitche*s, ABS-CBN News (May 4, 2010), *available at*: https://news.abs-cbn.com/nation/05/04/10/smartmatic-tim-running-out-time-fix-glitches.

> Hart InterCivic – collectively provide voting machines & software that facilitate voting for over 90% of all eligible voters in the U.S." (See Ex. 16).
>
> H. Senator Ron Wyden (D-Oregon) said the findings [insecurity of voting systems] are "yet another damning indictment of the profiteering election vendors, who care more about the bottom line than protecting our democracy." It's also an indictment, he said, "of the notion that important cybersecurity decisions should be left entirely to county election offices, many of whom do not employ a single cybersecurity specialist."[11]

93. The House of Representatives passed H.R. 2722 in an attempt to address these very risks on June 27, 2019:

> This bill addresses election security through grant programs and requirements for voting systems and paper ballots.
> The bill establishes requirements for voting systems, including that systems (1) use individual, durable, voter-verified paper ballots; (2) make a voter's marked ballot available for inspection and verification by the voter before the vote is cast; (3) ensure that individuals with disabilities are given an equivalent opportunity to vote, including with privacy and independence, in a manner that produces a voter-verified paper ballot; (4) be manufactured in the United States; and (5) meet specified cybersecurity requirements, including the prohibition of the connection of a voting system to the internet.
>
> See H.R. 2722.

9. Because Dominion Senior Management Has Publicly Expressed Hostility to Trump and Opposition to His Election, Dominion Is Not Entitled to Any Presumption of Fairness, Objectivity or Impartiality, and Should Instead Be Treated as a Hostile Partisan Political Actor.

94. Dr. Eric Coomer is listed as the co-inventor for several patents on

[11] Kim Zetter, *Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials*, VICE (Aug. 8, 2019) ("VICE Election Article"), *available at:* https://www.vice.com/en/article/3kxzk9/exclusive-critical-us-election-systems have-been-left-exposed-online-despite-official-denials.

ballot adjudication and voting machine-related technology, all of which were assigned to Dominion.[12] He joined Dominion in 2010, and most recently served as Voting Systems Officer of Strategy and Director of Security for Dominion. Dr. Coomer first joined Sequoia Voting Systems in 2005 as Chief Software Architect and became Vice President of Engineering before Dominion Voting Systems acquired Sequoia. Dr. Coomer's patented ballot adjudication technology is built into Dominion voting machines sold throughout the United States, including those used in Arizona. (See attached hereto Exh 6, Jo Oltmann Aff.).

95. In 2016, Dr. Coomer admitted to the State of Illinois that Dominion Voting machines can be manipulated remotely.[13] He has also publicly posted videos explaining how Dominion voting machines can be remotely manipulated. See Id.[14]

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[12] *See* "Patents by Inventor Eric Coomer," *available at:* https://patents.justia.com/inventor/eric-coomer. This page lists the following patents issued to Dr. Coomer and his co-inventors: (1) U.S. Patent No. 9,202,113, Ballot Adjudication in Voting Systems Utilizing Ballot Images (issued Dec. 1, 2015); (2) U.S. Patent No. 8,913,787, Ballot Adjudication in Voting Systems Utilizing Ballot Images (issued Dec. 16, 2014); (3) U.S. Patent No. 8,910,865, Ballot Level Security Features for Optical Scan Voting Machine Capable of Ballot Image Processing, Secure Ballot Printing, and Ballot Layout Authentication and Verification (issued Dec. 16, 2014); (4) U.S. Patent No. 8,876,002, Systems for Configuring Voting Machines, Docking Device for Voting Machines, Warehouse Support and Asset Tracking of Voting Machines (issued Nov. 4, 2014); (5) U.S. Patent No. 8,864,026, Ballot Image Processing System and Method for Voting Machines (issued Oct. 21, 2014); (6) U.S. Patent No. 8,714,450, Systems and Methods for Transactional Ballot Processing, and Ballot Auditing (issued May 6, 2014), available at: https://patents.justia.com/inventor/eric-coomer.

[13] Jose Hermosa, *Electoral Fraud: Dominion's Vice President Warned in 2016 That Vote-Counting Systems Are Manipulable*, The BL (Nov. 13, 2020), *available at*: https://thebl.com/us-news/electoral-fraud-dominions-vice-president-warned-in-2016-that-vote-counting-systems-are-manipulable.html.

[14] See, *e.g.,* "Eric Coomer Explains How to Alter Votes in the Dominion Voting System" (Nov. 24, 2020) (excerpt of presentation delivered in Chicago in 2017), *available at:* https://www.youtube.com/watch?v=UtB3tLaXLJE.

96. Dr. Coomer has emerged as Dominion's principal defender, both in litigation alleging that Dominion rigged elections in Georgia and in the media. An examination of his previous public statements has revealed that Dr. Coomer is highly partisan and even more anti-Trump, precisely the opposite of what would expect from the management of a company charged with fairly and impartially counting votes (which is presumably why he tried to scrub his social media history). (See Id.)

97. Unfortunately for Dr. Coomer, however, a number of these posts have been captured for perpetuity. Below are quotes from some of his greatest President Trump and Trump voter hating hits to show proof of motive and opportunity. (See Id).

> If you are planning to vote for that autocratic, narcissistic, fascist ass-hat blowhard and his Christian jihadist VP pic, UNFRIEND ME NOW! No, I'm not joking. … Only an absolute F[**]KING IDIOT could ever vote for that wind-bag fuck-tard FASCIST RACIST F[**]K! … I don't give a damn if you're friend, family, or random acquaintance, pull the lever, mark an oval, touch a screen for that carnival barker … UNFRIEND ME NOW! I have no desire whatsoever to ever interact with you. You are beyond hope, beyond reason. You are controlled by fear, reaction and bullsh[*]t. Get your shit together. F[**]K YOU! Seriously, this f[**]king ass-clown stands against everything that makes this country awesome! You want in on that? You [Trump voters] deserve nothing but contempt. *Id.* (July 21, 2016 Facebook post).[15]

98. In a rare moment of perhaps unintentional honesty, Dr. Coomer anticipates this Complaint and many others, by slandering those seeking to hold election riggers like Dominion to account and to prevent the United States' descent into Venezuelan levels of voting fraud and corruption out of which Dominion was born:

> Excerpts in stunning Trump-supporter logic, "I know there is a lot of voter fraud. I don't know who is doing it, or how much is happening, but I

[15] In this and other quotations from Dr. Coomer's social media, Plaintiffs have redacted certain profane terms.

> know it is going on a lot." This beautiful statement was followed by, "It happens in third world countries, this the US, we can't let it happen here." *Id.* (October 29, 2016 Facebook post); (See also Exh. 6)

1. Dr. Coomer, who invented the technology for Dominion's voting fraud and has publicly explained how it can be used to alter votes, seems to be extremely hostile to those who would attempt to stop it and uphold the integrity of elections that underpins the legitimacy of the United States government:

> And in other news… There be some serious fuckery going on right here fueled by our Cheeto-in-Chief stoking lie after lie on the flames of [Kris] Kobach… [Linking Washington Post article discussing the Presidential Advisory Commission on Election Integrity, of which former Kansas Secretary of State Kris Kobach was a member, entitled, "The voting commission is a fraud itself. Shut it down."] *Id.* (September 14, 2017 Facebook post.] (Id.)

99. Dr. Coomer also keeps good company, supporting and reposting ANTIFA statements slandering President Trump as a "fascist" and by extension his supporters, voters and the United States military (which he claims, without evidence, Trump will make into a "fascist tool"). *Id.* (June 2, 2020 Facebook post). Lest someone claims that these are "isolated statements" "taken out of context", Dr. Coomer has affirmed that he shares ANTIFA's taste in music and hatred of the United States of America, *id.* (May 31, 2020 Facebook post linking "F[**]k the USA" by the exploited), and the police. *Id.* (separate May 31, 2020 Facebook posts linking N.W.A. "F[**]k the Police" and a post promoting phrase "Dead Cops"). *Id.* at 4-5.

100. Affiant and journalist Joseph Oltmann researched ANTIFA in Colorado. *Id.* at 1. "On or about the week of September 27, 2020," he attended an Antifa meeting which appeared to be between Antifa members in Colorado Springs and Denver Colorado," where Dr. Coomer was present. In response to a question as to what Antifa would do "if Trump wins this … election?", Dr. Coomer responded "Don't worry about the election. Trump is not going to win. I made f[**]king sure of that … Hahaha." *Id.* at 2.

101. By putting an anti-Trump zealot like Dr. Coomer in charge of election "Security," and using his technology for what should be impartial "ballot adjudication," Dominion has given the fox the keys to the hen house ***and has forfeited any presumption of objectivity, fairness, or even propriety***. It appears that Dominion does not care about even an appearance of impropriety, as its most important officer has his fingerprints all over a highly partisan, vindictive, and personal vendetta against the Republican nominee both in 2016 and 2020, President Donald Trump. Dr. Coomer's highly partisan anti-Trump rages show clear motive on the part of Dominion to rig the election in favor of Biden, and may well explain why for each of the so-called "glitches" uncovered, it is always Biden receiving the most votes on the favorable end of such a "glitch." (Id.)

102. In sum, as set forth above, for a host of independent reasons, the Arizona election results concluding that Joe Biden received more votes that President Donald Trump must be set aside.

COUNT I

Defendants Violated the Elections and Electors Clauses and 42 U.S.C. § 1983.

103. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

104. The Electors Clause states that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for President. U.S. Const. art. II, §1, cl. 2 (emphasis added). Likewise, the Elections Clause of the U.S. Constitution states that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by *the Legislature* thereof." U.S. Const. art. I, § 4, cl. 1 (emphasis added).

105. The Legislature is "'the representative body which ma[kes] the laws of the people.'" *Smiley v. Holm,* 285 U.S. 355, 365 (1932). Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." *Id.* at 367; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2668 (2015).

106. Defendants are not part of the Arizona Legislature and cannot exercise legislative power. Because the United States Constitution reserves for the Arizona Legislature the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

i. The VRA, 52 U.S.C. § 10307, also provides, in relevant part, that,

ii. No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of chapters 103 to 107 of this title or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

iii. Federal law also requires the states to maintain uniform voting standards. Section 301 of the Help America Vote Act of 2002 [HAVA], (Pub. L. 107–252, 116 Stat. 1704, codified at 42 U.S.C. § 15481.

iv. Each voting system used in an election for Federal office shall meet the following requirements: (6) Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State. 42 U.S.C. §15481(a)(6).

107. With respect to unreturned ballots recorded for voters who did return their ballot but were recorded as being unreturned, Plaintiffs have identified 78,714 to 94,975 ballots out of 518,560 absentee / mail ballots. Id. These absentee ballots were either lost or destroyed (consistent with allegations of Trump ballot destruction) and/or were replaced with blank ballots filled out by election workers, Dominion or other third parties.

108. Taking the average of the two types of errors together, 303,305 ballots, or

58% of the total, are defective. These errors are not only conclusive evidence of widespread fraud by the State of Arizona, but they are fully consistent with the evidence about Dominion presented in Section III below insofar as these unreturned absentee ballots represent a pool of blank ballots that could be filled in by third parties to shift the election to Joe Biden, and also present the obvious conclusion that there must be absentee ballots unlawfully ordered by third parties that were returned.

109. There are also thousands of absentee ballots that Plaintiffs can show were sent to someone besides the registered voter named in the request, and thus could have been filled out by anyone and then submitted in the name of another voter specifically in violation of election law, one vote is one ballot.

110. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the injunctive relief requested herein is granted. Defendants have acted and, unless enjoined, will act under color of state law to violate the Elections Clause.

111. Accordingly, the results for President in the November 3, 2020 election must be set aside, the State of Arizona should be enjoined from transmitting the certified the results thereof, and this Court should grant the other declaratory and injunctive relief requested herein.

COUNT II

Defendants Violated The Equal Protection Clause of the Fourteenth Amendment U.S. Const. Amend. XIV & 42 U.S.C. § 1983

112. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

113. The Fourteenth Amendment of the United States Constitution provides "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. *See also Bush v. Gore*, 531 U.S. 98, 104 (2000) (having once granted the

right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over the value of another's). *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 665 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."). The Court has held that to ensure equal protection, a problem inheres in the absence of specific standards to ensure its equal application. *Bush*, 531 U.S. at 106 ("The formulation of uniform rules to determine intent based on these recurring circumstances is practicable and, we conclude, necessary.").

114. The equal enforcement of election laws is necessary to preserve our most basic and fundamental rights. The requirement of equal protection is particularly stringently enforced as to laws that affect the exercise of fundamental rights, including the right to vote.

115. The disparate treatment of Arizona voters, in subjecting one class of voters to greater burdens or scrutiny than another, violates Equal Protection guarantees because "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. *Rice v. McAlister*, 268 Ore. 125, 128, 519 P.2d 1263, 1265 (1975); *Heitman v. Brown Grp., Inc.,* 638 S.W.2d 316, 319, 1982 Mo. App. LEXIS 3159, at *4 (Mo. Ct. App. 1982); *Prince v. Bear River Mut. Ins. Co.*, 2002 UT 68, ¶ 41, 56 P.3d 524, 536-37 (Utah 2002).

116. In statewide and federal elections conducted in the State of Arizona, including without limitation the November 3, 2020 General Election, all candidates, political parties, and voters, including without limitation Plaintiffs, have an interest in having the election laws enforced fairly and uniformly.

117. Defendants failed to comply with the requirements of Arizona law and the Equal Protection Clause and thereby diluted the lawful ballots of the Plaintiffs and of other Arizona voters and electors in violation of the United States Constitution guarantee

of Equal Protection. In Section II, Plaintiff experts provide testimony quantifying the number of illegal votes resulting from Defendants' statutory and constitutional violations. Finally, Section III details the additional voting fraud and manipulation enabled by the use Dominion voting machines, which had the intent and effect of favoring Biden and Democratic voters and discriminating against Trump and Republican voters.

118. Defendants have acted and will continue to act under color of state law to violate Plaintiffs' right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution and Arizona law. Defendants thus failed to conduct the general election in a uniform manner as required by the Equal Protection Clause of the Fourteenth Amendment, the corollary provisions of Arizona election law.

119. Plaintiffs seek declaratory and injunctive relief forbidding Defendants from certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden through the unlawful use of Dominion Democracy Suite software and devices.

120. In addition, Plaintiffs ask this Court to order that no ballot processed by a counting board in Arizona can be included in the final vote tally unless a challenger was allowed to meaningfully observe the process and handling and counting of the ballot, or that were unlawfully switched from Trump to Biden.

121. Clearly the dilution of lawful votes violates the Equal Protection clause; and the counting of unlawful votes violates the rights of lawful Citizens.

122. There are also thousands of absentee ballots that Plaintiffs can show were sent to someone besides the registered voter named in the request, and thus could have been filled out by anyone and then submitted in the name of another voter specifically in violation of election law, one vote is one ballot. That is the dilution of lawful votes, while 78,714 to 94,975 ballots out of 518,560 unreturned ballots recorded for voters who did return their ballot but were recorded as being unreturned, and their vote was taken from

them.

123. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm unless the declaratory and injunctive relief requested herein is granted. Indeed, the setting aside of an election in which the people have chosen their representative is a drastic remedy that should not be undertaken lightly, but instead should be reserved for cases in which a person challenging an election has clearly established a violation of election procedures and has demonstrated that the violation has placed the result of the election in doubt. Arizona law allows elections to be contested through litigation, both as a check on the integrity of the election process and as a means of ensuring the fundamental right of citizens to vote and to have their votes counted accurately.

COUNT III

Fourteenth Amendment, Amend. XIV & 42 U.S.C. § 1983

Denial of Due Process On The Right to Vote

124. Plaintiffs refer to and incorporate by reference each of the prior paragraphs of this Complaint as though the same were repeated at length herein.

125. The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. *Harper,* 383 U.S. at 665. *See also Reynolds*, 377 U.S. at 554 (The Fourteenth Amendment protects the "the right of all qualified citizens to vote, in state as well as in federal elections."). Indeed, ever since the *Slaughter-House Cases*, 83 U.S. 36 (1873), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (*citing Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)). *See also Oregon v. Mitchell*, 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting cases).

126. The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it "is preservative of other basic civil and political rights." *Reynolds*, 377 U.S. at 562. Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," *Burson v. Freeman*, 504 U.S. 191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

127. "Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted" if they are validly cast. *United States v. Classic*, 313 U.S. 299, 315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at 555, n.29 (*quoting South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

128. "Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States*, 417 U.S. 211, 227 (1974); *see also Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes "debase[]" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

129. The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. *See, e.g., Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be "protected from the diluting effect of illegal ballots."); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of

eligible voters."); *accord Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964).

130. The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States." *Anderson*, 417 U.S. at 226 (*quoting Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

131. Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. See *Reynolds*, 377 U.S. at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.").

132. Arizona law makes clear with regard to the electronic voting systems, that "[a]fter the close of the polls and after compliance with section 16-602 the members of the election board shall prepare a report in duplicate of the number of voters who have voted, as indicated on the poll list, and place this report in the ballot box or metal container, in which the voted ballots have been placed, which thereupon shall be sealed with a numbered seal and delivered promptly by two members of the election board of different political parties to the central counting place or other receiving station designated by the board of supervisors or officer in charge of elections, which shall not be more than fifty miles from the polling place from which the ballots are delivered. The person in charge of receiving ballots shall give a numbered receipt acknowledging receipt of such ballots to the person in charge who delivers such ballots. B. The chairman of the county committee of each political party represented on the ballot may designate a member of his party to accompany the ballots from each polling place to the central counting place. A.R.S. § 16-608.

133. As Plaintiffs have shown the ballots processed by Dominion Voting Systems reports to SCYTL, which is offshore, and uses an algorithm, that is secretive, and applies

a cleansing of invalid versus valid ballots, before the votes get tallied for distribution.

134. Plaintiffs seek declaratory and injunctive relief enjoining Defendants from certifying the results of the General Election. This Court should enjoin Defendants from certifying a tally that includes any ballots that were not legally cast, or that were switched from Trump to Biden through the unlawful use of Dominion Democracy Suite software and devices.

COUNT IV

Wide-Spread Ballot Fraud

135. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

136. The scheme of civil fraud can be shown with the pattern of conduct that includes motive and opportunity, as exhibited by the high level official at Dominion Voting Systems, Eric Coomer, and his visceral and public rage against the current U.S. President.

137. Opportunity appears with the secretive nature of the voting source code, and the feed of votes that make clear that an algorithm is applied, that reports in decimal points despite the law requiring one vote for one ballot.

138. The Supreme Court of Arizona set forth the standard of fraud for elections when it that held in the State of Arizona, fraud in an election is based on ballots procured in violation to the law: "We therefore hold that HN5 a showing of **fraud** is not a necessary condition to invalidate absentee **balloting**. It is sufficient that an express non-technical statute was violated, and **ballots** cast in violation of the statute affected the election. *Miller v. Picacho Elementary Sch. Dist. No*. 33, 179 Ariz. 178, 180, 877 P.2d 277, 279, (S. Ct.1994).

> "Contrary to *Findley,* election statutes are mandatory, not "advisory," or else they would not be law at all. If a statute expressly provides that non-compliance invalidates the vote, then the vote is invalid. If the statute does not have such a provision, non-compliance may or may not invalidate the vote depending on its effect. In the context of this case, "affect the result, or at least render it uncertain," *id.* at 269, 276 P. at 844, means **ballots** procured in violation of a non-technical statute in sufficient numbers to alter the outcome of the election.

Id.

139. This Complaint presents expert witness testimony demonstrating that several hundred thousand illegal, ineligible, duplicate or purely fictitious votes must be thrown out, in particular:

A. Unreturned mail ballots unlawfully ordered by third parties: 219,135

B. Returned ballots that were deemed unreturned by the state: 86,845

C. Votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 5,790.

D. "Excess votes" to historically unprecedented, and likely fraudulent turnout levels of 80% or more in over half of Maricopa and Pima County precincts: 100,724.

E. And Plaintiffs can show Mr. Biden received a statistically significant Advantage from the use of Dominion Machines in a nationwide Study, which conservatively estimates Biden's advantage at 62,282 Votes.

140. The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times. The Supreme Court of the United States has made this clear in case after case. See, e.g., *Gray v. Sanders*, 372 U.S. 368, 380 (1963) (every vote must be "protected from the diluting effect of illegal ballots."); *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 196 (2008) (plurality op. of Stevens, J.) ("There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters."); *accord Reynolds v. Sims*, 377 U.S. 533, 554-55 & n.29 (1964).

141. Plaintiffs have no adequate remedy at law. Plaintiffs contest the results of Arizona's 2020 General Election because it is fundamentally corrupted by fraud. Defendants should be enjoined from certifying an election where there were intentional violations of multiple provisions of Arizona law to elect Biden and other Democratic candidates and defeat President Trump and other Republican candidates.

PRAYER FOR RELIEF

142. Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

143. In the alternative, Plaintiffs seek an emergency order prohibiting Defendants from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with Arizona law.

144. Further, Plaintiffs ask this Court to order production of all registration data, ballot applications, ballots, envelopes, etc. required to be maintained by law. When we consider the harm of these uncounted votes, and ballots not ordered by the voters themselves, and the potential that many of these unordered ballots may in fact have been improperly voted and also prevented proper voting at the polls, the mail ballot system has clearly failed in the state of Arizona and did so on a large scale and widespread basis. The size of the voting failures, whether accidental or intentional, are multiples larger than the margin in the state. For these reasons, Arizona cannot reasonably rely on the results of the mail vote. Relief sought is the elimination of the mail ballots from counting in the 2020 election. Alternatively, the electors for the State of Arizona should be disqualified from counting toward the 2020 election. Alternatively, the electors of the State of Arizona should be directed to vote for President Donald Trump.

145. For these reasons, Plaintiffs ask this Court to enter a judgment in their favor and provide the following emergency relief:

1. An order directing Governor Ducey and Secretary Hobbs to de-certify the election results;

2. An order enjoining Governor Ducey from transmitting the currently certified election results the Electoral College;

3. An immediate emergency order to seize and impound all servers, software, voting machines, tabulators, printers, portable media, logs,

ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election for forensic audit and inspection by the Plaintiffs;

4. An order that no votes received or tabulated by machines that were not certified as required by federal and state law be counted;

5. A declaratory judgment declaring that Arizona's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

6. A declaratory judgment declaring that currently certified election results violate the Due Process Clause, U.S. CONST. Amend. XIV;

7. A declaratory judgment declaring that mail-in and absentee ballot fraud must be remedied with a Full Manual Recount or statistically valid sampling that properly verifies the signatures on absentee ballot envelopes and that invalidates the certified results if the recount or sampling analysis shows a sufficient number of ineligible absentee ballots were counted;

8. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

9. A permanent injunction prohibiting the Governor and Secretary of State from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering;

10. Immediate production of 48 hours of security camera recording of all rooms used in Maricopa County for November 3, 2020 and November 4, 2020.

11. Plaintiffs further request the Court grant such other relief as is just and proper, including but not limited to, the costs of this action and their reasonable attorney fees and expenses pursuant to 42 U.S.C. 1988.

Respectfully submitted, this 1st day of December 2020.

/s Sidney Powell*

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PLAINTIFFS' COMPLAINT EXHIBIT CORRELATION TABLE

DOCKET NO.	EXHIBIT NO.	EXHIBIT TITLE
1-1	EXH 1	Redacted - Venezuela Smartmatic Affidavit 11.116.2020
1-2	EXH 2	Absentee Survey Analysis - Briggs Rpt.
1-3	EXH 2 A	Absentee Survey Wisconsin Analysis – Briggs Rpt. re Attachment AZ
1-4	EXH 2 B	Briggs - attachment GA re 5 state Rpt. Absentee Live ID Topline
1-5	EXH 2 C	Briggs - attachment PA re 5 state Rpt. Absentee Live ID Topline
1-6	EXH 2 D	Briggs - Attachment WI Unreturned Live Agent Topline [26655]
1-7	EXH 2 E	Briggs - Attachment MI Unreturned Live Agent Topline
1-8	EXH 2 F	Briggs CV
1-9	EXH 3	Re Braynard
1-11	EXH 4	Redacted Expert affidavit - Statistician
1-12	EXH 5	Diane Serra Declaration (3 sep pdfs for pages 1-3)
1-13	EXH 6	Joseph Oltmann Affidavit
1-14	EXH 7	Harri Hursti Declaration Doc 809 US DIST CT 3 8-24-20
1-15	EXH 8	Affidavit of Anna Mercedes Diaz Cardozo in ENGLISH
1-16	EXH 9	Keshel Expert Affidavit
1-17	EXH 9 A&B	Keshel Expert attachment

1-18	EXH 10	Andrew W. Appel, *et al.*, "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019)
1-19	EXH 11	State of Texas Secretary of State Report of Review 20 //and 11B
1-20	EXH 12	Spider Affidavit Redacted
1-21	EXH 13	Redacted Declaration TPM 11 30 20 Redacted
1-22	EXH 14	Declaration of Ronald Watkins 11 26 20
1-23	EXH 15	Congresswoman Maloney letter re Smartmatica
1-24	EXH 16	Senators Warren etc. letter re Dominion Voting Systems
1-25	EXH 17	Ramsland Declaration
1-26	EXH 18	Joint FBI CISSA Cyber Security Advisory Exhibit [2305843009225631231]
1-27	EXH 19	MCB Redacted Fraud Declaration 11 30 20 Redacted
EXH 20	Mark Low Declaration	
EXH 21	Burns Decl Declaration	
EXH 22	Greg Wodynski Declaration	
EXH 23	Linda Brickman Declaration	

Dated December 2, 2020

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EXHIBIT 1

DECLARATION OF [redacted]

I, [redacted], hereby state the following:

1. [redacted]

2. I am an adult of sound mine. All statements in this declaration are based on my personal knowledge and are true and correct.

3. I am making this statement voluntarily and on my own initiative. I have not been promised, nor do I expect to receive, anything in exchange for my testimony and giving this statement. I have no expectation of any profit or reward and understand that there are those who may seek to harm me for what I say in this statement. I have not participated in any political process in the United States, have not supported any candidate for office in the United States, am not legally permitted to vote in the United States, and have never attempted to vote in the United States.

4. I want to alert the public and let the world know the truth about the corruption, manipulation, and lies being committed by a conspiracy of people and companies intent upon betraying the honest people of the United States and their legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries all over the world. It is a conspiracy to wrongfully gain and keep power and wealth. It involves political leaders, powerful companies, and other persons whose purpose is to gain and keep power by changing the free will of the people and subverting the proper course of governing.

5. [redacted] Over the course of my career, I specialized in the marines [redacted]

6. Due to my training in special operations and my extensive military and academic formations, I was selected for the national security guard detail of the President of Venezuela. [redacted]

[redacted]

7. [redacted] Señor Cabello was a long-time confederate of President Chavez and instrumental in his gaining power. In 2002, Señor Cabello had very briefly taken over the duties of the presidency while Hugo Chavez was imprisoned. Within hours of Señor Cabello taking over the presidency, Hugo Chavez was released from prison and regained the office of President. On December 11, 2011, Cabello was installed as the Vice-President of the United Socialist Party – the party of President Chávez and became the second most powerful figure in the party after Hugo Chávez. Cabello was appointed president of the National Assembly in early 2012 and was re-elected to that post in January 2013. After Hugo Chávez's death, Cabello was next in line for the presidency of the country, but he remained president of the National Assembly and yielded to Nicolás Maduro holding the position of President of Venezuela.

8. [redacted] President Chavez was very precise and exacting in his instructions in the details about meetings he wanted, where the meeting was to occur, who was to attend, what was to be done. [redacted]

9. [redacted] I was witness to the creation and operation of a

sophisticated electronic voting system that permitted the leaders of the Venezuelan government to manipulate the tabulation of votes for national and local elections and select the winner of those elections in order to gain and maintain their power.

10. Importantly, I was a direct witness to the creation and operation of an electronic voting system in a conspiracy between a company known as Smartmatic and the leaders of conspiracy with the Venezuelan government. This conspiracy specifically involved President Hugo Chavez Frias, the person in charge of the National Electoral Council named Jorge Rodriguez, and principals, representatives, and personnel from Smartmatic which included [redacted]. The purpose of this conspiracy was to create and operate a voting system that could change the votes in elections from votes *against* persons running the Venezuelan government to votes *in their favor* in order to maintain control of the government.

11. In mid-February of 2009, there was a national referendum to change the Constitution of Venezuela to end term limits for elected officials, including the President of Venezuela. The referendum passed. This permitted Hugo Chavez to be re-elected an unlimited number of times.

12. After passage of the referendum, President Chavez instructed me to make arrangements for him to meet with Jorge Rodriguez, then President of the National Electoral Council, and three executives from Smartmatic. Among the three Smartmatic representatives were [redacted] President Chavez had multiple meetings with Rodriguez and the Smartmatic team at which I was present. In the first of four meetings, Jorge Rodriguez promoted the idea to create software that would manipulate elections. Chavez was very excited and made it clear that he would provide whatever Smartmatic needed. He wanted them immediately to create a voting system which would ensure that any time anything was going to be voted on the voting system would guarantee results that Chavez wanted. Chavez offered Smartmatic many inducements, including large sums of money, for Smartmatic to create or modify the voting system so that it would guarantee Chavez would win every election cycle. Smartmatic's team agreed to create such a system and did so.

13. I arranged and attended three more meetings between President Chavez and the representatives from Smartmatic at which details of the new

voting system were discussed and agreed upon. For each of these meetings, I communicated directly with [redacted] on details of where and when to meet, where the participants would be picked up and delivered to the meetings, and what was to be accomplished. At these meetings, the participants called their project the "Chavez revolution." From that point on, Chavez never lost any election. In fact, he was able to ensure wins for himself, his party, Congress persons and mayors from townships.

14. Smartmatic's electoral technology was called "Sistema de Gestión Electoral" (the "Electoral Management System"). Smartmatic was a pioneer in this area of computing systems. Their system provided for transmission of voting data over the internet to a computerized central tabulating center. The voting machines themselves had a digital display, fingerprint recognition feature to identify the voter, and printed out the voter's ballot. The voter's thumbprint was linked to a computerized record of that voter's identity. Smartmatic created and operated the entire system.

15. Chavez was most insistent that Smartmatic design the system in a way that the system could change the vote of each voter without being detected. He wanted the software itself to function in such a manner that if the voter were to place their thumb print or fingerprint on a scanner, then the thumbprint would be tied to a record of the voter's name and identity as having voted, but that voter would not tracked to the changed vote. He made it clear that the system would have to be setup to not leave any evidence of the changed vote for a specific voter and that there would be no evidence to show and nothing to contradict that the name or the fingerprint or thumb print was going with a changed vote. Smartmatic agreed to create such a system and produced the software and hardware that accomplished that result for President Chavez.

16. After the Smartmatic Electoral Management System was put in place, I closely observed several elections where the results were manipulated using Smartmatic software. One such election was in December 2006 when Chavez was running against Rosales. Chavez won with a landslide over Manuel Rosales - a margin of nearly 6 million votes for Chavez versus 3.7 million for Rosales.

17. On April 14, 2013, I witnessed another Venezuelan national election in which the Smartmatic Electoral Management System was used to manipulate and change the results for the person to succeed Hugo Chávez

as President. In that election, Nicolás Maduro ran against Capriles Radonsky. [redacted] Inside that location was a control room in which there were multiple digital display screens – TV screens – for results of voting in each state in Venezuela. The actual voting results were fed into that room and onto the displays over an internet feed, which was connected to a sophisticated computer system created by Smartmatic. People in that room were able to see in "real time" whether the vote that came through the electronic voting system was in their favor or against them. If one looked at any particular screen, they could determine that the vote from any specific area or as a national total was going against either candidate. Persons controlling the vote tabulation computer had the ability to change the reporting of votes by moving votes from one candidate to another by using the Smartmatic software.

18. By two o'clock in the afternoon on that election day Capriles Radonsky was ahead of Nicolás Maduro by two million votes. When Maduro and his supporters realized the size of Radonsky's lead they were worried that they were in a crisis mode and would lose the election. The Smartmatic machines used for voting in each state were connected to the internet and reported their information over the internet to the Caracas control center in real-time. So, the decision was made to reset the entire system. Maduro's and his supporters ordered the network controllers to take the internet itself offline in practically all parts in Venezuela and to change the results.

19. It took the voting system operators approximately two hours to make the adjustments in the vote from Radonsky to Maduro. Then, when they turned the internet back on and the on-line reporting was up and running again, they checked each screen state by state to be certain where they could see that each vote was changed in favor of Nicholas Maduro. At that moment the Smartmatic system changed votes that were for Capriles Radonsky to Maduro. By the time the system operators finish, they had achieved a convincing, but narrow victory of 200,000 votes for Maduro.

20. After Smartmatic created the voting system President Chavez wanted, he exported the software and system all over Latin America. It was sent to Bolivia, Nicaragua, Argentina, Ecuador, and Chile – countries that were in alliance with President Chavez. This was a group of leaders who wanted to be able to guarantee they maintained power in their countries. When Chavez died, Smartmatic was in a position of being the only

company that could guarantee results in Venezuelan elections for the party in power.

21. I want to point out that the software and fundamental design of the electronic electoral system and software of Dominion and other election tabulating companies relies upon software that is a descendant of the Smartmatic Electoral Management System. In short, the Smartmatic software is in the DNA of every vote tabulating company's software and system.

22. Dominion is one of three major companies that tabulates votes in the United States. Dominion uses the same methods and fundamentally same software design for the storage, transfer and computation of voter identification data and voting data. Dominion and Smartmatic did business together. The software, hardware and system have the same fundamental flaws which allow multiple opportunities to corrupt the data and mask the process in a way that the average person cannot detect any fraud or manipulation. The fact that the voting machine displays a voting result that the voter intends and then prints out a paper ballot which reflects that change does not matter. It is the software that counts the digitized vote and reports the results. The software itself is the one that changes the information electronically to the result that the operator of the software and vote counting system intends to produce that counts. That's how it is done. So the software, the software itself configures the vote and voting result -- changing the selection made by the voter. The software decides the result regardless of what the voter votes.

23. All of the computer controlled voting tabulation is done in a closed environment so that the voter and any observer cannot detect what is taking place unless there is a malfunction or other event which causes the observer to question the process. I saw first-hand that the manipulation and changing of votes can be done in real-time at the secret counting center which existed in Caracas, Venezuela. For me it was something very surprising and disturbing. I was in awe because I had never been present to actually see it occur and I saw it happen. So, I learned first-hand that it doesn't matter what the voter decides or what the paper ballot says. It's the software operator and the software that decides what counts – not the voter.

24. If one questions the reliability of my observations, they only have to read the words of [redacted] a time period in

which Smartmatic had possession of all the votes and the voting, the votes themselves and the voting information at their disposition in Venezuela. [redacted] he was assuring that the voting system implemented or used by Smartmatic was completely secure, that it could not be compromised, was not able to be altered.

25. But later, in 2017 when there were elections where Maduro was running and elections for legislators in Venezuela, [redacted] and Smartmatic broke their secrecy pact with the government of Venezuela. He made a public announcement through the media in which he stated that all the Smartmatic voting machines used during those elections were totally manipulated and they were manipulated by the electoral council of Venezuela back then. [redacted] stated that all of the votes for Nicholas Maduro and the other persons running for the legislature were manipulated and they actually had lost. So I think that's the greatest proof that the fraud can be carried out and will be denied by the software company that [redacted] admitted publicly that Smartmatic had created, used and still uses vote counting software that can be manipulated or altered.

26. I am alarmed because of what is occurring in plain sight during this 2020 election for President of the United States. The circumstances and events are eerily reminiscent of what happened with Smartmatic software electronically changing votes in the 2013 presidential election in Venezuela. What happened in the United States was that the vote counting was abruptly stopped in five states using Dominion software. At the time that vote counting was stopped, Donald Trump was significantly ahead in the votes. Then during the wee hours of the morning, when there was no voting occurring and the vote count reporting was off-line, something significantly changed. When the vote reporting resumed the very next morning there was a very pronounced change in voting in favor of the opposing candidate, Joe Biden.

27. [redacted] I have worked in gathering information, researching, and working with information technology. That's what I know how to do and the special knowledge that I have. Due to these recent election events, I contacted a number of reliable and intelligent ex-co-workers of mine that are still informants and work with the intelligence community. I asked for them to give me information that was up-to-date information in as far as how all these businesses are acting, what actions they are taking.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was prepared in Dallas County, State of Texas, and executed on November 15, 2020.

[redacted]

EXHIBIT 2

An Analysis of Surveys Regarding Absentee Ballots Across Several States

William M. Briggs

November 23, 2020

1 Summary

Survey data was collected from individuals in several states, sampling those who the states listed as not returning absentee ballots. The data was provided by Matt Braynard.

The survey asked respondents whether they (a) had ever requested an absentee ballot, and, if so, (b) whether they had in fact returned this ballot. From this sample I produce predictions of the total numbers of: **Error #1**, those who were recorded as receiving absentee ballots *without* requesting them; and **Error #2**, those who returned absentee ballots but whose votes went missing (i.e. marked as unreturned).

The sizes of both errors were large in each state. The states were Georgia, Michigan, Wisconsin, and Arizona where ballots were across parties. Pennsylvania data was for Republicans only.

2 Analysis Description

Each analysis was carried out separately for each state. The analysis used (a) the number of absentee ballots recorded as unreturned, (b) the total responding to the survey, (c) the total of those saying they did not request a ballot, (d) the total of those saying they did request a ballot, and of these (e) the number saying they returned their ballots. I assume survery respondents are representative and the data is accurate.

From these data a simple parameter-free predictive model was used to calculate the probability of all possible outcomes. Pictures of these probabilities were derived, and the 95% prediction interval of the relevant numbers was calculated. The pictures appear in the Appendix at the end. They are summarized here with their 95% prediction intervals.

Error #1: being recorded as sent an absentee ballot without requesting one.

Error #2: sending back an absentee ballot and having it recorded as not returned.

State	Unreturned ballots	Error #1	Error #2
Georgia	138,029	16,938–22,771	31,559–38,866
Michigan	139,190	29,611–36,529	27,928–34,710
Pennsylvania*	165,412	32,414–37,444	26,954–31,643
Wisconsin	96,771	16,316–19,273	13,991–16,757
Arizona	518,560	208,333–229,937	78,714–94,975

*Number for Pennsylvania represent Republican ballots only.

Ballots that were not requested, and ballots returned and marked as not returned were classed as *troublesome*. The estimated average number of troublesome ballots for each state were then calculated using the table above and are presented next.

State	Unreturned ballots	Estimated average troublesome ballots	Percent
Georgia	138,029	53,489	39%
Michigan	139,190	62,517	45%
Pennsylvania*	165,412	61,780	37%
Wisconsin	96,771	29,594	31%
Arizona	518,560	303,305	58%

*Number for Pennsylvania represent Republican ballots only.

3 Conclusion

There are clearly a large number of troublesome ballots in each state investigated. Ballots marked as not returned that were never requested are clearly an error of some kind. The error is not small as a percent of the total recorded unreturned ballots.

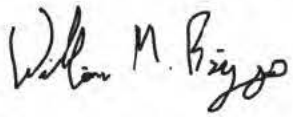
Ballots sent back and unrecorded is a separate error. These represent votes that have gone missing, a serious mistake. The number of these missing ballots is also large in each state.

Survey respondents were not asked if they received an unrequested ballot whether they sent these ballots back. This is clearly a lively possibility, and represents a third possible source of error, including the potential of voting twice (once by absentee and once at the polls). No estimates or likelihood can be calculated for this potential error due to absence of data.

4 Declaration of William M. Briggs, PhD

1. My name is William M. Briggs. I am over 18 years of age and am competent to testify in this action. All of the facts stated herein are true and based on my personal knowledge.
2. I received a Ph.D of Statistics from Cornell University in 2004.
3. I am currently a statistical consultant. I make this declaration in my personal capacity.
4. I have analyzed data regarding responses to questions relating to mail ballot requests, returns and related issues.
5. I attest to a reasonable degree of professional certainty that the resulting analysis are accurate.

I declare under the penalty of perjury that the foregoing is true and correct.

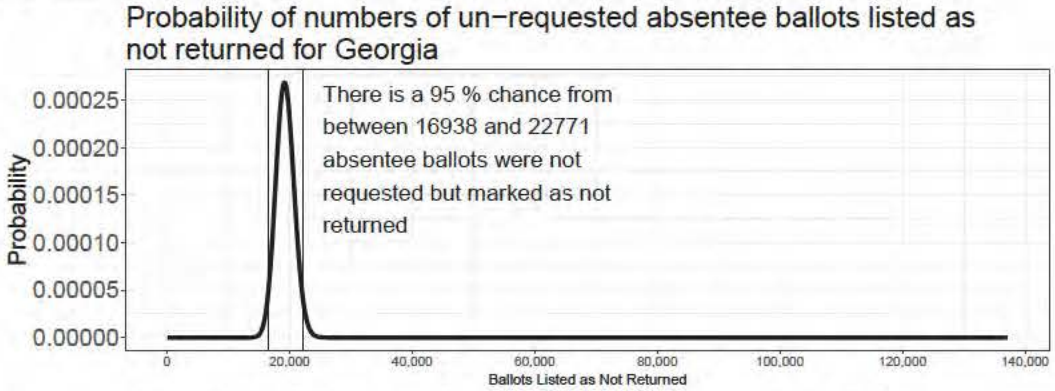


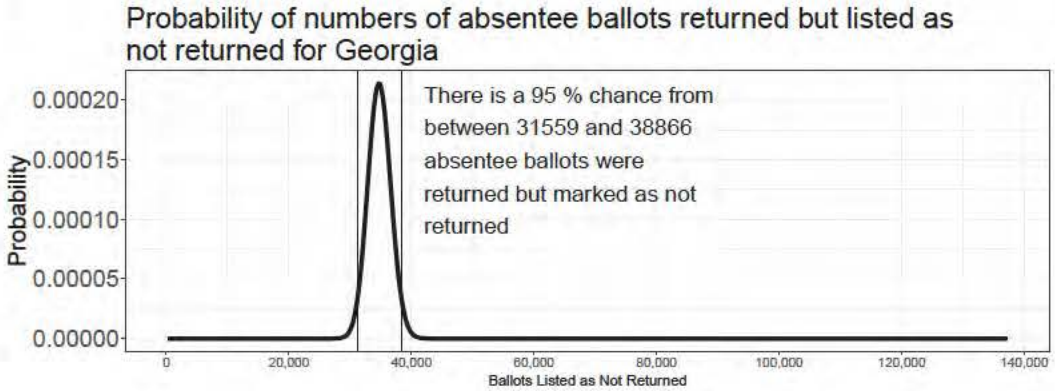
23 November 2020

William M. Briggs

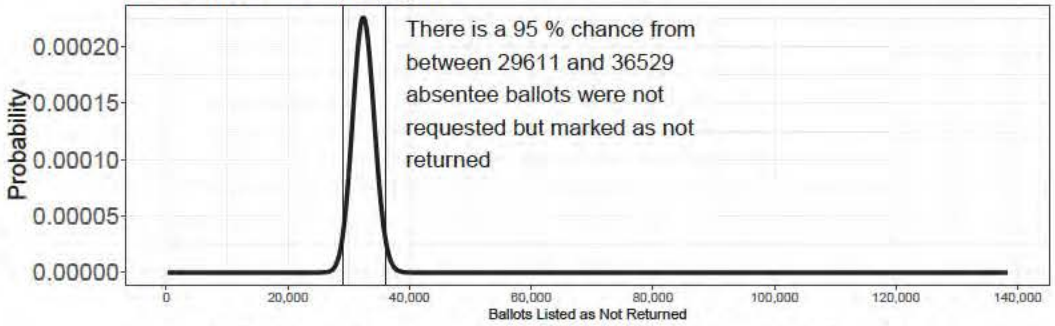
5 Appendix

The probability pictures for each state for each outcome as mentioned above.

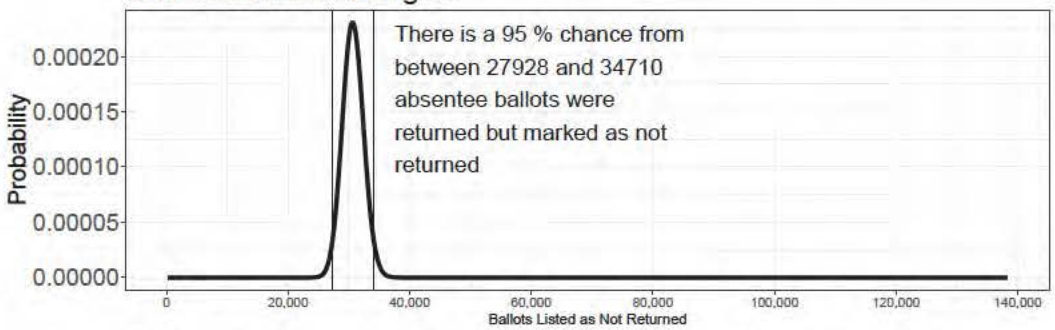




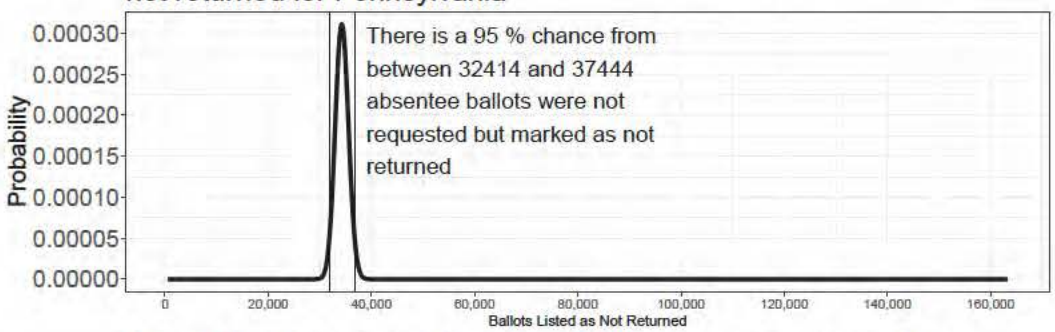
Probability of numbers of un−requested absentee ballots listed as not returned for Michigan



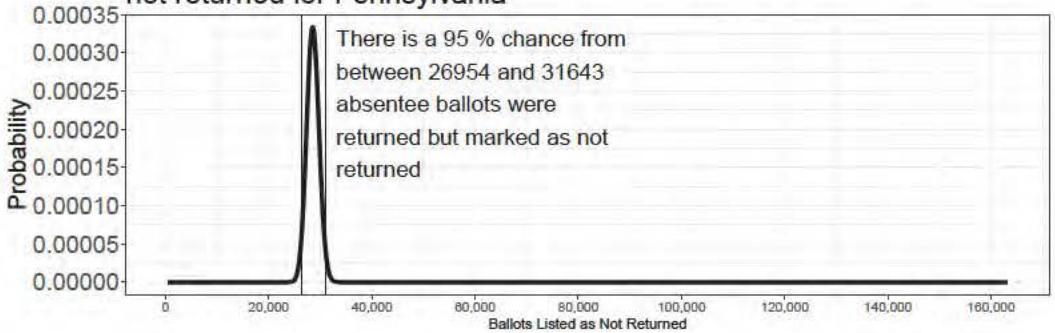
Probability of numbers of absentee ballots returned but listed as not returned for Michigan



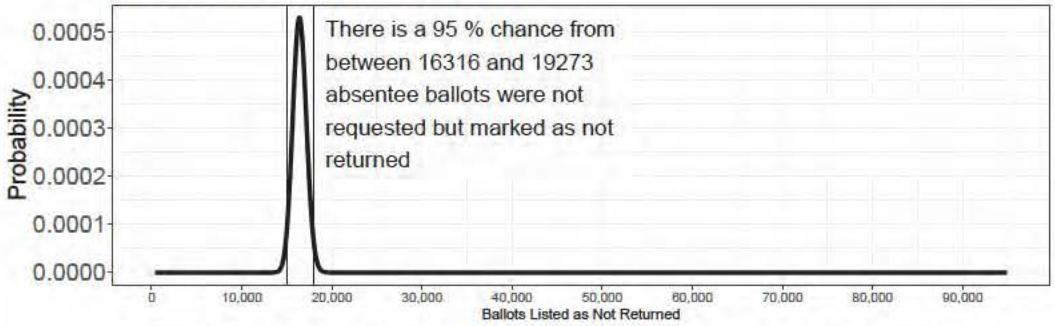
Probability of numbers of un−requested absentee ballots listed as not returned for Pennsylvania



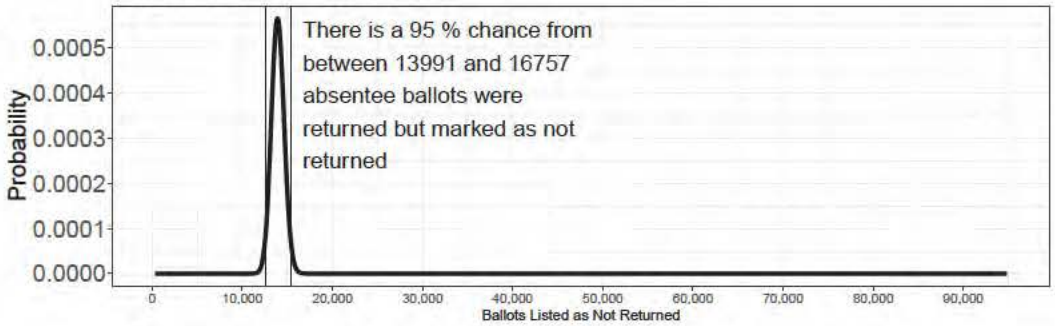
Probability of numbers of absentee ballots returned but listed as not returned for Pennsylvania



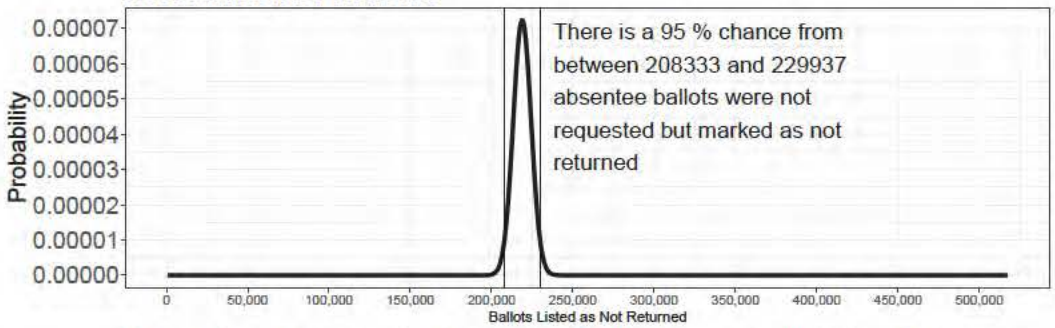
Probability of numbers of un−requested absentee ballots listed as not returned for Wisconsin



Probability of numbers of absentee ballots returned but listed as not returned for Wisconsin



Probability of numbers of un−requested absentee ballots listed as not returned for Arizona



Probability of numbers of absentee ballots returned but listed as not returned for Arizona

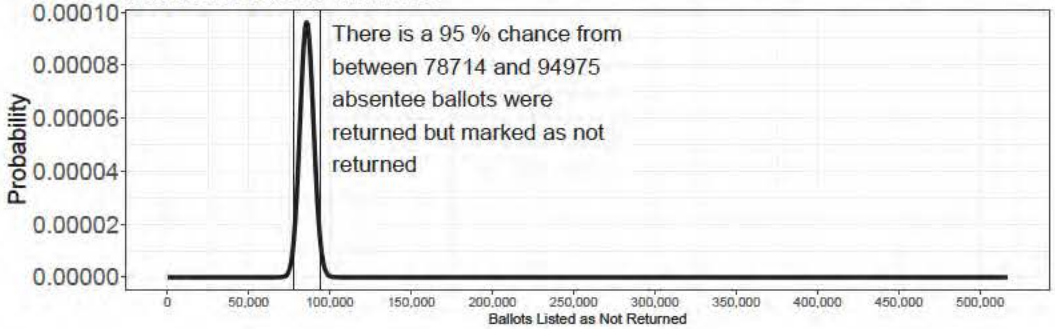


EXHIBIT 2 A

AZ Unreturned Live Agent - Mass Markets

			11/15/2020	11/16/2020	11/17/2020	
5,604	**Completes**		**745**	**1,881**	**2,978**	
684	**Q4=01**	1-Completed Survey	116	212	356	
1,945	**VM Message Left**	2-Message Delivered VM	90	657	1,198	
2,975	**up/RC**	3-Refused	539	1,012	1,424	
74,437	**No Answer**	4-No Answer	6,764	25,056	42,617	
1,663	**Numbers/Language**	5-Bad Number	245	384	1,034	
100.00%	**List Penetration**					
81,708	**Data Loads**					

Q1 - May I please speak to <lead on screen>?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
1,812	40.05%	A-Reached Target	307	554	951
335	7.40%	Uncertain	80	124	131
2,377	52.54%	X = Refused	382	854	1,141
0	0.00%				
4,524	**100.00%**	**Sum of All Responses**	**769**	**1,532**	**2,223**

Q2 - Did you request Absentee Ballot in state of AZ?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
1,120	45.00%	A-Yes [Go to Q3]	210	361	549

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885	35.56%	B-No [Go to Q4]	162	286	437
24	0.96%	Member) [Go to Q3]	5	9	10
21	0.84%	Member) [Go to Q4]	3	10	8
72	2.89%	E-Unsure [Go to Close A]	10	18	44
7	0.28%	[Go to Close A]	-	1	6
360	14.46%	X = Refused	45	69	246
2,489	**100.00%**	**Sum of All Responses**	**435**	**754**	**1,300**

Q3 - Did you mail your ballot		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
344	16.16%	A-Yes [Go to Q4]	67	112	165
696	32.69%	B-No [Go to Close A]	116	237	343
11	0.52%	Member) [Go to Q4]	2	2	7
9	0.42%	Member) [Go to Close A]	1	4	4
14	0.66%	Close A]	3	4	7
1,055	49.55%	X = Refused	201	326	528
2,129	**100.00%**	**Sum of All Responses**	**390**	**685**	**1,054**

Q4 - Can you please give us the best phone number to reach you at?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
678	82.48%	[illegible] Q5]	116	212	350
144	17.52%	B-Refused [Go to Q5]	38	50	56

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0	0.00%				
0	0.00%				
822	**100.00%**	**Sum of All Responses**	**154**	**262**	**406**

Q5 - Can you provide us your email address?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
127	18.57%	01-Yes [Go to Close B]	24	36	67
557	81.43%	02-No [Go to Close B]	92	176	289
0	0.00%				
684	**100.00%**	**Sum of All Responses**	**116**	**212**	**356**

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EXHIBIT 2 B

AZ Unreturned Live Agent - Mass Markets

			11/15/2020	11/16/2020	11/17/2020	
5,604	**Completes**		**745**	**1,881**	**2,978**	
684	**Q4=01**	1-Completed Survey	116	212	356	
1,945	**VM Message Left**	2-Message Delivered VM	90	657	1,198	
2,975	**up/RC**	3-Refused	539	1,012	1,424	
74,437	**No Answer**	4-No Answer	6,764	25,056	42,617	
1,663	**Numbers/Language**	5-Bad Number	245	384	1,034	
100.00%	**List Penetration**					
81,708	**Data Loads**					

Q1 - May I please speak to <lead on screen>?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
1,812	40.05%	A-Reached Target	307	554	951
335	7.40%	Uncertain	80	124	131
2,377	52.54%	X = Refused	382	854	1,141
0	0.00%				
4,524	**100.00%**	**Sum of All Responses**	**769**	**1,532**	**2,223**

Q2 - Did you request Absentee Ballot in state of AZ?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
1,120	45.00%	A-Yes [Go to Q3]	210	361	549

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885	35.56%	B-No [Go to Q4]	162	286	437
24	0.96%	Member) [Go to Q3]	5	9	10
21	0.84%	Member) [Go to Q4]	3	10	8
72	2.89%	E-Unsure [Go to Close A]	10	18	44
7	0.28%	[Go to Close A]	-	1	6
360	14.46%	X = Refused	45	69	246
2,489	**100.00%**	**Sum of All Responses**	**435**	**754**	**1,300**

Q3 - Did you mail your ballot		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
344	16.16%	A-Yes [Go to Q4]	67	112	165
696	32.69%	B-No [Go to Close A]	116	237	343
11	0.52%	Member) [Go to Q4]	2	2	7
9	0.42%	Member) [Go to Close A]	1	4	4
14	0.66%	Close A]	3	4	7
1,055	49.55%	X = Refused	201	326	528
2,129	**100.00%**	**Sum of All Responses**	**390**	**685**	**1,054**

Q4 - Can you please give us the best phone number to reach you at?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
678	82.48%	[illegible] Q5]	116	212	350
144	17.52%	B-Refused [Go to Q5]	38	50	56

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0	0.00%				
0	0.00%				
822	**100.00%**	**Sum of All Responses**	**154**	**262**	**406**

Q5 - Can you provide us your email address?		Response	11/15/2020	11/16/2020	11/17/2020
127	18.57%	01-Yes [Go to Close B]	24	36	67
557	81.43%	02-No [Go to Close B]	92	176	289
0	0.00%				
684	**100.00%**	**Sum of All Responses**	**116**	**212**	**356**

EXHIBIT 2 C

MI Unreturned Live Agent - Mass Markets

			11/15/2020	11/16/2020	11/17/2020	
3,815	**Completes**		**-**	**990**	**2,825**	
248	**Q4=01**	1-Completed Survey	-	36	212	
1,257	**VM Message Left**	2-Message Delivered VM	-	388	869	
2,310	**up/RC**	3-Refused	-	566	1,744	
62,569	**No Answer**	4-No Answer	-	15,482	47,087	
3,644	**Numbers/Language**	5-Bad Number	-	570	3,074	
100.00%	**List Penetration**					
70,030	**Data Loads**					

Q1 - May I please speak to <lead on screen>?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
958	23.65%	A-Reached Target	-	158	800
142	3.51%	Uncertain	-	57	85
2,950	72.84%	X = Refused	-	883	2,067
0	0.00%				
4,050	**100.00%**	**Sum of All Responses**	**-**	**1,098**	**2,952**

Q2 - Did you request Absentee Ballot in state of MI?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
752	49.64%	A-Yes [Go to Q3]	-	167	585

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239	15.78%	B-No [Go to Q4]	-	39	200
50	3.30%	Member) [Go to Q3]	-	5	45
17	1.12%	Member) [Go to Q4]	-	2	15
37	2.44%	E-Unsure [Go to Close A]	-	4	33
11	0.73%	Moment [Go to Close A]	-	2	9
409	27.00%	X = Refused	-	63	346
1,515	**100.00%**	**Sum of All Responses**	**-**	**282**	**1,233**

Q3 - Did you mail your ballot back?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
232	21.28%	A-Yes [Go to Q4]	-	41	191
472	43.30%	B-No [Go to Close A]	-	109	363
10	0.92%	Member) [Go to Q4]	-	2	8
28	2.57%	Member) [Go to Close A]	-	2	26
22	2.02%	Close A]	-	5	17
326	29.91%	X = Refused	-	60	266
			-		
1,090	**100.00%**	**Sum of All Responses**	**-**	**219**	**871**

Q4 - Can you please give us the best phone number to reach you at?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
246	69.89%	[illegible] to Q5]	-	36	210
106	30.11%	B-Refused [Go to Q5]	-	27	79

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0	0.00%				
0	0.00%				
352	**100.00%**	**Sum of All Responses**	**-**	**63**	**289**

Q5 - Can you provide us your email address?		**Response**	**11/15/2020**	**11/16/2020**	**11/17/2020**
18	7.26%	01-Yes [Go to Close B]	-	5	13
230	92.74%	02-No [Go to Close B]	-	31	199
0	0.00%				
248	**100.00%**	**Sum of All Responses**	**-**	**36**	**212**

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EXHIBIT 2 D

0270 PA Absentee Live ID Topline

			11/9/2020	11/10/2020	11/11/2020
18037	**Completes**		**4419**	**13618**	**0**
834	**survey** - Q4=01**	status = C	178	656	
14,203	**Machines**	status = AM	3465	10738	
3,000	**Hang up/RC**	status = R, IR, RC, DC	776	2224	
3,521	**Numbers/Languag**	status = D, BC,WN, NE	556	2965	
0	**MA**	status = MA			
87.70%	**List Penetration**				
24,581	**Data Loads**		24,581		

Q1 - May I please speak to <lead on screen>?		**Response**	**9-Nov**	**10-Nov**	**11-Nov**
2,262	75.86%	1. Reached Target [Go to Q2].	593	1,669	
422	14.15%	Q2].	102	320	
298	9.99%	X = Refused <Go to CLOSE A>	77	221	
739	24.78%	Q = Hangup <Go to CLOSE A>	160	579	
2,982	**100.00%**	**Sum of All Responses**	**932**	**2789**	**0**

Q2 - Did you request an absentee ballot?		**Response**	**9-Nov**	**10-Nov**	**11-Nov**
1,114	43.91%	1. Yes. [Go to Go to Q3].	331	783	
531	20.93%	2. No. [Go to Q4].	131	400	

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36	1.42%	confirmed “Yes” [Go to Q3]	12	24	
25	0.99%	confirmed “No” [Go to Q4]	9	16	
91	3.59%	5. Unsure. [Go to Q3].	25	66	
89	3.51%	moment. [Go to Close A]	17	72	
544	21.44%	A]	105	439	
107	4.22%	X = Refused <Go to CLOSE A>	29	78	
147	5.79%	Q = Hangup <Go to CLOSE A>	36	111	
2,537	**100.00%**	**Sum of All Responses**	**695**	**1989**	**0**

Q3 - Did you mail back that ballot?		**Response**	**9-Nov**	**10-Nov**	**11-Nov**
452	39.75%	1. Yes. [Go to Go to Q4].	90	362	
632	55.58%	2. No [Go to Close A].	229	403	
11	0.97%	confirmed “Yes” [Go to Q4]	1	10	
11	0.97%	confirmed “No” [Go to Close A]	4	7	
15	1.32%	5. Unsure. [Go to Close A].	6	9	
2	0.18%	moment. [Go to Close A]	0	2	
14	1.23%	X = Refused <Go to CLOSE A>	5	9	
13	1.14%	Q = Hangup <Go to CLOSE A>	8	5	
1,137	**100.00%**	**Sum of All Responses**	**343**	**807**	**0**

Q4 - Can you please give us the best phone number to reach you at?		**Response**	**9-Nov**	**10-Nov**	**11-Nov**
834	87.61%	01 = Yes <Go to CLOSE B>	178	656	
118	12.39%	X = Refused <Go to CLOSE A>	36	82	
67	7.04%	Q = Hangup <Go to CLOSE A>	17	50	
952	**100.00%**	**Sum of All Responses**	**231**	**788**	**0**

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EXHIBIT 2 E

0276 GA Unreturned_Absentee Live ID Topline

			11/16/2020	11/17/2020
15179	**Completes**		**8143**	**7036**
184	**Q5=01 or 02**	status = C	64	120
13,479	**Answering Machines**	status = AM	7090	6389
1,516	**up/RC**	status = R, IR, RC, DC	989	527
4,902	**Numbers/Language**	status = D, BC,WN, NE	2436	2466
0	**MA**	status = MA	0	0
58.45%	**List Penetration**			
34,355	**Data Loads**		34,355	

Q1 - May I please speak to <lead on screen>?		**Response**	**16-Nov**	**17-Nov**
767	65.28%	1. Reached Target [Go to Q2].	446	321
255	21.70%	[Go to Q2].	165	90
153	13.02%	X = Refused <Go to CLOSE A>	104	49
385	32.77%	Q = Hangup <Go to CLOSE A>	267	118
1,175	**100.00%**	**Sum of All Responses**	**982**	**578**

Q2 - Did you request an absentee ballot?		**Response**	**16-Nov**	**17-Nov**
591	61.31%	1. Yes. [Go to Go to Q3].	343	248
128	13.28%	2. No. [Go to Q4].	84	44

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39	4.05%	member confirmed “Yes” [Go to	24	15
14	1.45%	member confirmed “No” [Go to Q4]	11	3
40	4.15%	5. Unsure. [Go to Q3].	26	14
82	8.51%	moment. [Go to Close A]	48	34
70	7.26%	X = Refused <Go to CLOSE A>	42	28
58	6.02%	Q = Hangup <Go to CLOSE A>	33	25
964	**100.00%**	**Sum of All Responses**	**611**	**411**

Q3 - Did you mail back that ballot?		**Response**	**16-Nov**	**17-Nov**
240	38.52%	1. Yes. [Go to Go to Q4].	149	91
317	50.88%	2. No. [Go to Close A].	174	143
17	2.73%	member confirmed “Yes” [Go to	10	7
9	1.44%	member confirmed “No” [Go to Close A]	4	5
24	3.85%	5. Unsure. [Go to Close A].	14	10
11	1.77%	moment. [Go to Close A]	8	3
5	0.80%	X = Refused <Go to CLOSE A>	5	0
7	1.12%	Q = Hangup <Go to CLOSE A>	3	4
623	**100.00%**	**Sum of All Responses**	**367**	**263**

Q4 - Can you please give us the best phone number to reach you at?		**Response**	**16-Nov**	**17-Nov**
313	82.15%	01 = Yes <Go to Q5>	205	108
49	12.86%	02 = No <Go to Q5>	26	23
19	4.99%	X = Refused <Go to CLOSE A>	13	6
18	4.72%	Q = Hangup <Go to CLOSE A>	10	8

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381	**100.00%**	**Sum of All Responses**	**254**	**145**

Q5 - May we please have an email address to follow-up as well?		**Response**	**16-Nov**	**17-Nov**
99	28.86%	01 = Yes <Go to CLOSE B>	64	35
229	66.76%	02 = No <Go to CLOSE B>	144	85
15	4.37%	X = Refused <Go to CLOSE A>	11	4
19	5.54%	Q = Hangup <Go to CLOSE A>	12	7
343	**100.00%**	**Sum of All Responses**	**231**	**131**

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EXHIBIT 2 F

William M. Briggs, PhD
Statistician to the Stars!
matt@wmbriggs.com
917-392-0691

1. Experience

(1) 2016: Author of *Uncertainty: The Soul of Modeling, Probability & Statistics*, a book which argues for a complete and fundamental change in the philosophy and practice of probability and statistics. Eliminate hypothesis testing and estimation, and move to verifiable predictions. This includes AI and machine learning. Call this The Great Reset, but a good one.

(2) 2004-2016 Adjunct Professor of Statistical Science, Cornell University, Ithaca, New York
I taught a yearly Masters course to people who (rightfully) hate statistics. Interests: philosophy of science & probability, epistemology, epidemiology (ask me about the all-too-common epidemiologist fallacy), Bayesian statistics, medicine, climatology & meteorology, goodness of forecasts, overconfidence in science; public understanding of science, limitations of science, scientism; scholastic metaphysics (as it relates to epistemology).

(3) 1998-present. Statistical consultant, Various companies
Most of my time is spent coaxing people out of their money to tell them they are too sure of themselves. All manner of analyses cheerfully undertaken. Example: Fraud analysis; I created the *Wall Street Journal's* College Rankings. I consultant regularly at Methodist and other hospitals, start-ups, start-downs, and with any instition willing to fork it over.

(4) 2003-2010. Research Scientist, New York Methodist Hospital, New York
Besides the usual, I sit/sat on the Institutional Review Committee to assess the statistics of proposed research. I was an Associate Editor for *Monthly Weather Review* (through 2011). Also a member of the American Meteorological Society's Probability and Statistics Committee (through 2011). At a hospital? Yes, sir; at a hospital. It rains there, too, you know.

(5) Fall 2007, Fall 2010 Visiting Professor of Statistics, Department of Mathematics, Central Michigan University, Mt. Pleasant, MI
Who doesn't love a visit from a statistician? Ask me about the difference between "a degree" and "an education."

(6) 2003-2007, Assistant Professor Statistics, Weill Medical College of Cornell University, New York, New York
Working here gave me a sincere appreciation of the influences of government money; grants galore.

(7) 2002-2003. Gotham Risk Management, New York
A start-up then, after Enron's shenanigans, a start-down. We set future weather derivative and weather insurance contract prices that incorporated information from medium- and long-range weather and climate forecasts.

(8) 1998-2002. DoubleClick, New York
Lead statistician. Lot of computer this and thats; enormous datasets.

(9) 1993-1998. Graduate student, Cornell University

Meteorology, applied climatology, and finally statistics. Was Vice Chair of the graduate student government; probably elected thanks to a miracle.

(10) 1992-1993. National Weather Service, Sault Ste. Marie, MI
Forecast storms o' the day and launched enormous balloons in the name of Science. My proudest moment came when I was able to convince an ancient IBM-AT machine to talk to an *analog*, 110 baud, phone-coupled modem, all using BASIC!

(11) 1989-1992. Undergraduate student, Central Michigan University
Meteorology and mathematics. Started the local student meteorology group to chase tornadoes. Who knew Michigan had so few? Spent a summer at U Michigan playing with a (science-fiction-sounding) lidar.

(12) 1983-1989. United States Air Force
Cryptography and other secret stuff. Shot things; learned pinochle. I adopted and became proficient with a fascinating and versatile vocabulary. Irritate me for examples. TS/SCI, etc. security clearance (now inactive).

2. Education

(1) Ph.D., 2004, Cornell University. Statistics.
(2) M.S., 1995, Cornell University. Atmospheric Science.
(3) B.S., Summa Cum Laude, 1992, Central Michigan University. Meteorology and Math.

3. Publications

3.0.1. *Popular.*

(1) Op-eds in various newspapers; articles in *Stream*, *Crisis Magazine*, *The Remnant*, *Quadrant*, *Quirks*; blog with ∼70,000 monthly readers. Various briefs submitted to government agencies, such as California Air Resources Board, Illinois Department of Natural Resources. Talks and holding-forths of all kinds.

3.0.2. *Books.*

(1) Richards, JW, WM Briggs, and D Axe, 2020. *UThe Price of Panic: How the Tyranny of Experts Turned a Pandemic into a Catastrophe*. Regnery. Professors Jay Richards, William Briggs, and Douglas Axe take a deep dive into the crucial questions on the minds of millions of Americans during one of the most jarring and unprecedented global events in a generation.

(2) Briggs, WM., 2016. *Uncertainty: The Soul of Modeling, Probability & Statistics*. Springer. Philosophy of probability and statistics. A new (old) way to view and to use statistics, a way that doesn't lead to heartbreak and pandemic over-certainty, like current methods do.

(3) Briggs, WM., 2008 *Breaking the Law of Averages: Real Life Probability and Statistics in Plain English*. Lulu Press, New York. Free text for undergraduates.

(4) Briggs, WM., 2006 *So You Think You're Psychic?* Lulu Press, New York. Hint: I'll bet you're not.

3.0.3. *Methods.*

(1) Briggs, WM and J.C. Hanekamp, 2020. Uncertainty In The MAN Data Calibration & Trend Estimates. *Atmospheric Environment,* In review.
(2) Briggs, WM and J.C. Hanekamp, 2020. Adjustments to the Ryden & McNeil Ammonia Flux Model. *Soil Use and Management,* In review.
(3) Briggs, William M., 2020. Parameter-Centric Analysis Grossly Exaggerates Certainty. In *Data Science for Financial Econometrics*, V Kreinovich, NN Thach, ND Trung, DV Thanh (eds.), In press.
(4) Briggs, WM, HT Nguyen, D Trafimow, 2019. Don't Test, Decide. In *Behavioral Predictive Modeling in Econometrics*, Springer, V Kreinovich, S Sriboonchitta (eds.). In press.
(5) Briggs, William M. and HT Nguyen, 2019. Clarifying ASA's view on p-values in hypothesis testing. *Asian Journal of Business and Economics*, 03(02), 1–16.
(6) Briggs, William M., 2019. Reality-Based Probability & Statistics: Solving The Evidential Crisis (invited paper). *Asian Journal of Business and Economics*, 03(01), 37–80.
(7) Briggs, William M., 2019. Everything Wrong with P-Values Under One Roof. *In Beyond Traditional Probabilistic Methods in Economics*, V Kreinovich, NN Thach, ND Trung, DV Thanh (eds.), pp 22—44.
(8) Briggs, WM, HT Nguyen, D Trafimow, 2019. The Replacement for Hypothesis Testing. *In Structural Changes and Their Econometric Modeling*, Springer, V Kreinovich, S Sriboonchitta (eds.), pp 3—17.
(9) Trafimow, D, V Amrhein, CN Areshenkoff, C Barrera-Causil, ..., WM Briggs, (45 others), 2018. Manipulating the alpha level cannot cure significance testing. *Frontiers in Psychology*, *9*, 699. doi.org/10.3389/ fpsyg.2018.00699.
(10) Briggs, WM, 2018. Testing, Prediction, and Cause in Econometric Models. In *Econometrics for Financial Applications*, ed. Anh, Dong, Kreinovich, and Thach. Springer, New York, pp 3–19.
(11) Briggs, WM, 2017. The Substitute for p-Values. *JASA*, 112, 897–898.
(12) J.C. Hanekamp, M. Crok, M. Briggs, 2017. Ammoniak in Nederland. *Enkele kritische wetenschappelijke kanttekeningen.* V-focus, Wageningen.
(13) Briggs, WM, 2017. Math: Old, New, and Equalitarian. *Academic Questions*, 30(4), 508–513.
(14) Monckton, C, W Soon, D Legates, ... (several others), WM Briggs 2018. On an error in applying feedback theory to climate. In submission (currently *J. Climate*).
(15) Briggs, WM, JC Hanekamp, M Crok, 2017. Comment on Goedhart and Huijsmans. *Soil Use and Management*, 33(4), 603–604.
(16) Briggs, WM, JC Hanekamp, M Crok, 2017. Response to van Pul, van Zanten and Wichink Kruit. *Soil Use and Management*, 33(4), 609–610.
(17) Jaap C. Hanekamp, William M. Briggs, and Marcel Crock, 2016. A volatile discourse - reviewing aspects of ammonia emissions, models, and atmospheric concentrations in The Netherlands. *Soil Use and Management*, 33(2), 276–287.

(18) Christopher Monckton of Brenchley, Willie Soon, David Legates, William Briggs, 2015. Keeping it simple: the value of an irreducibly simple climate model. *Science Bulletin*. August 2015, Volume 60, Issue 15, pp 1378–1390.
(19) Briggs, WM, 2015. The Third Way Of Probability & Statistics: Beyond Testing and Estimation To Importance, Relevance, and Skill. *arxiv.org/abs/1508.02384*.
(20) Briggs, WM, 2015. The Crisis Of Evidence: Why Probability And Statistics Cannot Discover Cause. *arxiv.org/abs/1507.07244*.
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(23) Christopher Monckton of Brenchley, Willie Soon, David Legates, William Briggs, 2014. Why models run hot: results from an irreducibly simple climate model. *Science Bulletin*. January 2015, Volume 60, Issue 1, pp 122-135.
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(27) Briggs, WM, 2012. On Probability Leakage. *arxiv.org/abs/1201.3611*.
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(29) Briggs, WM, Soon, W, Legates, D, Carter, R, 2011. A Vaccine Against Arrogance. *Water, Air, & Soil Pollution*: Volume 220, Issue 1 (2011), Page 5-6
(30) Briggs, WM, and R Zaretzki, 2009. Induction and falsifiability in statistics. *arxiv.org/abs/math/0610859*.
(31) Briggs, WM, 2011. Discussion to A Gelman. Why Tables are Really Much Better than Graphs. *Journal Computational and Graphical Statistics*. Volume 20, 16–17.
(32) Zaretzki R, Gilchrist MA, Briggs WM, and Armagan A, 2010. Bias correction and Bayesian analysis of aggregate counts in SAGE libraries. *BMC Bioinformatics*, 11:72doi:10.1186/1471-2105-11-72.
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3.0.4. *Applications.*

(1) Jamorabo, Daniel, Renelus, Benjamin, Briggs, WM, 2019. "Comparative outcomes of EUS-guided cystogastrostomy for peripancreatic fluid collections (PFCs): A systematic review and meta-analysis, 2019. *Therapeutic Advances in Gastrointestinal Endoscopy*, in press.

(2) Benjamin Renelus, S Paul, S Peterson, N Dave, D amorabo, W Briggs, P Kancharla, 2019. Racial disparities with esophageal cancer mortality at a high-volume university affiliated center: An All ACCESS Invitation, *Journal of the National Medical Association*, in press.

(3) Mehta, Bella, S Ibrahim, WM Briggs, and P Efthimiou, 2019. Racial/Ethnic variations in morbidity and mortality in Adult Onset Still's Disease: An analysis of national dataset", *Seminars in Arthritis and Rheumatism*, doi: 10.1016/j.semarthrit.2019.04.0044.

(4) Ivanov A, Dabiesingh DS, Bhumireddy GP, Mohamed A, Asfour A, Briggs WM, Ho J, Khan SA, Grossman A, Klem I, Sacchi TJ, Heitner JF. Prevalence and Prognostic Significance of Left Ventricular Noncompaction in Patients Referred for Cardiac Magnetic Resonance Imaging. *Circ Cardiovasc Imaging*. 2017 Sep;10(9). pii: e006174. doi: 10.1161/CIRCIMAGING.117.006174.

(5) Ivanov A, Kaczkowska BA, Khan SA, Ho J, Tavakol M, Prasad A, Bhumireddy G, Beall AF, Klem I, Mehta P, Briggs WM, fpaSacchi TJ, Heitner JF, 2017. Review and Analysis of Publication Trends over Three Decades in Three High Impact Medicine Journals. *PLoS One*. 2017 Jan 20;12(1):e0170056. doi: 10.1371/journal.pone.0170056.

(6) A. Ivanova, G.P. Bhumireddy, D.S. Dabiesingh, S.A. Khana, J. Hoa N. Krishna, N. Dontineni, J.A Socolow, W.M. Briggs, I. Klem, T.J. Sacchi, J.F. Heitner, 2016. Importance of papillary muscle infarction detected by cardiac magnetic resonance imaging in predicting cardiovascular events. *International Journal of Cardiology*. Volume 220, 1 October 2016, Pages 558–563. PMID: 27390987.

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(9) Chery J, Semaan E, Darji S, Briggs W, Yarmush J, D'Ayala M, 2014. Impact of regional versus general anesthesia on the clinical outcomes of patients undergoing major lower extremity amputation. *Ann Vasc Surg*, 2014 Jul;28(5):1149-56. PMID: 24342828.

(10) Visconti A, Gaeta T, Cabezon M, Briggs W, Pyle M., 2013. Focused Board Intervention (FBI): A Remediation Program for Written Board Preparation

and the Medical Knowledge Core Competency. *J Grad Med Educ.* 2013 Sep;5(3):464-7. PMID: 24404311.

(11) Annika Krystyna, D Kumari, R Tenney, R Kosanovic, T Safi, WM Briggs, K Hennessey, M Skelly, E Enriquez, J Lajeune, W Ghani and MD Schwalb, 2013. Hepatitis c antibody testing in African American and Hispanic men in New York City with prostate biopsy. *Oncology Discovery*, Vol 1. DOI: 10.7243/2052-6199-1-1.

(12) Ziad Y. Fayad, Elie Semaan, Bashar Fahoum, W. Matt Briggs, Anthony Tortolani, and Marcus D'Ayala, 2013. Aortic mural thrombus in the normal or minimally atherosclerotic aorta: A systematic review and meta-analysis of the available literature. *Ann Vasc Surg.*, Apr;27(3):282-90. DOI:10.1016/j.avsg.2012.03.011.

(13) Elizabeth Haines, Gerardo Chiricolo, Kresimir Aralica, William Briggs, Robert Van Amerongen, Andrew Laudenbach, Kevin O'Rourke, and Lawrence Melniker MD, 2012. Derivation of a Pediatric Growth Curve for Inferior Vena Caval Diameter in Healthy Pediatric Patients. *Crit Ultrasound J.* 2012 May 28;4(1):12. doi: 10.1186/2036-7902-4-12.

(14) Wei Li, Piotr Gorecki, Elie Semaan, William Briggs, Anthony J. Tortolani, Marcus D'Ayala, 2011. Concurrent Prophylactic Placement of Inferior Vena Cava Filter in gastric bypass and adjustable banding operations: An analysis of the Bariatric Outcomes Longitudinal Database (BOLD). *J. Vascular Surg.* 2012 Jun;55(6):1690-5. doi: 10.1016/j.jvs.2011.12.056.

(15) Krystyna A, Kosanovic R, Tenney R, Safi T, Briggs WM, et al. (2011) Colonoscopy Findings in Men with Transrectal Ultrasound Guided Prostate Biopsy: Association of Colonic Lipoma with Prostate Cancer. *J Cancer Sci Ther* S4:002. doi:10.4172/1948-5956.S4-002

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EXHIBIT 3



Matt Braynard on Twitter: "Update: -Residency Analysis of ABS/EV Voters These are the two indicators of someone no longer eligible to vote due to residency: NCOA = Voters who filed change of address to another state. SVR = Subsequent Voter Registration in another state Merged = NCOA+SVR Deduped" / Twitter

EXHIBIT 4

Declaration of [redacted]

Pursuant to 28 U.S.C Section 1746, I, [redacted], make the following declaration.

1. I am over the age of 21 years and am a resident of Monroe County, Florida.
2. I am under no legal disability that would prevent me from giving this declaration.
3. I hold a Bachelor of Science degree in Mathematics and a Master of Science degree in Statistics.
4. For thirty years, I have conducted statistical data analysis for companies in various industries, including aerospace, consumer packaged goods, disease detection and tracking, and fraud detection.
5. From November 13th, 2020 through November 28th, 2020, I conducted in-depth statistical analysis of publicly available data on the 2020 U.S. Presidential Election. This data included vote counts for each county in the United States, U.S. Census data, and type of voting machine data provided by the U.S. Election Assistance Committee.
6. The analysis yielded several "red flags" concerning the percentage of votes won by candidate Biden in counties using voting machines provided by Dominion Voting Systems. These red flags occurred in several States in the country, including possible red flag in Maricopa County, Arizona.
7. I began by using Chi-Squared Automatic Interaction Detection (CHAID), which treats the data in an agnostic way—that is, it imposes no parametric assumptions that could otherwise introduce

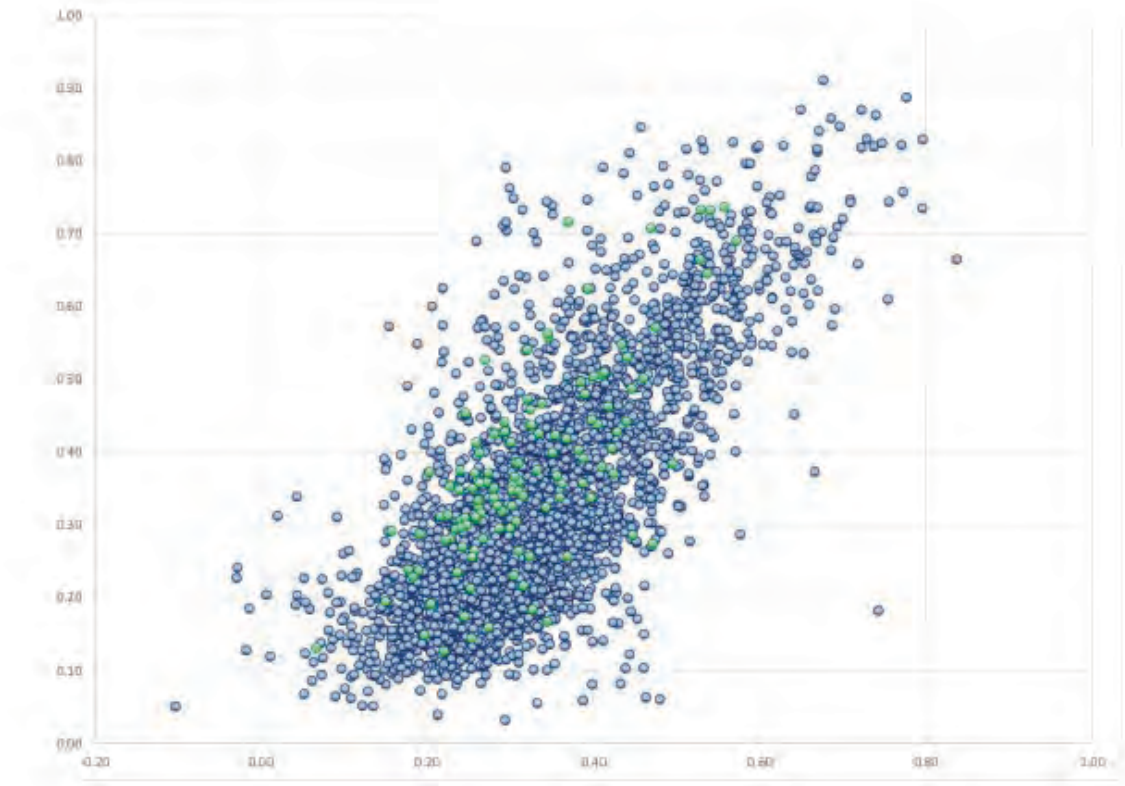
bias. Here, I posed the following question: "Do any voting machine types appear to have unusual results?" The answer provided by the statistical technique/algorithm was that machines from Dominion Voting Systems (Dominion) produced abnormal results.

8. Subsequent graphical and statistical analysis shows the unusual pattern involving machines from Dominion occurs in at least 100 counties and multiple States. Since machines from Dominion were used in Maricopa County, it is possible the unusual pattern continues there.

9. The results from most, if not all counties using the Dominion machines is three to five point six percentage points higher in favor of candidate Biden than the results should be. This pattern is seen easily in graphical form when the results from "Dominion" counties are overlaid against results from "non-Dominion" counties. The results from "Dominion" counties do not match the results from the rest of the counties in the United States. The results are certainly statistically significant, with a p-value of < 0.00004. This translates into a statistical impossibility that something unusual involving Dominion machines is *not* occurring. This pattern appears in multiple States and the margin of votes implied by the unusual activity would easily sway the election results in those States. The margin of votes implied by the unusual pattern would certainly sway the election results in Arizona.

10. The following graph shows the pattern. The x-axis is our predicted percentage candidate Biden should win. The y-axis is the actual percentage Biden won. The green dots are counties in the

United States that use Dominion voting machines. Almost all of them are above an imaginary blue center prediction line, when in normal situations approximately half of them would be below the prediction line (as evidence by approximately half the counties in the U.S. (blue dots) that are below the blue centerline). More easily put, the green dots (counties with Dominion machines) are simply "too high". The p-value of statistical analysis regarding the centerline for the green dots (Counties with Dominion machines) is 0.000000049, pointing to a statistical impossibility that this is a "random" statistical anomaly. Some external force caused this anomaly.



11. To confirm that Dominion machines were the source of the pattern/anomaly, I conducted further analysis using propensity scoring using U.S. census variables (Including ethnicities, income, professions, population density and other social/economic data) , which was used to place counties into paired groups. Such an analysis is important because one concern could be that counties with Dominion systems are systematically different from their counterparts, so abnormalities in the margin for Biden are driven by other characteristics unrelated to the election.

12. After matching counties using propensity score analysis, the only difference between the groups was the presence of Dominion machines. This approach again showed a highly statistically significant difference between the two groups, with candidate Biden again averaging three percentage points higher in Dominion counties than in the associated paired county. The associated p-value is < 0.00005, against indicating a statistical impossibility that something unusual is not occurring involving Dominion machines.

13. The results of the analysis and the pattern seen in the included graph strongly suggest a systemic, system-wide algorithm was enacted by an outside agent. Our estimate of the possible impact in Maricopa County is 3 percentage points, causing the results of Arizona's vote tallies to be inflated accordingly.

14. This is based on the residual between Biden's actual vote percentage in Maricopa County and the predicted vote percentage,

which is obtained from a national model using county level data on demographic Census characteristics (e.g., percent white, black, asian, etc, percent self employed, and the industrial composition).

15. The best estimate of impact in Maricopa (only county with Dominion in AZ) is 3%. The national analysis yielded 5.6% as the estimate of impacted votes, which would imply a larger number of votes impacted in AZ. To be more conservative, I defer to 3%.

16. Statistical estimating yields that in Arizona, the best estimate of the number of impacted votes is 62,282. However, calculating a 95% confidence interval from national data yields that as many as 97,576 votes may have been impacted in Arizona.

I declare under penalty of perjury that the forgoing is true and correct. Executed this November 28th, 2020.

[redacted],

[redacted] 11/28/20

EXHIBIT 5

DECLARATION

I make this Declaration of my own personal knowledge, and I am competent to testify to the matters contained herein.

1. I served as an official legal observer of the 2020 general election. I observed at the following location(s): Maricopa County Tabulation and Election Center (MCTEC) and five polling locations in Maricopa County.

2. While serving as an observer, I personally witnessed the following:

MCTEC Signature Verification Rooms 1 and 2 — 10/25/20 Room 2 and 10/28/20 Room 1

I worked in both of the Signature Verification rooms as a Republican volunteer observer. We could perform NO EFFECTIVE oversight as we were seated in a small designated area from which we could not move, the majority of the computer monitors were faced away from us, and we could not read the few screens that were turned our way due to distance.

Another observation I noted is at each monitor this task is accomplished by an individual, not by a two-person team of one Republican and one Democrat (as in Adjudication). This also lends itself to LESS THAN DESIRABLE oversight.

I had requested to volunteer in Signature Verification as I felt — and still do — it is such an important area. (I was concerned about ballot harvesting.) But there is NO WAY to provide any oversight.

MCTEC Envelope Separation Room — 10/25/20

EXHIBIT 5 A

The envelope separation room is a huge, long room containing dozens of tables of two-person teams (one Republican and one Democrat) opening ballot envelopes and separating the items.
We were escorted to the designated observation area on the left end of the front of the room. The area was a "taped off on the floor", small rectangle containing two chairs, one for a Republican and one for a Democrat observer. We were not allowed to move from this area. The distance was such that NO MEANINGFUL oversight could occur.

Republican Volunteer Poll Observer —

10/07/20 McDowell Square, 5114 W McDowell Rd, Phoenix, AZ 85035
All day we Republican and Democrat observers stood along a wall, unable to walk around to observe most of the functions. The Inspector was Bob.

10/23/20 9201 S Avenida Del Yaqui, Guadalupe, AZ 85283
We Republican and Democrat observers (one each) were seated and not allowed to walk around to observe most of the functions. Additionally, the Inspector Francis brought over a page of the polling locations' rules to two poll workers and then me because we had conversed. She told us we were not allowed to talk AT ALL. The two workers had been discussing dancing and music and I had answered "Big Band music" to a question, "What kind of music was Glenn Miller?" This polling location had a very repressive atmosphere. I felt very unwelcome all day.

10/24/20 & 10/27/20 & 10/31/20 845 West Southern Ave., Phoenix, AZ 85041
We Republican and Democrat observers (one each) were seated and not allowed to walk around to observe most of the functions. However, we were allowed to converse with staff as long as nothing political was said. We all knew that. And we could freely walk around outside. The Inspector Joe fostered a friendly atmosphere and addressed questions.

10/29/20 Fowler School, 6707 W Van Buren St, Phoenix, AZ 85043
We Republican and Democrat observers (one each) were seated to the left in the front of the cafeteria/gym. We were allowed to walk down to observe from afar the ballot printing function. We did not try to walk around to observe the other functions.

11/03/20 Election Day Horizon Church, 1401 E Liberty Lane, Phoenix, AZ 85048
The Inspector was James. The space was very small — long and narrow. I sat in a designated chair on one wall. I could freely walk around and observe the functions. What I witnessed throughout the day that concerned me was this: a voter would insert their ballot into one of the two on-site tabulators, then the ballot would kick out due

EXHIBIT 5 B

to an over-vote. A poll worker (various) would correctly advise the person they could do a whole new ballot or agree to having this race skipped and the rest of the ballot processed. I only saw one voter ask to do a new ballot. I felt the poll workers were verbally steering people/encouraging people to agree to skip the over-vote race, process the rest of the ballot, and leave. I did observe the poll worker press a button on the tabulator. I was not close enough to see what it was.

MCTEC Tabulation and Adjudication Room —

While working in Tabulation, alongside the Democratic volunteer observers Jeff and Robin Greeson, I helped select randomly two sample trays for the Hand Count. The trays consisted of 200 ballots each, being run though two different machines: one of the large HIPRO tabulators and one of the Canons. This was part of the plan to pull 52 trays/make up 52 sealed boxes, from which 26 boxes would be randomly chosen for the Hand Count. The other 26 would be available if a new set was needed for some reason.
What I feel is important is I know the pulling of the 52 trays was completed before Election Day. No Election Day ballots were included in the Hand Count. Jeff Greeson would know the date the last boxes were created and sealed.
They say the Hand Count was 100% on the money. Perhaps someone could freely manipulate the tabulation of the votes on Election Day if they knew none would be looked at in the Hand Count?

I declare under penalty of perjury under the laws of the State of Arizona that I have read the above Declaration, am familiar with its contents, and know the same to be true and correct of my own personal knowledge.

Dated November 25, 2020.

Signature: Diane L Serra

Printed Name: Diane L. Serra

DECLARATION

I make this Declaration of my own personal knowledge, and I am competent to testify to the matters contained herein.

1. I served as an official legal observer of the 2020 general election. I observed at the following location(s): Maricopa County Tabulation and Election Center (MCTEC) and five polling locations in Maricopa County.

2. While serving as an observer, I personally witnessed the following:

MCTEC Signature Verification Rooms 1 and 2 — 10/25/20 Room 2 and 10/28/20 Room 1

I worked in both of the Signature Verification rooms as a Republican volunteer observer. We could perform NO EFFECTIVE oversight as we were seated in a small designated area from which we could not move, the majority of the computer monitors were faced away from us, and we could not read the few screens that were turned our way due to distance.

Another observation I noted is at each monitor this task is accomplished by an individual, not by a two-person team of one Republican and one Democrat (as in Adjudication). This also lends itself to LESS THAN DESIRABLE oversight.

I had requested to volunteer in Signature Verification as I felt — and still do — it is such an important area. (I was concerned about ballot harvesting.) But there is NO WAY to provide any oversight.

MCTEC Envelope Separation Room — 10/25/20

EXHIBIT 6

STATE OF COLORADO)
County of Douglas))ss.

COMES NOW, Affiant Joseph T. Oltmann, being first duly sworn, under oath, and states under penalty of perjury that the following information is true and accurate within his personal knowledge and belief:

My name Joseph Oltmann. I am over eighteen years of age. I am not suffering under any mental disability and am competent to give this worn affidavit. I am able to read and write and to give this affidavit voluntarily and on my own free will and accord. No one has used any threats, force, pressure, or intimidation to male me sign this affidavit. I make this affidavit in support of the truth.

I am the CEO of a tech company based just outside of Denver, Colorado. I am also the founder of an organization called FEC United. [Fecunited.com] The goal of this organization is to restore constitutional integrity to our community and empower those in our community to stand up to state and national leadership that intends to suppress the rights of individuals holistically.

Through this organization "FEC" I became a target of journalists who began to slander both me and my organization. I became the topic of Antifa and extremists through my involvement in a movement to resist the narrative that police are bad and our society represented the rhetoric shared by these extremists. As a result of these attacks, I started researching Antifa, BLM, Inc. and their connection to violence and unrest inside of our communities. As a result, I set out to infiltrate Antifa meetings and de-mask those Antifa members who are journalists in the mainstream media in Colorado specifically.

On or about the week of September 27, 2020, I was able to attend an Antifa meeting which appeared to be between Antifa members in Colorado Springs and in Denver Colorado. I cannot verify the connection between the two or the leadership as they were disorganized. Discussions of Our Revolution and Antifa were discussed. Rhetoric of "eliminating fascists" and frustration as to the dwindling of support to rally in the street was evident.

Then I honed in among other conversations key actors in the organization who work for local and state news publications. One such person of interest was Heidi Beedle, identified leader of Our Revolution in El Paso County (Southern Colorado) and Antifa leader of the same area.

Heidi's name is actually Sean Beedle. She is a journalist at Colorado Springs Independent, Colorado Springs Business Journal and a freelance writer for several online publications. Others to remain unnamed in this were present.

The conversation went like this:

Someone identified as "Eric" began to speak. Someone asked who Eric was, and someone else replied "he is the Dominion guy" [paraphrased].

Eric then began to speak after being told to continue, but was interrupted and asked by someone, "What are we going to do if Trump wins this fucking election?"

Eric responded, "Don't worry about the election. Trump is not going to win. I made fucking sure of that.. Hahaha"

Someone responded, "Fucking right."

Eric continued with fortifying the groups and recruiting. I would describe his tone as eccentric and boisterous. I wrote down his name and started to do some research into him.

At the time, I thought that they were so disconnected with reality that they think they can "make sure Trump is not elected."

I started with a simple google search: Keywords: "Eric," "Dominion," "Denver Colorado." The fifth result in organic search returned:

Dominion Voting Systems | Employee Profiles, Emails, Mutual ...

www.leadcandy.io › company › Dominion-Voting-Syst...

Find people working at Dominion Voting Systems. LeadCandy provides Full ... Denver, Colorado. VIEW FULL PROFILE ... FULL PROFILE. Eric Coomer's photo ...

Above that were results for Eric Schussler- Old Dominion University and Eric E Johnson, Attorney - Sherman & Howard. The first two on organic search however was as follows:

Dominion - Colorado Secretary of State

www.sos.state.co.us › elections › files › projectPlans

PDF

Sep 9, 2016 — our most recent pilots in the City and County of Denver and Mesa County. ... 1 Democracy Suite is a registered trademark of Dominion Voting Systems. ... Eric Coomer graduated from the University of California, Berkeley in ...

And

Eric Coomer's email & phone | Dominion Voting Systems's ...

rocketreach.co › eric-coomer-email_7112825

Location, **Denver**, **Colorado**, United States. Work, Director, Market Strategy @ **Dominion** Voting Systems Member, Board of Directors @ Friends of Levitt Pavilion ...

I began doing research on Eric Coomer and discovered that Colorado Secretary of state link the following about Dr. Eric Coomer on page 26:

"Eric Coomer graduated from the University of California, Berkeley in 1997 with a Ph.D. in Nuclear Physics. After working in IT consulting for several years, Eric entered the elections industry in 2005 with Sequoia Voting Systems as Chief Software Architect. After three years with the company, Eric took over all development operations as Vice President of Engineering. When Sequoia was acquired by Dominion Voting Systems in 2010, Eric joined the DVS team as Vice President of US Engineering overseeing development in the Denver, Colorado office.

Recently, Eric has taken over as the Director of Product Strategy driving the creation of next generation products through close collaboration with customers, combined with a deep understanding of technology and the needs of Elections departments throughout the United States and abroad. Eric has been an active participant in the development of the IEEE common data format for Elections systems, as well as the working group for developing standards for Risk-Limiting Audits for elections results. When not designing new products, Eric supports large and small scale customers during Election season."

I did some cursory research on Eric, but my conclusion was that he was either a part of the government or not relevant to the conversation. In other words, this was not a target I would

identify as being influential in Antifa. My conclusion was based on his credentials of having a PhD in Nuclear Physics. Did not add up for someone with that intelligence. I set it aside and concentrated my focus on the activist journalist who were actually Antifa members.

On October 15, 2020 I spoke at an FEC meeting in Bandimere Speedway. It was a rally around the unconstitutional actions of Jefferson County, Colorado government leadership to hurt Bandimere Speedway. I spoke and before the event started they escorted a suspected Antifa Journalist Erik Maulbetsch [Colorado Recorder] off the premises. In that meeting I talked about outing activist journalists who were Antifa and holding them accountable in our community for attacking organizations like FEC United that serve the community.

These activist journalists frequently slander people of faith, conservatives and call them names that defame them in the community. I had enough and warned that we would call them out by name. Maulbetsch wrote and article reflecting this as he was listening in online and decided to omit details about the meeting, causing the entire journalistic community to wonder if they were on the list. It had a positive effect contrary to their intentions.

On Friday November 6th, I received a forwarded a article about Georgia irregularities on the election day. I normally do not read many of these articles because I am inundated with information both from FEC, and my company. I started reading it and noticed Eric Coomer was the spokesperson for a company called Dominion Voting Systems. I immediately stopped and started to go back through my notes to find the info on Eric Coomer. I then started research Dominion Voting Systems. The information became rather scary as everywhere I looked I found Eric's name. Some listing him as VP of Security and others calling him Director of Strategy and Security. I began my search for everything Eric Coomer, Dr. Eric Coomer and any information related to legal filings, RFPs, states using Dominion, Colorado uses and even areas in Colorado that do not use Dominion.

I then turned my attention to Eric Coomer's Facebook profile and page while I gathered information on correlating email addresses, profiles, screen names, etc. Searching Twitter, Reddit, Facebook, 4Chan, etc etc.

I was able to get screenshots of Eric Coomer's Facebook posts going back to 2016. What I discovered was disturbing. Anti-Trump rhetoric, posts referring to: Fuck USA, Fuck the Police, A.C.A.B., posts that were anti Conservative, and even posts being happy someone died. Then the bigger shocker. He reposted the Antifa "Manifesto" letter to Donald Trump. I knew that I had the right guy and someone that was clearly mentally unstable and radical. I started digging into the

code irregularities and tying all of the pieces together with the irregularities and the Dominion uses in the disputed states. The correlation was astonishing. I then found the information related to justifying voting machines being online and his justification that they had "hardware and IP address protection". This statement by itself is FALSE.

I then attempted to reach out to all sources to bring this information to light. Calling major news stations and attempting to connect with the DOJ.

I took the information to the listeners of an organization that I also own called Conservative Daily. We have a podcast that we do on weekdays. I felt I had enough information and was confident that the Eric on the conference call was the same Eric Coomer that worked for Dominion. I was also confident that given the Facebook and other information I was able to collect that Eric Coomer was interfering with the election and as he admits in one of his posts that people at his company think and feel the same way he does. I began to research his patents, who owns them, the pattern of states they acquired as clients.

I began to research the connection to Diane Feinstein, her husband, campaign manager, Clinton Foundation and became worried that the finger of radicals had taken away the voice of the American people in deciding the election. I used ARIMA analysis to show me trends on data and probability models to prove that they were in fact using code and technology to ghost votes, switch votes or even remove probable ballots completely. Code is random unless it is not. Since we are a data company and understand artificial intelligence and use of neural networks, we understand the capabilities of creating chaos in outcome based on weighted density of probable voters.

These statements are true and accurate to the best of my knowledge.

Joseph Oltmann

STATE OF COLORADO
COUNTY OF Douglas

Personally appeared before me, LYNN KIEFFER, a Notary Public in and for the aforesaid State and County, JOSEPH T OLTMANN, the within named bargainer, with whom I am personally acquainted and who, after being duly sworn, acknowledged that she executed the foregoing Agreement for the purposes contained therein.

JOSEPH T OLTMANN

Sworn to and subscribed before me this 17th day of November, 2020.

My Commission Expires:

07-24-2021

NOTARY PUBLIC

LYNN KIEFFER
Notary Public
State of Colorado
Notary ID # 20174030910
My Commission Expires 07-24-2021

EXHIBIT 7

EXHIBIT 2

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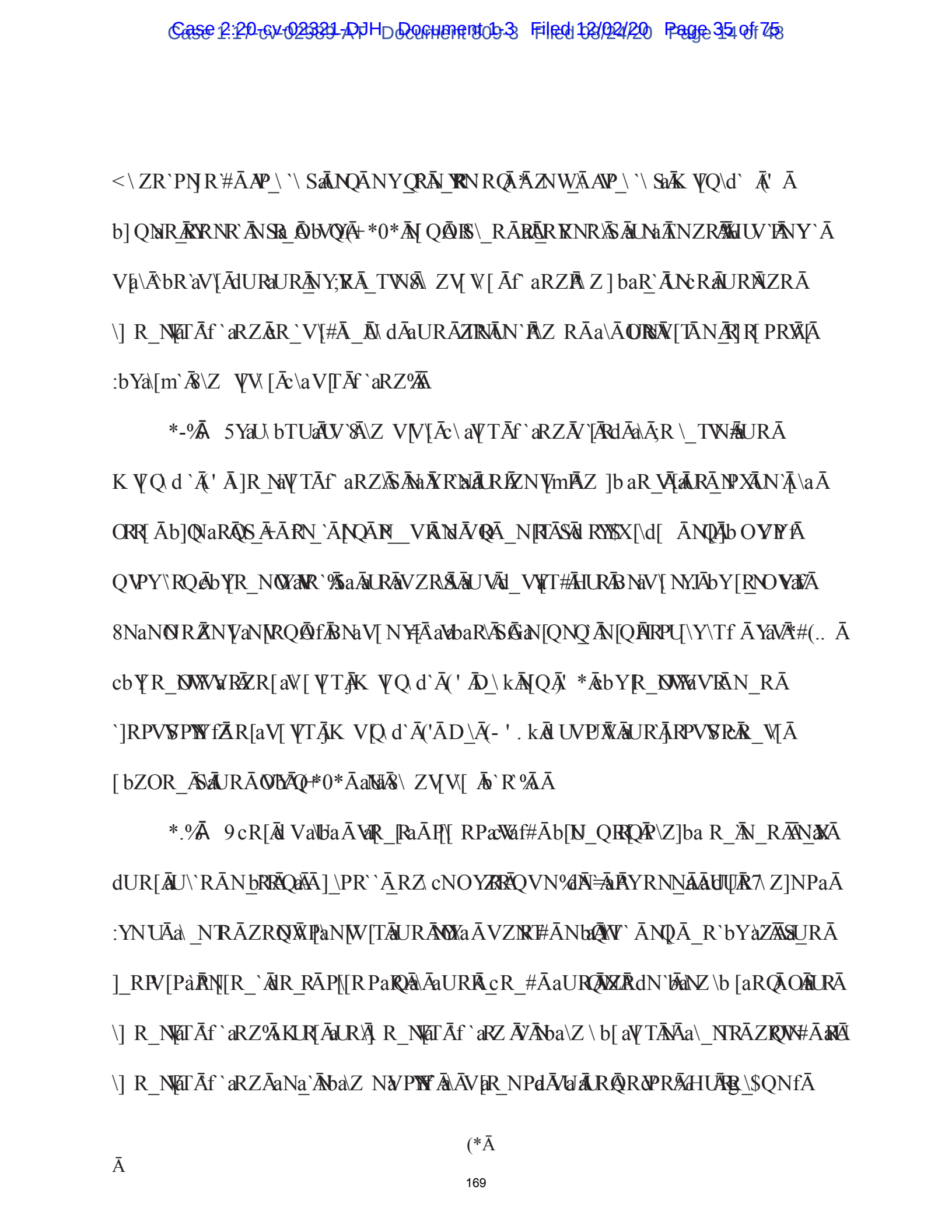

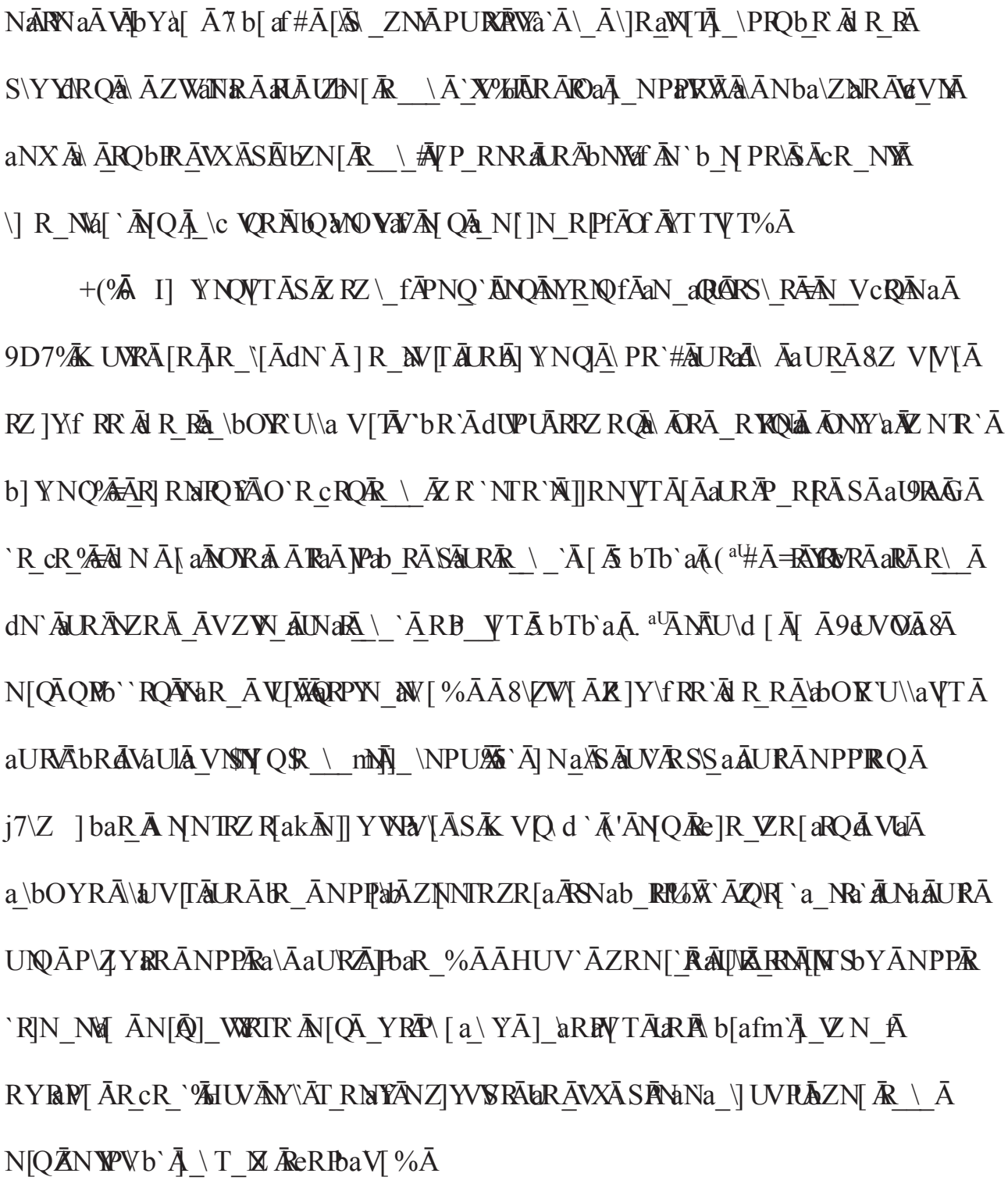

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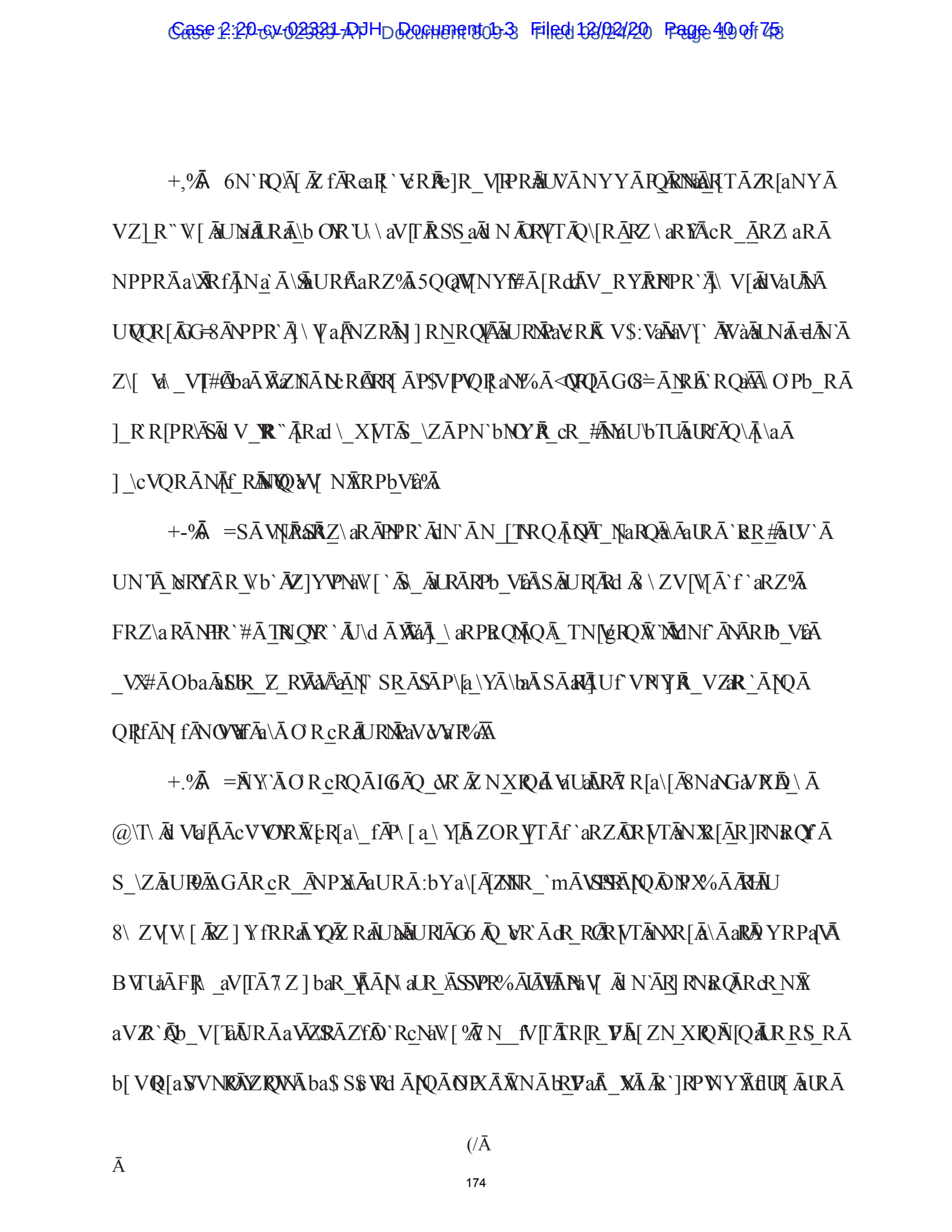

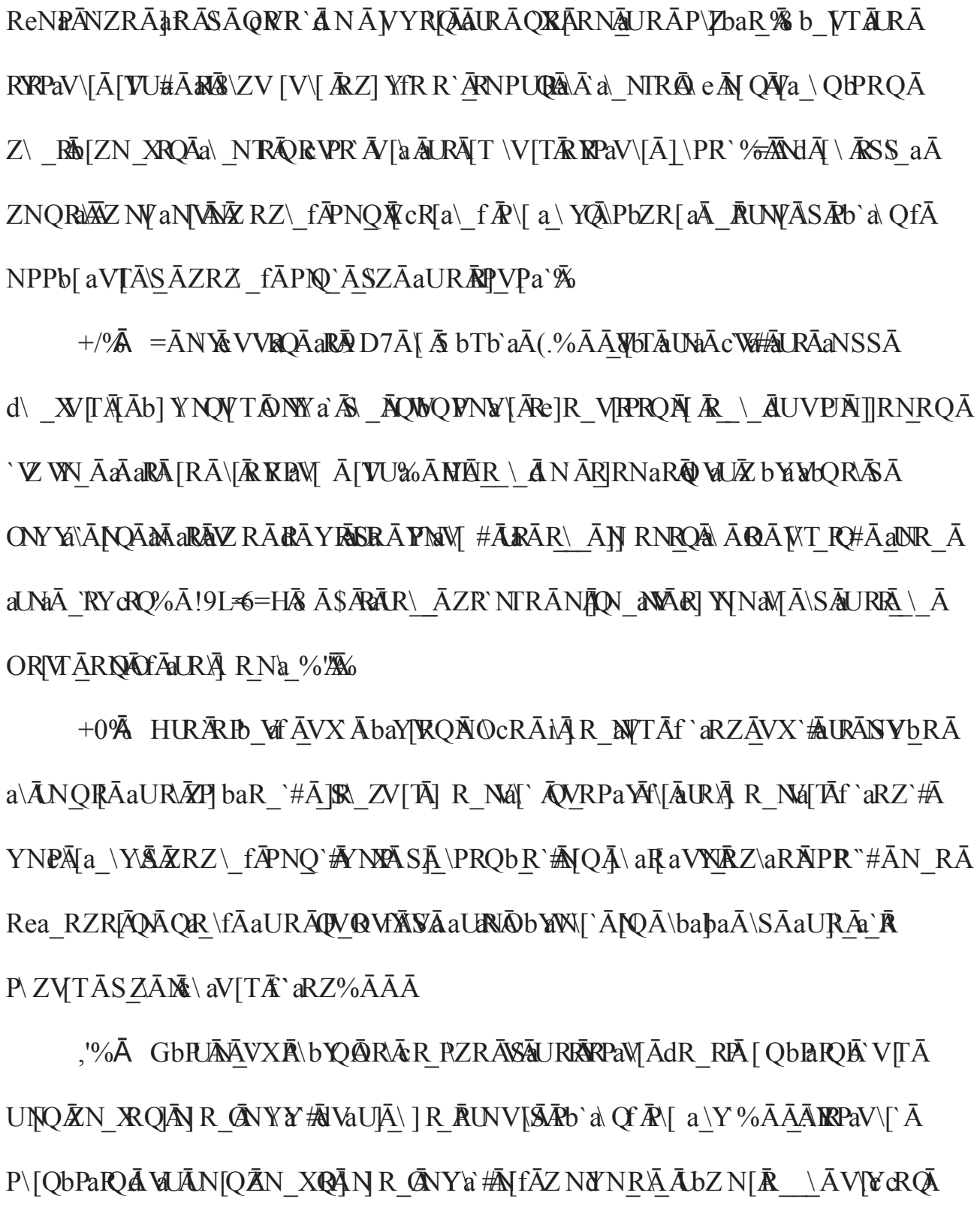

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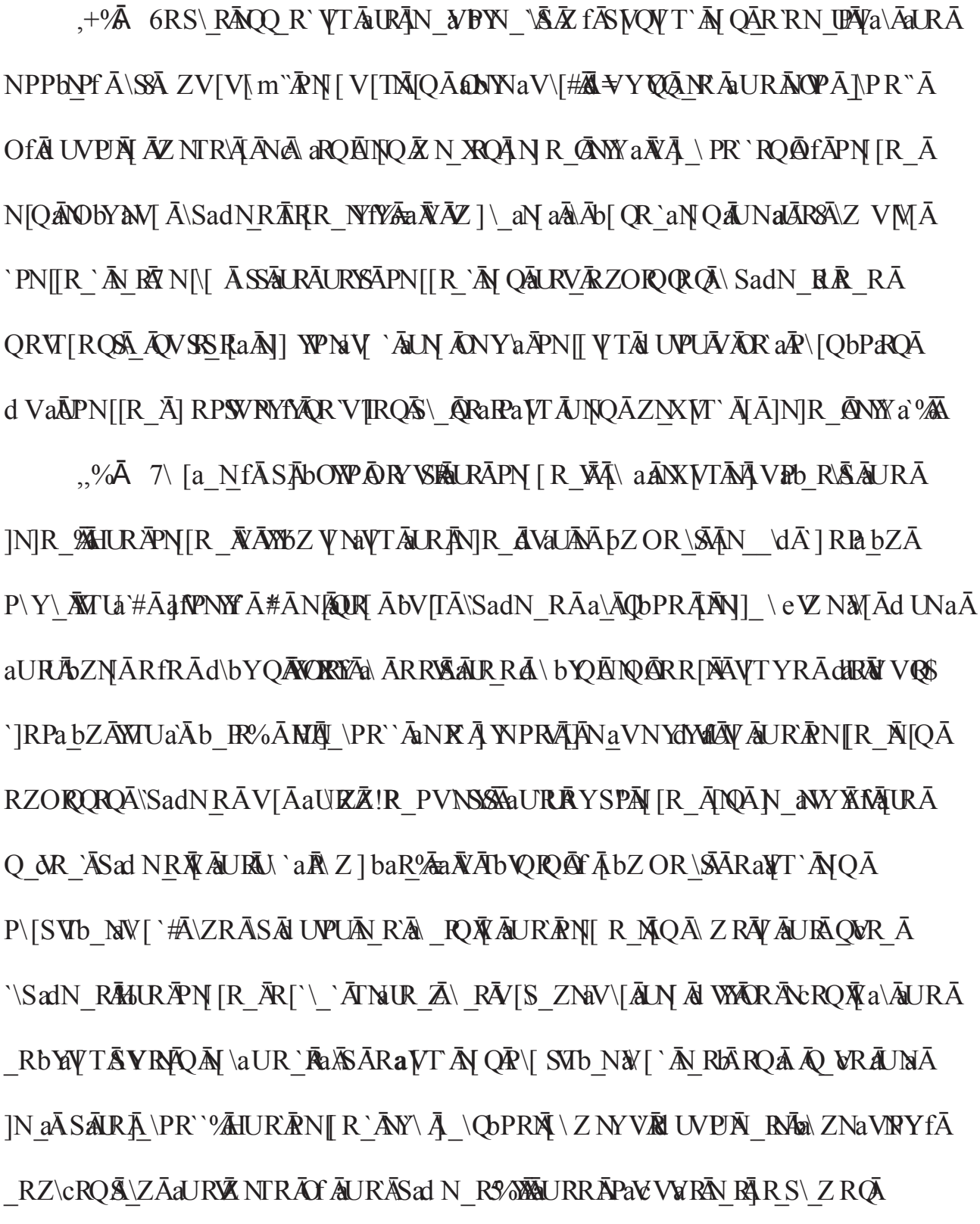

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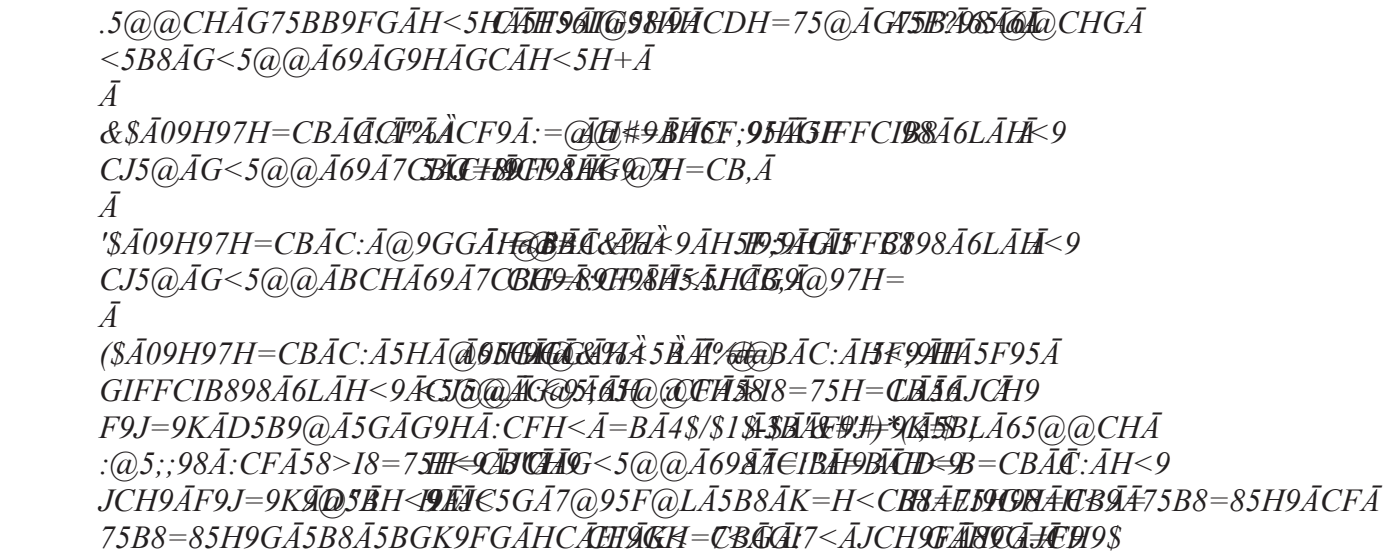





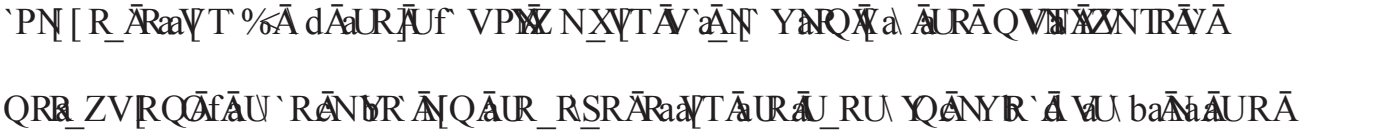

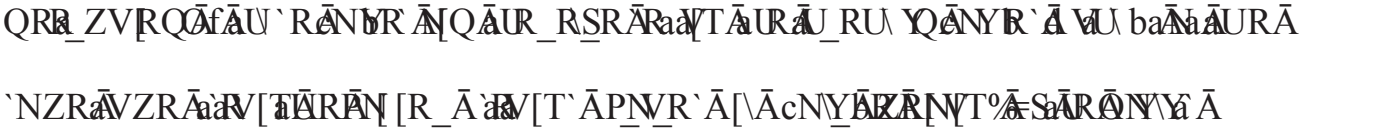

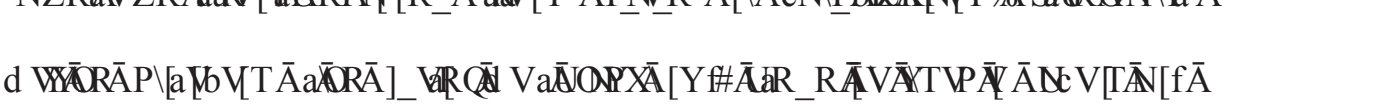













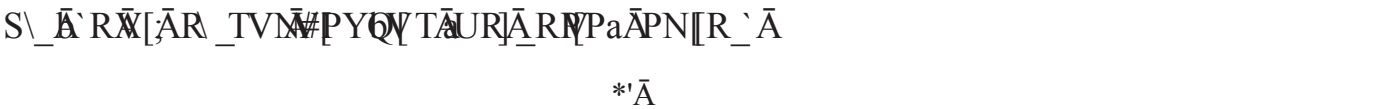

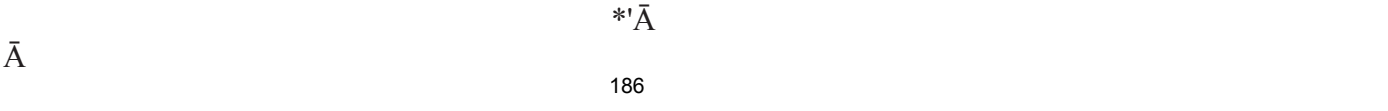

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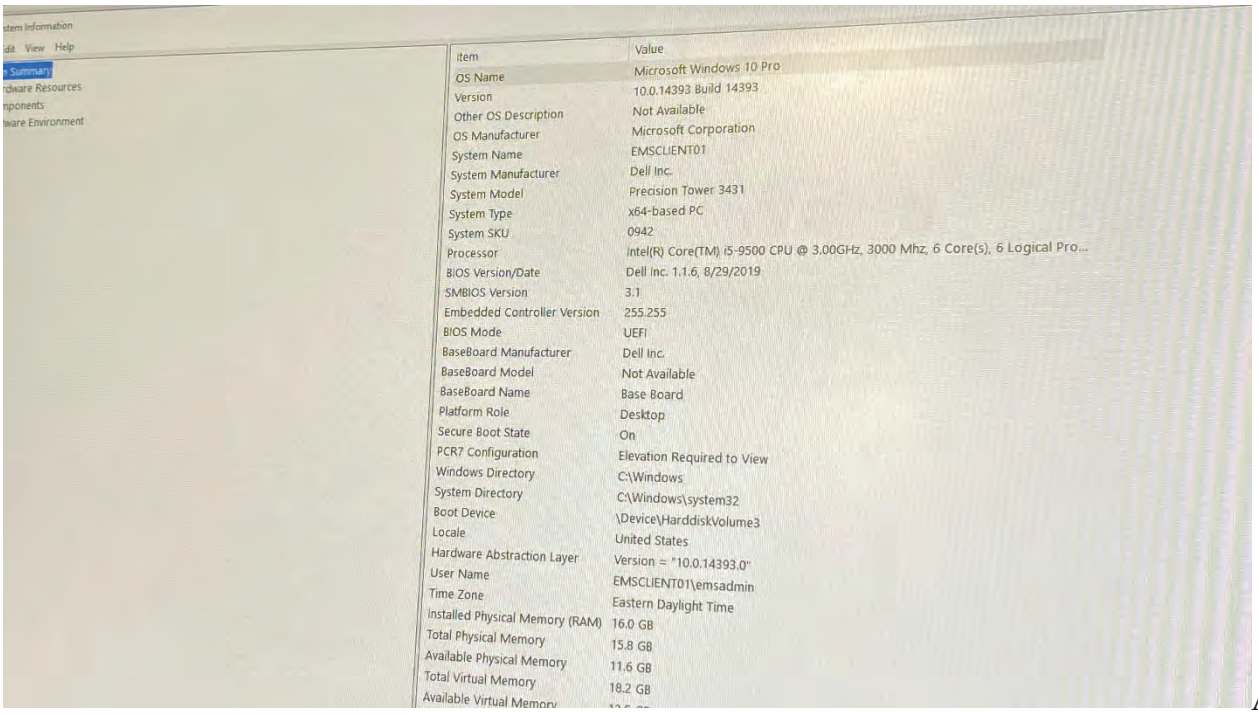

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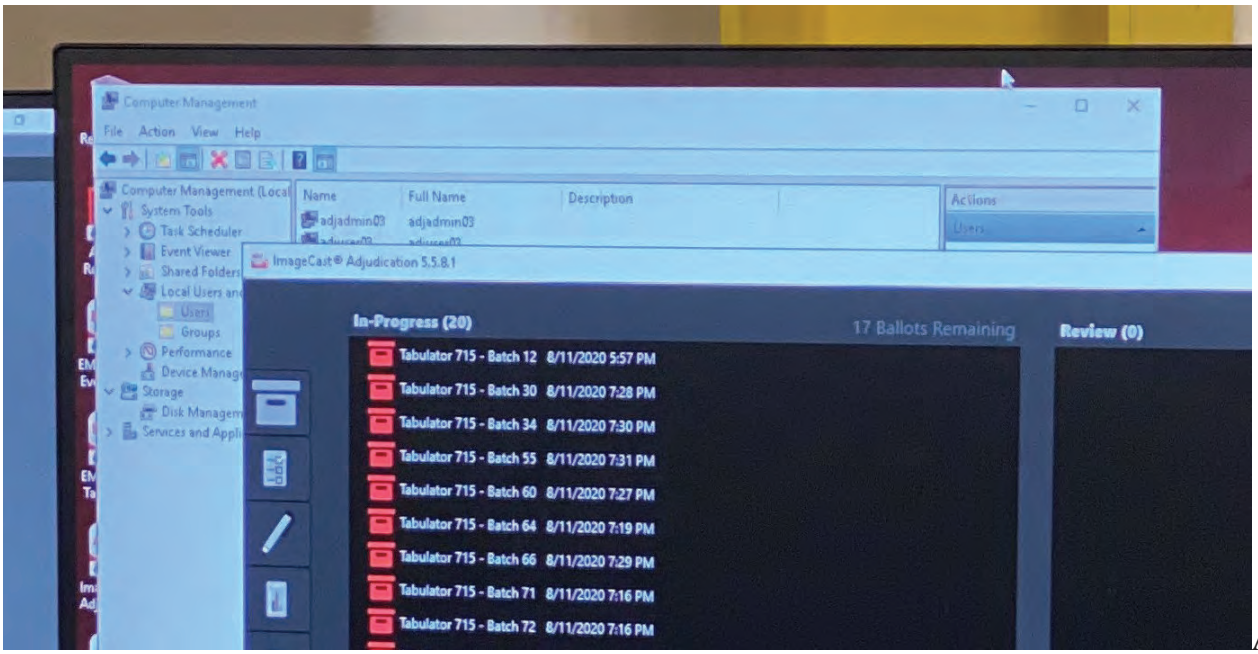

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ICC SCANNER DRIVER SETTINGS

DOMINION VOTING

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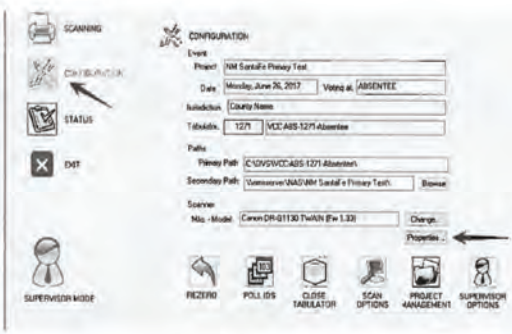
1. Click on the **ADMINISTRATOR MODE** icon in the lower left corner of the window. Enter the Supervisor password.
2. Click the **CONFIGURATION** button option on the left side of the window then click the **Properties** button located in the lower **Scanner** section.



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Verify/select the following settings:

a. **Color Drop-out**: Red
b. **Detect by Length**: Not selected
c. **Detect by Ultrasonic**: Selected
d. **Deskew**: Selected
e. **Edge Cleanup**: Selected
f. **Doc Orientation**: Portrait
g. **Brightness**: Set to 90
h. **Contrast**: 4
i. **Gamma**: Not selected
j. **Moire Reduction**: Not selected
k. **Imprinter**: Not selected

Click the **Apply** button then click the **OK** button.



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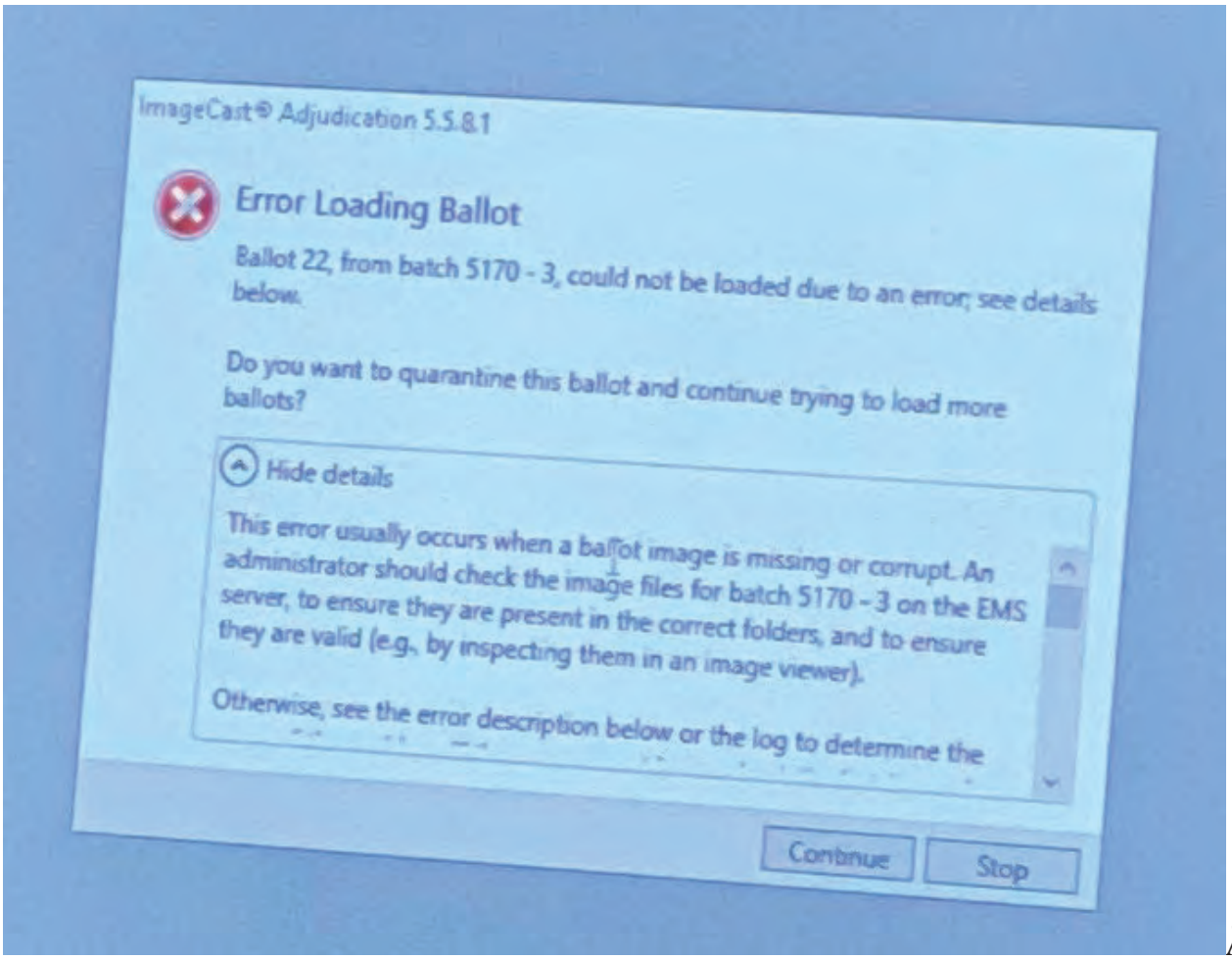

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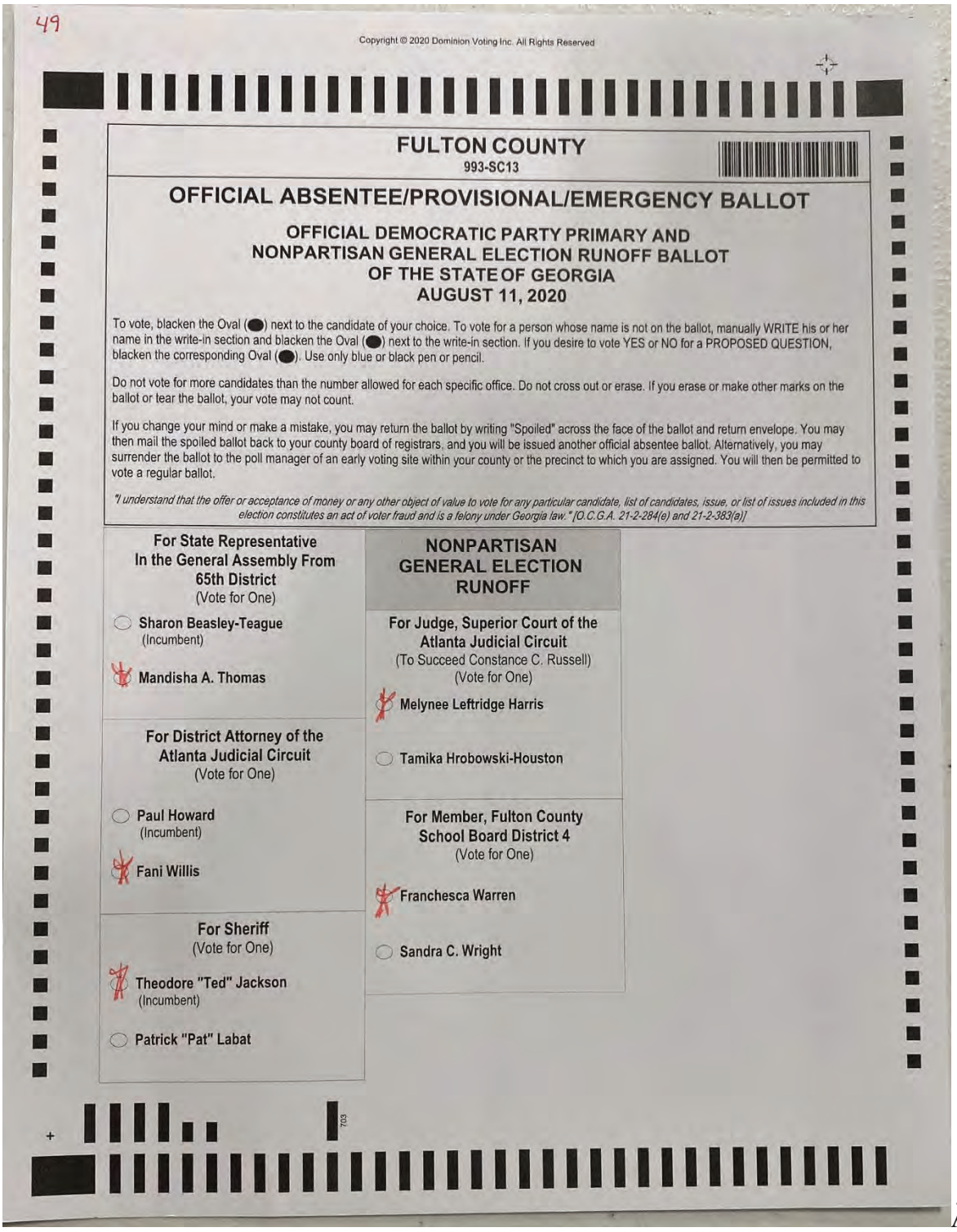
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FULTON COUNTY
993-SC13

OFFICIAL ABSENTEE/PROVISIONAL/EMERGENCY BALLOT

OFFICIAL DEMOCRATIC PARTY PRIMARY AND
NONPARTISAN GENERAL ELECTION RUNOFF BALLOT
OF THE STATE OF GEORGIA
AUGUST 11, 2020

To vote, blacken the Oval (●) next to the candidate of your choice. To vote for a person whose name is not on the ballot, manually WRITE his or her name in the write-in section and blacken the Oval (●) next to the write-in section. If you desire to vote YES or NO for a PROPOSED QUESTION, blacken the corresponding Oval (●). Use only blue or black pen or pencil.

Do not vote for more candidates than the number allowed for each specific office. Do not cross out or erase. If you erase or make other marks on the ballot or tear the ballot, your vote may not count.

If you change your mind or make a mistake, you may return the ballot by writing "Spoiled" across the face of the ballot and return envelope. You may then mail the spoiled ballot back to your county board of registrars, and you will be issued another official absentee ballot. Alternatively, you may surrender the ballot to the poll manager of an early voting site within your county or the precinct to which you are assigned. You will then be permitted to vote a regular ballot.

"I understand that the offer or acceptance of money or any other object of value to vote for any particular candidate, list of candidates, issue, or list of issues included in this election constitutes an act of voter fraud and is a felony under Georgia law." [O.C.G.A. 21-2-284(e) and 21-2-383(a)]

For State Representative In the General Assembly From 65th District
(Vote for One)
- ○ Sharon Beasley-Teague (Incumbent)
- ✗ Mandisha A. Thomas

For District Attorney of the Atlanta Judicial Circuit
(Vote for One)
- ○ Paul Howard (Incumbent)
- ✗ Fani Willis

For Sheriff
(Vote for One)
- ✗ Theodore "Ted" Jackson (Incumbent)
- ○ Patrick "Pat" Labat

NONPARTISAN GENERAL ELECTION RUNOFF

For Judge, Superior Court of the Atlanta Judicial Circuit
(To Succeed Constance C. Russell)
(Vote for One)
- ✗ Melynee Leftridge Harris
- ○ Tamika Hrobowski-Houston

For Member, Fulton County School Board District 4
(Vote for One)
- ✗ Franchesca Warren
- ○ Sandra C. Wright

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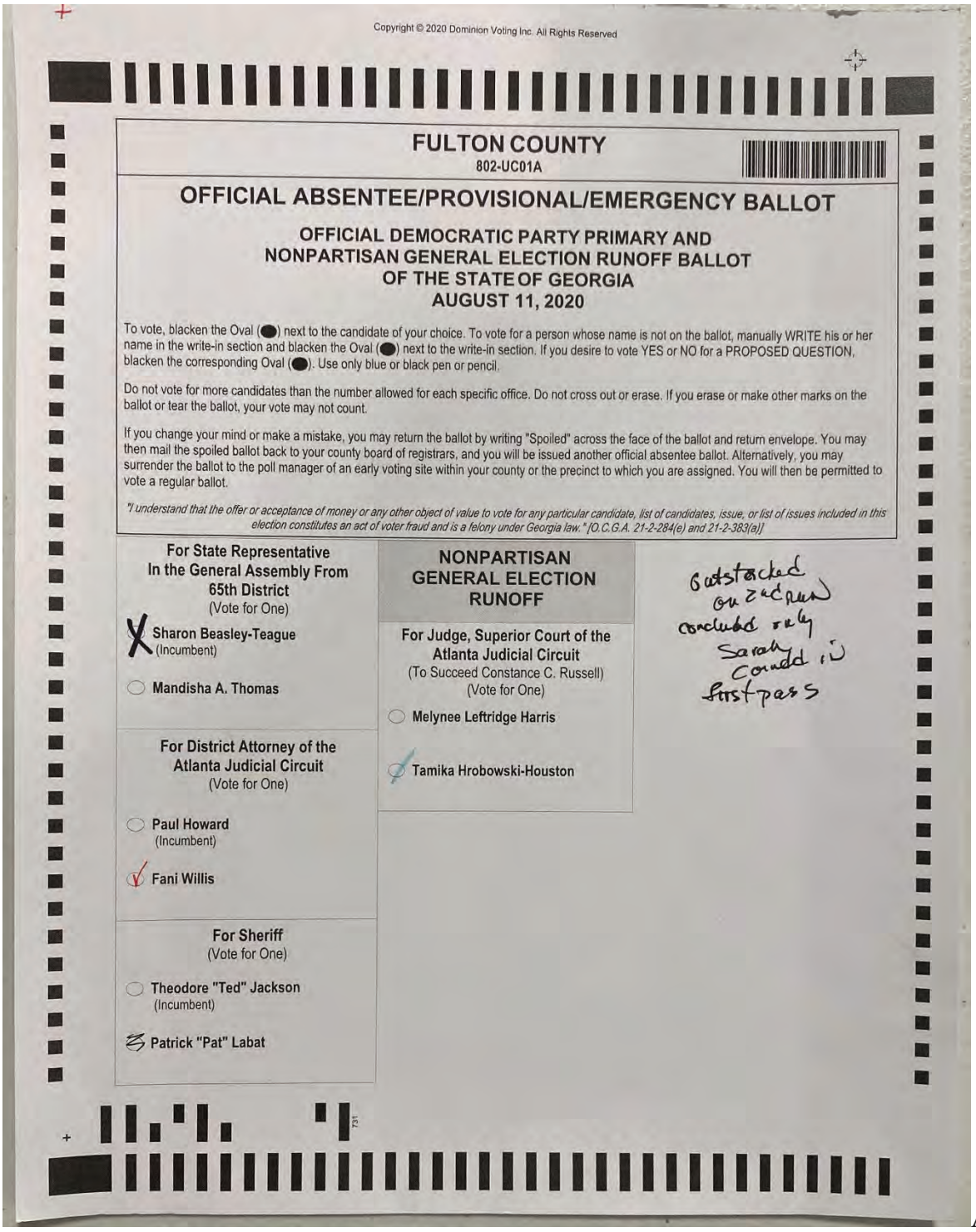

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- Create a voter card from Poll Pad for each unique ballot style within the designated Polling Location
  - Recommend labels be placed on card identifying what ballot style will be displayed by BMD once card is inserted
  - BMD removes the activation code from the Voter Card once used, therefore create the card again from Poll Pad after each use by a BMD

D. Testing the BMD and Printer

Use a combination of Poll Worker Card with Ballot Activation Codes for the polling location, and Voter Cards created from a Poll Pad loaded with the LA/Advance Voting dataset to bring up ballots on the BMD

- Produce at least one printed ballot from each BMD assigned to the polling location
- Produce a test deck from the BMDs assigned to the polling location for each unique ballot style within the polling location. The test deck must contain at least one vote for each candidate listed in each race within the unique ballot style
  - **Example**: Ballot from BMD 1 contains a vote for only the first candidate in each race listed on Ballot Style 1, Ballot from BMD 2 contains a vote only for the second candidate in each race on Ballot Style 1, and continue through the line of devices until all candidates in all races within the unique ballot style have received a single vote
  - **If Number of BMDs outnumber the number of vote positions on the unique ballot style**, start the vote pattern over until all BMDs have produced one printed ballot
  - **If Number of unique ballot styles in the polling place is greater than 1,** once the vote pattern is complete for a unique ballot style, proceed to the next BMD in line to start the review of the next unique Ballot Style
  - **All unique ballot styles do not have to be tested on each BMD**
- Review BMD-generated Test Deck and confirm the vote content before placing in the designated Polling Place Scanner

E. Testing the Polling Place Scanner

- Scan the BMD-generated Test Deck into the Polling Place Scanner
- Scan one blank optical scan ballot style(s) associated to the Polling Place to verify the Polling Place Scanner will recognize the ballot style in case of emergency
- Verify Scanner(s) shows a number of Ballot Cast equal to the number of ballots in the BMD-generated test deck plus the scanned blank Optical Scan ballot styles
- Firmly place the Security Key Tab in the Security Key Slot
- Touch Close Polls
- Enter the passcode
- Touch Enter
- Touch Yes
- Touch No for additional tapes (Scanner will automatically produce 3 copies of the closing tape)

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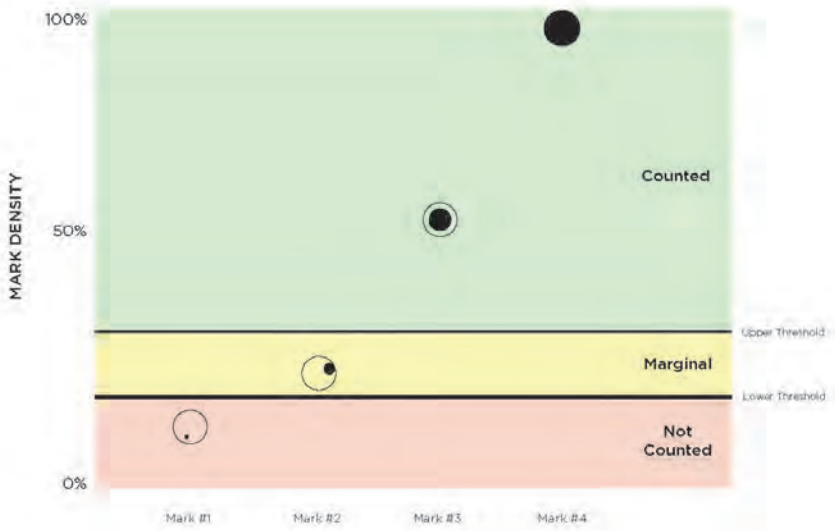
THE DOMINION DIFFERENCE

DUAL THRESHOLD TECHNOLOGY (MARGINAL MARKS)

From its early beginnings, Dominion Voting has emphasized the use of digital scanning, and continues to set the standard in digital image acquisition and analysis in the tabulation of digitally scanned ballots. When a ballot is fed into an ImageCast® tabulator – at the precinct level or centrally – a complete duplex image is created and then analyzed for tabulation by evaluating the pixel count of a voter mark. The pixel count of each mark is compared with two thresholds (which can be defined through the Election Management System) to determine what constitutes a vote. If a mark falls above the upper threshold, it's a valid vote. If a mark falls below the lower threshold, it will not be counted as a vote.

However, if a mark falls between the two thresholds (known as the "ambiguous zone"), it will be deemed as a marginal mark and the ballot will be returned to the voter for corrective action (please see diagram below). With this feature, the voter is given the ability to determine his or her intent, not an inspection or recount board after the fact, when it is too late. The chart below illustrates the Marginal Mark threshold interpretation.



THE DOMINION DIFFERENCE DUAL THRESHOLD TECHNOLOGY DOMINION VOTING

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EXHIBIT 8

STATEMENT BY ANA MERCEDES DÍAZ CARDOZO

I, Ana Mercedes Díaz Cardozo, hereby declare the following:

1. My name is Ana Mercedes Díaz Cardozo. I'm known as Ana Diaz by many. I am an adult of the sound mine and was born in Caracas, Venezuela on March 24, 1960. I'm a naturalized American citizen. I reside at 923 Gulf Stream Court, Weston, Florida 33327.

2. I make this statement voluntarily and on my own initiative. I have not been promised, nor do I expect to receive anything in exchange for my testimony and give this statement. I have no expectation of any benefit or reward and understand that there are those who can try to hurt me for what I say in this statement.

3. I moved from Venezuela to the United States in 2004 due to political corruption and rapid decline in my home country of Venezuela. I want to alert the public and let the world know the truth about corruption, manipulation, and lies committed through a conspiracy of individuals and businesses with the intention of betraying the honest people of the United States and its legally constituted institutions and fundamental rights as citizens. This conspiracy began more than a decade ago in Venezuela and has spread to countries around the world. It is a conspiracy to unjustly gain and maintain power and wealth. These are political leaders, powerful companies, and others whose purpose is to gain and maintain power by changing people's free will and subverting the proper course of governing.

4. After graduating from high school, I attended the University of Santa Maria in Caracas, Venezuela and graduated as a lawyer in 1987. Then I studied a postgraduate degree in administrative law at the University of Central Venezuela. Before I could submit my thesis for a Master's degree in Administrative Law, I moved to the United States. I'm certified as an arbiter of international trade.

5. I was a career official for 25 years at the Supreme Electoral Council of Venezuela, which is the name that it was called in the 1970's. It is currently called the National Electoral Council. This is the highest electoral administrative agency in Venezuela and oversees all elections in Venezuela. In 1979, at the age of 19, I began my career at the Supreme Electoral Council of Venezuela as secretary in the regional delegation of the federal district. When I graduated from the university as a lawyer, my position on the Supreme Electoral Council changes to the position as an adviser to the Judicial Council of the Supreme Council Electoral. In 1991, I was appointed Assistant Director General of Political Parties, where I served until Hugo Chavez came to power in 1998. Also during this time, I served for seven years as a member of the Legislative Commission of the Venezuelan Electoral Council. It was the role of the Legislative Commission to review and identify any issues related to candidates

for elected positions. The Legislative Commission and my office had access to many resources within the various departments of the Electoral Council, including an information technology section that had experts in computers, computer programming, computer systems and telecommunications features such as modems, telephone lines. I was regularly in communication with the various departments of the Electoral Body for my daily duties. In the last years of my work for the Electoral Counsel, a little of my activities and duties were to learn about electronic voting systems and their functioning by Council experts.

6. As Deputy Director General of Political Parties in the Supreme Electoral Council, it was my duty to oversee everything related to political parties in Venezuela, particularly the participation of political parties in elections and the selection and qualifications of candidates for political office. My office reviewed everything to do with the ability of political parties to participate in the electoral process. Before a political party could be formed, it had to undergo a process for approval. This included legal approval of the party name, its colors and a list of its members. The proposed party had to have a certain percentage of Venezuela's population depending on whether it wanted to be a regional or national party. It could not be constituted as a political party until it was approved by the Supreme Electoral Council. My office also oversaw the creation of ballots that bore the name of the candidates and any party symbol or color that the candidate would like to use. When our office approved these matters, we sent the ballot for printing and circulation. Any conflict over which group could be a political party, which would be a candidate for elected office, how that candidate would be included in the vote, were decided by my office. I was a signatory to all decisions taken by the Political Parties office at the Supreme Electoral Council.

7. After Hugo Chavez was elected, he changed the Venezuelan Constitution. One such change was in the Supreme Electoral Council, now the Electoral Power. In February 2009, a national referendum was passed to change Venezuela's Constitution to end mandate limits for elected officials, including the President of Venezuela. This change allowed Hugo Chavez to be re-elected an unlimited number of times.

8. In 2003, I was appointed Director General of Political Parties at the National Electoral Council. At the end of that year there was a national effort to hold a referendum to remove Hugo Chavez from the post of President. In 2004 I was appointed to the Validation Committee that was responsible for reviewing petitions, the requirements of the signatories were their name, their signature, their fingerprint and their identification number. I discovered many ways that the party in power was trying to override requests. One was the change of forms to reflect that the petition was a referendum on the removal of members of the Venezuelan Congress

rather than the removal of the Venezuelan president. The purpose of manipulating petitions was to prevent a referendum to remove President Chavez from office. I investigated the allegations of fraud with the referendum petitions and lobbied for the fraudulent changes to be rectified. Because of my resistance and protests to this voter fraud, I received a letter in March 2004 stating that my position was trusted and trust had been lost in me and I was fired from the service.

9. After my dismissal, I decided to commit to the study of electoral processes both within Venezuela and in other countries, particularly in South American countries that were experiencing electoral unrest and government manipulation of constitutions, laws and elections. I joined a small group of highly educated and informed people who had access to information about the Venezuelan government and its activities. This group and I conduct interviews with Venezuelan citizens, read news publications and specialized treaties, and write evaluating the political, economic, legal and electoral changes taking place in Venezuela, South American countries, and other parts of the world controlled by socialist dictators and oligarchies. I read these treatises, studies, and publications to educate myself on how elections were manipulated and the use of empirical analysis to detect and identify the manipulation of elections and their results. In addition, I have collected copies of official Venezuelan government documents.

10. Official documents of the Venezuelan government include documents showing the bidding process for the implementation of a new electronic voting system in March 2004 and the award of the contract for that new system to Smartmatic. A true and authentic copy of the venezuelan National Electoral Council's tender documents, internal memorandums and contract signed between the Venezuelan government and the SBC Consortium (Smartmatic) are labeled Exhibit 1 and this statement is attached. I received the documents that constitute Exhibit 1 from a reliable person who had taken some notes on the documents and highlighted some parts for my attention. I have not made any alterations to what I have received, and the substantive content of the documents is authentic. For convenience, I've had the Bates document tagged at the bottom right of each page.

11. I have studied the documents contained in Exhibit 1 and have several observations. Exhibit 1 says that it is a contract between the National Electoral Council and the SBC Consortium (Smartmatic) and is dated 15 March 2004. It has a stamp that says Bolivarian Republic of Venezuela, Secretary General of the National Electoral Council. That is the official seal of the Secretary of the National Electoral Council. The initials at the bottom right side confirm the document's authenticity.

12. You would notice that page DIAZ 00002 is important because it shows that the contract is being made on February 16, 2004. Page DIAZ 00027, reflects that on February 14, 2004 at 11:50 a.m., in the Council's session room, Francisco Carrasquero López, Ezequiel Zamora Presilla, Jorge Rodríguez Gómez (Jorge Rodríguez), Sobella Mejías, and William Pacheco Medina, Vice President, the directors of the Secretary General of Electoral Voters respectively, in order to proceed with the delivery to the technical commissions, designated at the meeting dated 13 February 2004, they opened the tender envelopes containing the tenders of the companies that wanted to be awarded a contract for the automation of Venezuela's voting system and the processes used to carry out the 2004 referendum on the revocation of Hugo Chavez's election. Below you can read the amounts of offers made by Smartmatic SBC, Diebold and other bidders.

13. Then, on page DIAZ 000031, there is an internal note from the Director General of Administration, Mr. Medina. It was dated 14 February 2004 and said that a report on the research and evaluation of companies bidding for the automation of the voting system needed to be prepared.

14. It would then draw attention to the page marked DIAZ 000029. It is a document made on February 13, 2004. While this page is out of sequence, it shows the speed at which the decision was made to award the electoral system contract. The tender began on February 13 and had ended on February 16th -- a three-day period to review contracts and evaluate the specifications and performance of bidders' systems, including software, hardware, security, performance and bidding costs for the procurement, installation, training and operation of the systems. By February 16th, a decision to choose Smartmatic was made. This is convincing evidence that there was no genuine competition for the electoral system contract or serious consideration for alternative contracts. There was no due diligence and the bidding was rigged. It is not possible that within three or four days to do the formal investigation to evaluate the bids and award a contract of this size and important. The impropriety of this action is confirmed by the fact that the contract with Smartmatic was signed a month later, on 15 March 2004.

15. After the contract was awarded to Smartmatic, it was learned that Smartmatic had no previous experience in conducting elections and electoral tabulations. More importantly, it was discovered that the Smartmatic voting system contained two-way communication functions that allowed voting data not only to be sent to a central system of operation and voting, but the central voting system in operation and tabulation to send operational instructions and data to voting machines. It is not mentioned in the contract documents and specifications that the system would be bidirectional and would allow the transmission of data and instructions from the central operating system directly to voting machines. One

simply has to examine the system diagram on page DIAZ 000057 of Exhibit 1. If this feature of the Smartmatic system had been disclosed to the Electoral Council, it could not have adequately accepted Smartmatic's offer because it would allow the Smartmatic voting system to be handled in a way that manipulated votes and interfered with the legitimate voting and electoral process by impersonating the will to govern officials with the will of the electorate: the citizens of Venezuela. It was not surprising that Hugo Chávez and his successors then constantly won the election through the use and manipulation of the Smartmatic voting system.

16. In the 16 years since I left my post as Director General of Political Parties at the National Electoral Council of Venezuela, I have studied the electoral systems of Bolivia, Colombia, Ecuador, Guatemala, Honduras and Nicaragua and have observed elections and participated in pro-democratic forums in Colombia, Ecuador, Honduras and Nicaragua. I have also studied and researched electoral processes in Europe, participating in public academic conferences in Spain and Italy on the subject of democratic electoral processes.

17. Based on my specialized experiences with electoral systems, I have a firm view that no legitimate electronic voting system should be allowed to have the ability of two-way communications to send data and instructions between central tabulation operations and voting machines over telephone lines or the Internet. Having such characteristics compromise the integrity of the entire voting process by allowing injection of data and instructions to manipulate voting before, during and after an election and to avoid detection of processes and mechanisms designed to prevent voting manipulation and fraud.

I declare under penalty of perjury that the above is true and correct and that this Statement was prepared in Dallas County, Texas, and executed on November 20, 2020.

Ana Mercedes Díaz Cardozo

EXHIBIT 9

Declaration of Seth Keshel

Pursuant to 28 U.S.C Section 1746, I, Seth Keshel, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I am a trained data analyst with experience in multiple fields, including service in the United States Army as a Captain of Military Intelligence, with a one-year combat tour in Afghanistan. My experience includes political involvement requiring a knowledge of election trends and voting behavior.
3. I reside at 233 Muir Hill Dr., Aledo, TX 76008.
4. My affidavit highlights substantial deviance from statistical norms and results regarding voting patterns in Arizona.
5. All 2020-related voting totals are taken from the Decision Desk HQ unofficial tracker, are not certified, and are subject to change from the time of the creation of this affidavit.
6. Arizona is a rapidly growing state, with 287,001 new Democrat registrations and 269,164 new Republican registrations statewide since the 2016 general election. Republicans hold a 3% registration edge statewide (35.2% to 32.2%), and a 3.9% registration edge in Maricopa County (35.3% to 31.4%), the state's largest county which has cast roughly 61.1% of all votes counted statewide thus far in Arizona's 2020 presidential race.
7. Republicans have out-registered Democrats in voter registration since the March presidential primaries. Statewide, since the end of

primaries, Republicans have added 148,485 to their rolls, compared to 116,389 for Democrats. In Maricopa County, Republicans lead 87,000 to 76,417 in this time period. This is an indicator of momentum heading into the general election favoring Republicans.

8. Maricopa County has been won by the Republican candidate in every election since 1952, including in 1996 when Democrat Bill Clinton carried the state, and in 2016, when Donald Trump won the county with the weakest performance relative to registered Republicans since at least 2004. In that year, he tallied just 97 votes per 100 registered Republicans in the county, below George W. Bush's total in 2004 (100), John McCain's in 2008 (108), and Mitt Romney's in 2012 (109). Statewide in 2016, Trump's numbers lagged the previous three Republican votes per 100 registered statewide (105, 110, and 110), at just 101 votes per 100 registered Republicans. This year, with counts not certified and subject to adjustment, Trump's performance in Maricopa County equals Mitt Romney's high of 109 votes per 100 registered Republicans and matches two previous highs of 110 votes per 100 registered Republicans statewide. This indicates strong base support, crossover support, independent support, and minimal party defections. Biden's totals however, per 100 registered Democrats, are well above established trendlines for Democrats. Statewide, he has 121 votes per 100 registered Democrats, 14 votes higher than the previous high (Obama, 2012, 107 votes), and 15 higher than Hillary Clinton's total in 2016. In Maricopa County, Biden has 128 votes per 100 registered Democrats, a full 10 votes higher than Barack Obama's 2012 total, and 14 above

Hillary Clinton's. These figures can be observed in Exhibit A to this affidavit.

9. In Maricopa County, Democrats grew by 118,116 votes (from Al Gore to John Kerry) between 2000 and 2004. Hillary Clinton added 100,619 votes to Barack Obama's 2012 total in 2016. Thus far in the count, Joe Biden has added 337,646 votes in Maricopa County in a single cycle, a 48.0% increase in a county that already had a high number of Democratic votes relative to the other large counties in the nation. This comes as President Trump has reconsolidated his lost voter base from 2016 with his own 33.2% increase in the county.

10. Maricopa County received 1.52 new Democratic votes for every new registered Democrat in 2008, reversed into a losing number in 2012, and then received 0.93 new votes for every new registered Democrat in 2016. This year, they are receiving 1.72 new Democratic votes for every new registered Democrat in the county.

11. Among comparable 2016 counties (within 100,000 votes of Maricopa's 2016 Democratic vote total), Maricopa County towers above the rest in percentage of new Democratic votes, with 48.0% more (337,646 new Democrat votes) than in 2016, a virtually impossible number. Comparable counties are also growing counties with expanding voter rolls, with none of the counties won by a Republican presidential nominee since 2004. This information is available in Exhibit B.

    a. Orange County, California, has 198,203 (32.5%) more new Democrat votes.

b. San Diego County, California, has 221,302 (30.1%) more new Democrat votes.

c. Harris County, Texas, has 203,999 (28.8%) more new Democrat votes.

d. King County, Washington, has 185,810 (25.9%) more new Democrat votes.

e. Miami-Dade County, Florida, has lost 6,499 (-1.0%) Democrat votes since 2016.

12. Excepting Miami-Dade for its notable loss in raw Democratic votes, Maricopa County Democratic vote growth in line with Orange, San Diego, Harris, and King Counties should align with slightly more than 900,000 votes in the county for Joe Biden, not 1.04 million.

13. Pima County, Arizona, has also shown 35.8% Democratic raw vote growth (80,320 votes) in a single cycle. President Trump has increased his vote total in the county by 24.1%, with a vote total now surpassing Obama's total in this county in 2012. The previous high for increase in this county for Democrats was 45,440 votes in 2004.

14. Of the remaining 13 counties, these show proper progression in keeping with historic party registration trends:

a. Pinal

b. Graham

c. Greenlee

d. Santa Cruz

e. Yuma

f. La Paz

g. Mohave

h. Gila

i. Yavapai

15. These 4 counties show deviation from standard progression associated with historic party registration trends:

a. Apache – shifted one point in favor of Republicans in registration since 2016 but gave Trump a defeat margin 2,647 votes greater than in 2016, as Biden added a record number of votes in one cycle despite registration trends.

b. Coconino – shifted three points in favor of Democrats but has a heavier than expected margin in favor of Biden, particularly since Republicans also gained in this county.

c. Navajo – trended four points in favor of Republican registration since 2016, but Trump's margin of victory remained all but unchanged, save for 156 votes, even though Trump added nearly 7,000 more votes to his total in a county heavily trending Republican.

d. Cochise – trended four points in favor of Republican registration since 2016, but Trump's margin of victory is nearly unchanged, up just 297 votes.



Seth Keshel

18 Nov. 2020

Aledo, Texas

EXHIBIT 9 A&B

ole Mega Counties within 100,000 votes (+ or -) of 2016 Maricopa Dem Vote (702,907)
% Increase in Dem Votes in 2020

*Pima County included for comparison in Arizona

*Orange, San Diego, Harris, and King average 29.2% increase in Dem votes
-A 29.2% Increase in Maricopa County would mean 205,249 more Dem Votes (908,156 total)

*Previous highs for one-cycle increase in Dem Votes
-Maricopa – 118,166 (2004)
-Pima – 45,440 (2004)

UNTIES	% Increase Dem Votes 16-20	2016 Dem Votes	2020 Dem Votes	Amount
A (AZ)	48.03%	702,907	1,040,533	337
	35.75%	224,661	304,981	80,
(CA)	32.49%	609,961	808,164	198
O (CA)	30.09%	735,476	956,778	221
X)	28.82%	707,914	911,913	203
)	25.87%	718,322	904,132	185
DE (FL)	-1.04%	624,146	617,647	-6,

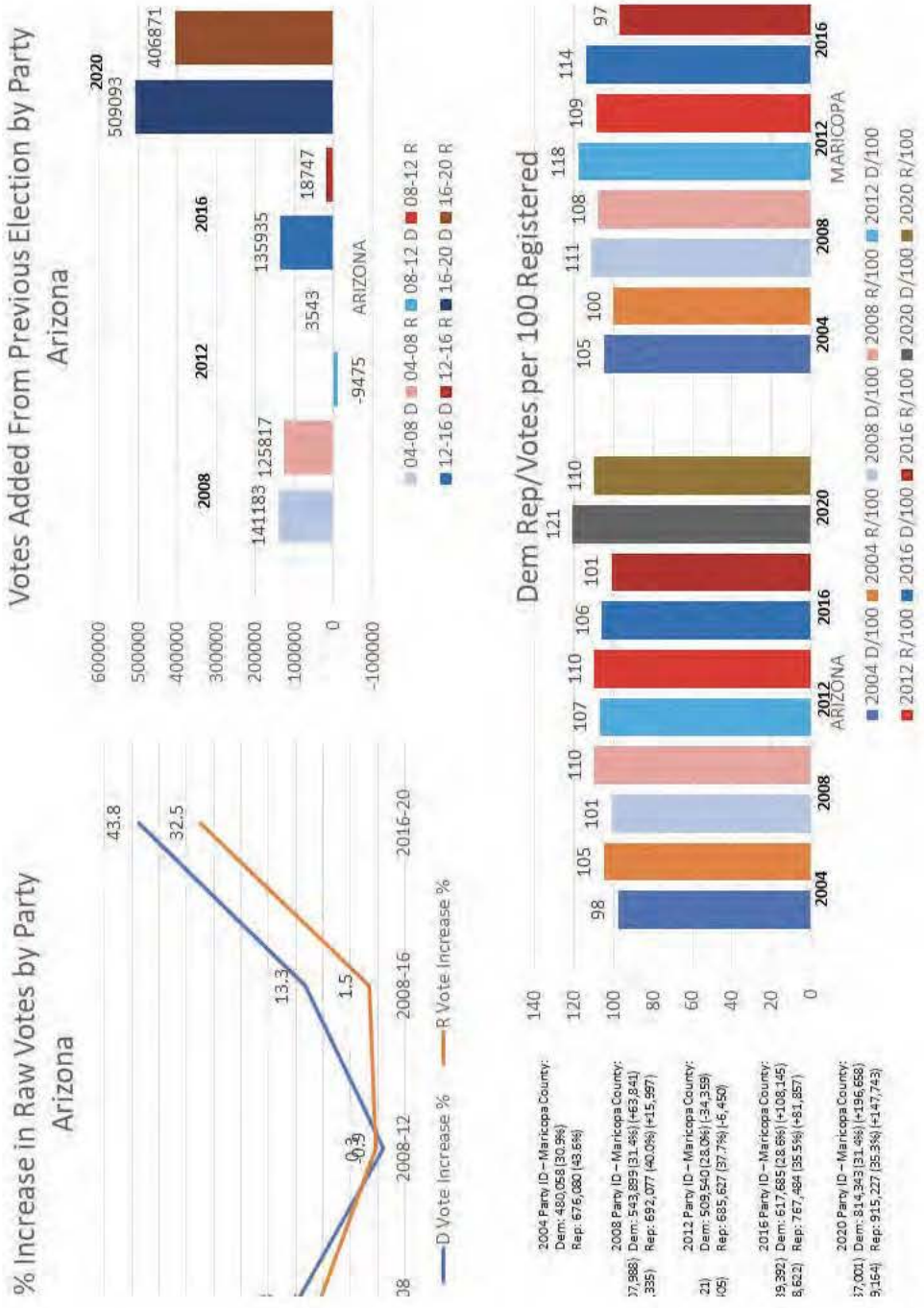
% Increase in Raw Votes by Party
Arizona
43.8
32.5
13.3
1.5
0.3
0.9
2008-12
2008-16
2016-20
D Vote Increase %
R Vote Increase %
Votes Added From Previous Election by Party
Arizona
600000
500000
400000
300000
200000
100000
0
-100000
2008
2012
2016
2020
141183
125817
-9475
3543
135935
18747
509093
406871
ARIZONA
04-08 D
04-08 R
08-12 D
08-12 R
12-16 D
12-16 R
16-20 D
16-20 R
Dem Rep/Votes per 100 Registered
2004 Party ID – Maricopa County:
Dem: 480,058 (30.9%)
Rep: 676,080 (43.6%)
2008 Party ID – Maricopa County:
Dem: 543,899 (31.4%) (+63,841)
Rep: 692,077 (40.0%) (+15,997)
2012 Party ID – Maricopa County:
Dem: 509,540 (28.0%) (-34,359)
Rep: 685,627 (37.7%) (-6,450)
2016 Party ID – Maricopa County:
Dem: 617,685 (28.6%) (+108,145)
Rep: 767,484 (35.5%) (+81,857)
2020 Party ID – Maricopa County:
Dem: 814,343 (31.4%) (+196,658)
Rep: 915,227 (35.3%) (+147,743)
140
120
100
80
60
40
20
0
98
105
101
110
107
110
106
101
121
110
105
100
111
108
118
109
114
97
2004
2008
2012
2016
2020
2004
2008
2012
2016
ARIZONA
MARICOPA
2004 D/100
2004 R/100
2008 D/100
2008 R/100
2012 D/100
2012 R/100
2016 D/100
2016 R/100
2020 D/100
2020 R/100

EXHIBIT 9 S

Declaration of Seth Keshel

Pursuant to 28 U.S.C Section 1746, I, Seth Keshel, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I am a trained data analyst with experience in multiple fields, including service in the United States Army as a Captain of Military Intelligence, with a one-year combat tour in Afghanistan. My experience includes political involvement requiring a knowledge of election trends and voting behavior.
3. I reside at 233 Muir Hill Dr., Aledo, TX 76008.
4. My affidavit highlights substantial deviance from statistical norms and results regarding voting patterns in Arizona.
5. All 2020-related voting totals are taken from the Decision Desk HQ unofficial tracker, are not certified, and are subject to change from the time of the creation of this affidavit.
6. Arizona is a rapidly growing state, with 287,001 new Democrat registrations and 269,164 new Republican registrations statewide since the 2016 general election. Republicans hold a 3% registration edge statewide (35.2% to 32.2%), and a 3.9% registration edge in Maricopa County (35.3% to 31.4%), the state's largest county which has cast roughly 61.1% of all votes counted statewide thus far in Arizona's 2020 presidential race.
7. Republicans have out-registered Democrats in voter registration since the March presidential primaries. Statewide, since the end of

primaries, Republicans have added 148,485 to their rolls, compared to 116,389 for Democrats. In Maricopa County, Republicans lead 87,000 to 76,417 in this time period. This is an indicator of momentum heading into the general election favoring Republicans.

8. Maricopa County has been won by the Republican candidate in every election since 1952, including in 1996 when Democrat Bill Clinton carried the state, and in 2016, when Donald Trump won the county with the weakest performance relative to registered Republicans since at least 2004. In that year, he tallied just 97 votes per 100 registered Republicans in the county, below George W. Bush's total in 2004 (100), John McCain's in 2008 (108), and Mitt Romney's in 2012 (109). Statewide in 2016, Trump's numbers lagged the previous three Republican votes per 100 registered statewide (105, 110, and 110), at just 101 votes per 100 registered Republicans. This year, with counts not certified and subject to adjustment, Trump's performance in Maricopa County equals Mitt Romney's high of 109 votes per 100 registered Republicans and matches two previous highs of 110 votes per 100 registered Republicans statewide. This indicates strong base support, crossover support, independent support, and minimal party defections. Biden's totals however, per 100 registered Democrats, are well above established trendlines for Democrats. Statewide, he has 121 votes per 100 registered Democrats, 14 votes higher than the previous high (Obama, 2012, 107 votes), and 15 higher than Hillary Clinton's total in 2016. In Maricopa County, Biden has 128 votes per 100 registered Democrats, a full 10 votes higher than Barack Obama's 2012 total, and 14 above

Hillary Clinton's. These figures can be observed in Exhibit A to this affidavit.

9. In Maricopa County, Democrats grew by 118,116 votes (from Al Gore to John Kerry) between 2000 and 2004. Hillary Clinton added 100,619 votes to Barack Obama's 2012 total in 2016. Thus far in the count, Joe Biden has added 337,646 votes in Maricopa County in a single cycle, a 48.0% increase in a county that already had a high number of Democratic votes relative to the other large counties in the nation. This comes as President Trump has reconsolidated his lost voter base from 2016 with his own 33.2% increase in the county.

10. Maricopa County received 1.52 new Democratic votes for every new registered Democrat in 2008, reversed into a losing number in 2012, and then received 0.93 new votes for every new registered Democrat in 2016. This year, they are receiving 1.72 new Democratic votes for every new registered Democrat in the county.

11. Among comparable 2016 counties (within 100,000 votes of Maricopa's 2016 Democratic vote total), Maricopa County towers above the rest in percentage of new Democratic votes, with 48.0% more (337,646 new Democrat votes) than in 2016, a virtually impossible number. Comparable counties are also growing counties with expanding voter rolls, with none of the counties won by a Republican presidential nominee since 2004. This information is available in Exhibit B.

    a. Orange County, California, has 198,203 (32.5%) more new Democrat votes.

b. San Diego County, California, has 221,302 (30.1%) more new Democrat votes.

c. Harris County, Texas, has 203,999 (28.8%) more new Democrat votes.

d. King County, Washington, has 185,810 (25.9%) more new Democrat votes.

e. Miami-Dade County, Florida, has lost 6,499 (-1.0%) Democrat votes since 2016.

12. Excepting Miami-Dade for its notable loss in raw Democratic votes, Maricopa County Democratic vote growth in line with Orange, San Diego, Harris, and King Counties should align with slightly more than 900,000 votes in the county for Joe Biden, not 1.04 million.

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Seth Keshel

18 Nov. 2020

Aledo, Texas

EXHIBIT 10

Ballot-Marking Devices (BMDs) Cannot Assure the Will of the Voters

Andrew W. Appel[†]
Princeton University

Richard A. DeMillo[†]
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Philip B. Stark[†]
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December 27, 2019

Abstract

The complexity of U.S. elections usually requires computers to count ballots—but computers can be hacked, so election integrity requires a voting system in which paper ballots can be recounted by hand. However, paper ballots provide no assurance unless they accurately record the vote as the voter expresses it.

Voters can express their intent by indelibly hand-marking ballots, or using computers called ballot-marking device (BMDs). Voters can make mistakes in expressing their intent in either technology, but only BMDs are also subject to hacking, bugs, and misconfiguration of the software that prints the marked ballots. Most voters do not review BMD-printed ballots, and those who do often fail to notice when the printed vote is not what they expressed on the touchscreen. Furthermore, there is no action a voter can take to demonstrate to election officials that a BMD altered their expressed votes, nor is there a corrective action that election officials can take if notified by voters—there is no way to deter, contain, or correct computer hacking in BMDs. These are the essential security flaws of BMDs.

Risk-limiting audits can assure that the votes recorded on paper ballots are tabulated correctly, but no audit can assure that the votes on paper are the ones expressed by the voter on a touchscreen: Elections conducted on current BMDs cannot be confirmed by audits. We identify two properties of voting systems, *contestability* and *defensibility*, necessary for audits to confirm election outcomes. No available EAC-certified BMD is contestable or defensible.

[†]Authors are listed alphabetically; they contributed equally to this work.

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1 Introduction: Criteria for Voting Systems

Elections for public office and on public questions in the United States or any democracy must produce outcomes based on the votes that voters *express* when they indicate their choices on a paper ballot or on a machine. Computers have become indispensable to conducting elections, but computers are vulnerable. They can be hacked—compromised by insiders or external adversaries who can replace their software with fraudulent software that deliberately miscounts votes—and they can contain design errors and bugs—hardware or software flaws or configuration errors that result in mis-recording or mis-tabulating votes. Hence there must be some way, *independent* of any software in any computers, to ensure that reported election outcomes are correct, i.e., consistent with the expressed votes as intended by the voters.

Voting systems should be *software independent*, meaning that "an undetected change or error in its software cannot cause an undetectable change or error in an election outcome" [29, 30, 31]. Software independence is similar to tamper-evident packaging: if somebody opens the container and disturbs the contents, it will leave a trace.

The use of software-independent voting systems is supposed to ensure that if someone fraudulently hacks the voting machines to steal votes, we'll know about it. But we also want to know *the true outcome* in order to avoid a do-over election.[1] A voting system is *strongly software independent* if it is software independent and, moreover, a detected change or error in an election outcome (due to change or error in the software) can be corrected using only the ballots and ballot records of the current election [29, 30]. Strong software independence combines tamper evidence with a kind of resilience: there's a way to tell whether faulty software caused a problem, and a way to recover from the problem if it did.

Software independence and *strong software independence* are now standard terms in the analysis of voting systems, and it is widely accepted that voting systems should be software independent. Indeed, version 2.0 of the Voluntary Voting System Guidelines (VVSG 2.0) incorporates this principle [10].

But as we will show, these standard definitions are incomplete and inadequate, because in the word *undetectable* they hide several important questions: *Who* detects the change or error in an election outcome? How can a person *prove* that she has detected

[1] Do-overs are expensive; they may delay the inauguration of an elected official; there is no assurance that the same voters will vote in the do-over election as voted in the original; they decrease public trust. And if the do-over election is conducted with the same voting system that can only detect but not correct errors, then there may need to be a do-over of the do-over, *ad infinitum*.

an error? *What happens* when someone detects an error—does the election outcome remain erroneous? Or conversely: How can an election administrator *prove* that the election outcome not been altered, or prove that the correct outcome was recovered if a software malfunction was detected? The standard definition does not distinguish evidence available to an election official, to the public, or just to a single voter; nor does it consider the possibility of false alarms.

Those questions are not merely academic, as we show with an analysis of ballot-marking devices. Even if some *voters* "detect" that the printed output is not what they expressed to the BMD—even if some of *those* voters report their detection to election officials—there is no mechanism by which the *election official* can "detect" whether a BMD has been hacked to alter election outcomes. The questions of *who detects, and then what happens,* are critical—but unanswered by the standard definitions.

We will define the terms *contestable* and *defensible* to better characterize properties of voting systems that make them acceptable for use in public elections.[2]

A voting system is *contestable* if an undetected change or error in its software that causes a change or error in an election outcome can always produce *public* evidence that the outcome is untrustworthy. For instance, if a voter selected candidate A on the touchscreen of a BMD, but the BMD prints candidate B on the paper ballot, then this A-vs-B evidence is available to the individual voter, but the voter cannot demonstrate this evidence to anyone else, since nobody else saw—nor should have seen—where the voter touched the screen.[3] Thus, the voting system does not provide a way for the voter who observed the misbehavior to prove to anyone else that there was a problem, even if the problems altered the reported outcome. Such a system is therefore not *contestable*.

While the definition of software independence might allow evidence available only to individual voters as "detection," such evidence does not suffice for a system to be contestable. Contestibility is software independence, plus the requirement that "detect" implies "can generate public evidence." "Trust me" does not count as public evidence. If a voting system is not contestable, then problems voters "detect" might never see the light of day, much less be addressed or corrected.[4]

[2]There are other notions connected to contestability and defensibility, although essentially different: Benaloh et al. [6] define a *P-resilient canvass framework*, *personally verifiable P-resilient canvass framework*, and *privacy-perserving personally verifiable P-resilient canvass frameworks*.

[3]See footnote 18.

[4]If voters are the only means of detecting and quantifying the effect of those problems—as they are for BMDs—then in practice the system is not strongly software independent. The reason is that, as we will show, such claims by (some) voters *cannot* correct software-dependent changes to other voters' ballots, and *cannot* be used as the basis to invalidate or correct an election outcome. Thus, BMD-based

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Similarly, while strong software independence demands that a system be able to report the correct outcome even if there was an error or alteration of the software, it does not require *public evidence* that the (reconstructed) reported outcome is correct. We believe, therefore, that voting systems must also be *defensible*. We say that a voting system is defensible if, when the reported electoral outcome is correct, it is possible to generate convincing public evidence that the reported electoral outcome is correct—despite any malfunctions, software errors, or software alterations that might have occurred. If a voting system is not defensible, then it is vulnerable to "crying wolf": malicious actors could claim that the system malfunctioned when in fact it did not, and election officials will have no way to prove otherwise.

By analogy with *strong software independence*, we define: A voting system is *strongly defensible* if it is defensible and, moreover, a detected change or error in an election outcome (due to change or error in the software) can be corrected (with convincing public evidence) using only the ballots and ballot records of the current election.

In short, a system is contestable if it can generate public evidence of a problem whenever a reported outcome is wrong, while a system is defensible if it can generate public evidence whenever a reported outcome is correct—despite any problems that might have occurred. Contestable systems are publicly tamper-evident; defensible systems are publicly, demonstrably resilient.

Defensibility is a key requirement for *evidence-based elections* [38]: defensibility makes it possible in principle for election officials to generate convincing evidence that the reported winners really won—if the reported winners did really win. (We say an election *system* may be defensible, and an *election* may be evidence-based; there's much more *process* to an election than just the choice of system.)

Examples. The only known practical technology for contestable, strongly defensible voting is a system of *hand-marked paper ballots*, kept demonstrably physically secure, counted by machine, audited manually, and recountable by hand.[5] In a hand-marked paper ballot election, ballot-marking software cannot be the source of an error or change-of-election-outcome, because no software is used in marking ballots. Ballot-scanning-and-counting software can be the source of errors, but such errors can be

election systems are not even (weakly) software independent, unless one takes "detection" to mean "somebody claimed there was a problem, with no evidence to support that claim."

[5]The election must also generate convincing evidence that physical security of the ballots was not compromised, and the audit must generate convincing public evidence that the audit itself was conducted correctly.

detected and corrected by audits.

That system is *contestable:* if an optical scan voting machine reports the wrong outcome because it miscounted (because it was hacked, misprogrammed, or miscalibrated), the evidence is *public*: the paper ballots, recounted before witnesses, will not match the claimed results, also witnessed. It is *strongly defensible:* a recount before witnesses can demonstrate that the reported outcome is correct, or can find the correct outcome if it was wrong—and provide public evidence that the (reconstructed) outcome is correct.

Some other paper-based systems such as Prêt-à-Voter [32] and Scantegrity [9] are also contestable and strongly defensible (provided the marked ballots are kept demonstrably secure through tabulation and posting). Scantegrity inherits these properties from the fact that it amounts to a cryptographic enhancement of hand-marked paper ballots. Prêt-à-Voter has these properties if the blank ballots are audited appropriately before the election.

Paper-based systems that rely on the "Benaloh challenge"—to ensure that the encryption of the vote printed on the ballot (by an electronic device) is correct—generally are neither contestable nor defensible.[6] The reason is that, while the challenge can produce public evidence that a machine did not accurately encrypt the plaintext vote on the ballot, if the machine prints the wrong plaintext vote and a correct encryption of that incorrect vote, there is no evidence the voter can use to prove that to anyone else. STAR-Vote [5] is an example of such a system.

Over 40 states now use some form of paper ballot for most voters [18]. Most of the remaining states are taking steps to adopt paper ballots. But *not all voting systems that use paper ballots are equally secure.*

Some are not even software independent. Some are software independent, but not strongly software independent, contestable, or defensible. In this report we explain:

- *Hand-marked paper ballot* systems are the only practical technology for contestable, strongly defensible voting systems.
- *Some ballot-marking devices (BMDs)* can be software independent, but they not strongly software independent, contestable, or defensible. Hacked or misprogrammed BMDs can alter election outcomes undetectably, so elections conducted using BMDs cannot provide public evidence that reported outcomes are correct. If BMD malfunctions are detected, there is no way to determine who

[6] Nor are they strongly software independent.

really won. Therefore BMDs should not be used by voters who are able to mark an optical-scan ballot with a pen.

- *All-in-one BMD or DRE+VVPAT voting machines* are not software independent, contestable, or defensible. They should not be used in public elections.

2 Background

We briefly review the kinds of election equipment in use, their vulnerability to computer hacking (or programming error), and in what circumstances risk-limiting audits can mitigate that vulnerability.

Voting equipment

Although a voter may form an intention to vote for a candidate or issue days, minutes, or seconds before actually casting a ballot, that intention is a psychological state that cannot be directly observed by anyone else. Others can have access to that intention through what the voter (privately) *expresses* to the voting technology by interacting with it, e.g., by making selections on a BMD or marking a ballot by hand.[7] Voting systems must accurately record the vote as the voter *expressed* it.

With a *hand-marked paper ballot optical-scan* system, the voter is given a paper ballot on which all choices (candidates) in each contest are listed; next to each candidate is a *target* (typically an oval or other shape) which the voter marks with a pen to indicate a vote. Ballots may be either preprinted or printed (unvoted) at the polling place using *ballot on demand* printers. In either case, the voter creates a tamper-evident record of intent by marking the printed paper ballot with a pen.

Such hand-marked paper ballots may be scanned and tabulated at the polling place using a *precinct-count optical scanner* (PCOS), or may be brought to a central place to

[7] We recognize that voters make mistakes in expressing their intentions. For example, they may misunderstand the layout of a ballot or express an unintended choice through a perceptual error, inattention, or lapse of memory. The use of touchscreen technology does not necessarily correct for such user errors, as every smartphone user who has mistyped an important text message knows. Poorly designed ballots, poorly designed touchscreen interfaces, and poorly designed assistive interfaces increase the rate of error in voters' expressions of their votes. For the purposes of this report, we assume that properly engineered systems seek to minimize such usability errors.

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be scanned and tabulated by a *central-count optical scanner* (CCOS). Mail-in ballots are typically counted by CCOS machines.

After scanning a ballot, a PCOS machine deposits the ballot in a secure, sealed ballot box for later use in recounts or audits; this is *ballot retention*. Ballots counted by CCOS are also retained for recounts or audits.[8]

Paper ballots can also be hand counted, but in most jurisdictions (especially where there are many contests on the ballot) this is hard to do quickly; Americans expect election-night reporting of unofficial totals. Hand counting—i.e., manually determining votes directly from the paper ballots—is appropriate for audits and recounts.

A *ballot-marking device* (BMD) provides a computerized user interface that presents the ballot to voters and captures their expressed selections—for instance, a touchscreen interface or an assistive interface that enables voters with disabilities to vote independently. Voter inputs (expressed votes) are recorded electronically. When a voter indicates that the ballot is complete and ready to be cast, the BMD prints a paper version of the electronically marked ballot. We use the term *BMD* for devices that mark ballots but do not tabulate or retain them, and *all-in-one* for devices that combine ballot marking, tabulation, and retention into the same paper path.

The paper ballot printed by a BMD may be in the same format as an optical-scan form (e.g., with ovals filled as if by hand) or it may list just the names of the candidate(s) selected in each contest. The BMD may also encode these selections into barcodes or QR codes for optical scanning. We discuss issues with barcodes later in this report.

An *all-in-one touchscreen voting machine* combines computerized ballot marking, tabulation, and retention in the same paper path. All-in-one machines come in several configurations:

- DRE+VVPAT machines—direct-recording electronic (DRE) voting machines with a voter-verifiable paper audit trail (VVPAT)—provide the voter a touchscreen (or other) interface, then print a paper ballot that is displayed to the voter under glass. The voter is expected to review this ballot and approve it, after which the machine deposits it into a ballot box. DRE+VVPAT machines do not contain optical scanners; that is, they do not read what is marked on the paper ballot; instead, they tabulate the vote directly from inputs to the touchscreen or other interface.

[8] Regulations and procedures governing custody and physical security of ballots are uneven and in many cases inadequate, but straightforward to correct because of decades of development of best practices.

- BMD+Scanner all-in-one machines[9] provide the voter a touchscreen (or other) interface to input ballot choices and print a paper ballot that is ejected from a slot for the voter to inspect. The voter then reinserts the ballot into the slot, after which the all-in-one BMD+scanner scans it and deposits it into a ballot box. Or, some BMD+Scanner all-in-one machines display the paper ballot behind plexiglass for the voter to inspect, before mechanically depositing it into a ballot box.

Opscan+BMD with separate paper paths. At least one model of voting machine (the Dominion ICP320) contains an optical scanner (opscan) and a BMD in the same cabinet,[10] so that the optical scanner and BMD-printer are not in the same paper path; no possible configuration of the software could cause a BMD-marked ballot to be deposited in the ballot box without human handling of the ballot. We do not classify this as an *all-in-one* machine.

Hacking

There are many forms of computer hacking. In this analysis of voting machines we focus on the alteration of voting machine software so that it miscounts votes or mismarks ballots to alter election outcomes. There are many ways to alter the software of a voting machine: a person with physical access to the computer can open it and directly access the memory; one can plug in a special USB thumbdrive that exploits bugs and vulnerabilities in the computer's USB drivers; one can connect to its WiFi port or Bluetooth port or telephone modem (if any) and exploit bugs in those drivers, or in the operating system.

"Air-gapping" a system (i.e., never connecting it to the Internet nor to any other network) does not automatically protect it. Before each election, election administrators must transfer a *ballot definition* into the voting machine by inserting a *ballot definition cartridge* that was programmed on election-administration computers that may have been connected previously to various networks; it has been demonstrated that vote-changing viruses can propagate via these ballot-definition cartridges [17].

Hackers might be corrupt insiders with access to a voting-machine warehouse; corrupt insiders with access to a county's election-administration computers; outsiders who can gain remote access to election-administration computers; outsiders who can

[9] Some voting machines, such as the ES&S ExpressVote, can be configured as either a BMD or a BMD+Scanner all-in-one. Others, such as the ExpressVoteXL, work only as all-in-one machines.

[10] More precisely, the ICP320 optical scanner and the BMD audio+buttons interface are in the same cabinet, but the printer is a separate box.

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gain remote access to voting-machine manufacturers' computers (and "hack" the firmware installed in new machines, or the firmware updates supplied for existing machines), and so on. Supply-chain hacks are also possible: the hardware installed by a voting system vendor may have malware pre-installed by the vendor's component suppliers.[11]

Computer systems (including voting machines) have so many layers of software that it is impossible to make them perfectly secure [23, pp. 89–91]. When manufacturers of voting machines use the best known security practices, adversaries may find it more difficult to hack a BMD or optical scanner—but not impossible. Every computer in every critical system is vulnerable to compromise through hacking, insider attacks or exploiting design flaws.

Election assurance through risk-limiting audits

To ensure that the reported electoral outcome of each contest corresponds to what the voters expressed, the most practical known technology is a *risk-limiting audit* (RLA) of trustworthy paper ballots [34, 35, 22]. The National Academies of Science, Engineering, and Medicine, recommend routine RLAs after every election [23], as do many other organizations and entities concerned with election integrity.[12]

The *risk limit* of a risk-limiting audit is the maximum chance that the audit will not correct the reported electoral outcome, if the reported outcome is wrong. "Electoral outcome" means the political result—who or what won—not the exact tally. "Wrong" means that the outcome does not correspond to what the voters expressed.

A RLA involves manually inspecting randomly selected paper ballots following a rigorous protocol. The audit stops if and when the sample provides convincing evidence that the reported outcome is correct; otherwise, the audit continues until every ballot has been inspected manually, which reveals the correct electoral outcome if the paper trail is trustworthy. RLAs protect against vote-tabulation errors, whether those errors are caused by failures to follow procedures, misconfiguration, miscalibration, faulty

[11] Given that many chips and other components are manufactured in China and elsewhere, this is a serious concern. Carsten Schürmann has found Chinese pop songs on the internal memory of voting machines (C. Schürmann, personal communication, 2018). Presumably those files were left there accidentally—but this shows that malicious code *could* have been pre-installed deliberately, and that neither the vendor's nor the election official's security and quality control measures discovered and removed the extraneous files.

[12] Among them are the Presidential Commission on Election Administration, the American Statistical Association, the League of Women Voters, and Verified Voting Foundation.

engineering, bugs, or malicious hacking.[13]

The risk limit should be determined as a matter of policy or law. For instance, a 5% risk limit means that, if a reported outcome is wrong solely because of tabulation errors, there is at least a 95% chance that the audit procedure will correct it. Smaller risk limits give higher confidence in election outcomes, but require inspecting more ballots, other things being equal. RLAs never revise a correct outcome.

RLAs can be very efficient, depending in part on how the voting system is designed and how jurisdictions organize their ballots. If the computer results are accurate, an efficient RLA with a risk limit of 5% requires examining just a few—about 7 divided by the margin—ballots selected randomly from the contest.[14] For instance, if the margin of victory is 10% and the results are correct, the RLA would need to examine about $7/10\% = 70$ ballots to confirm the outcome at 5% risk. For a 1% margin, the RLA would need to examine about $7/1\% = 700$ ballots. The sample size does not depend much on the total number of ballots cast in the contest, only on the margin of the winning candidate's victory.

RLAs assume that a full hand tally of the paper trail would reveal the correct electoral outcomes: the paper trail must be trustworthy. Other kinds of audits, such as *compliance audits* [6, 22, 38, 36] are required to establish whether the paper trail itself is trustworthy. Applying an RLA procedure to an untrustworthy paper trail cannot limit the risk that a wrong reported outcome goes uncorrected.

Properly preserved hand-marked paper ballots ensure that expressed votes are identical to recorded votes. But BMDs might not record expressed votes accurately, for instance, if BMD software has bugs, was misconfigured, or was hacked: BMD printout is not a trustworthy record of the expressed votes. Neither a compliance audit nor a RLA can possibly check whether errors in recording expressed votes altered election outcomes. RLAs that rely on BMD output therefore cannot limit the risk that an incorrect reported election outcome will go uncorrected.

A paper-based voting system (such as one that uses optical scanners) is systematically more secure than a paperless system (such as DREs) *only if the paper trail is trustworthy and the results are checked against the paper trail using a rigorous method such as an RLA or full manual tally*. If it is possible that error, hacking, bugs, or mis-

[13] RLAs do not protect against problems that cause BMDs to print something other than what was shown to the voter on the screen, nor do they protect against problems with ballot custody.

[14] Technically, it is the *diluted margin* that enters the calculation. The diluted margin is the number of votes that separate the winner with the fewest votes from the loser with the most votes, divided by the number of ballots cast, including undervotes and invalid votes.

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calibration caused the recorded-on-paper votes to differ from the expressed votes, an RLA or even a full hand recount cannot not provide convincing public evidence that election outcomes are correct: such a system cannot be *defensible*. In short, paper ballots provide little assurance against hacking if they are never examined or if the paper might not accurately reflect the votes expressed by the voters.

3 (Non)Contestability/Defensibility of BMDs

A BMD-generated paper trail is not a reliable record of the vote expressed by the voter. Like any computer, a BMD (or a DRE+VVPAT) is vulnerable to bugs, misconfiguration, hacking, installation of unauthorized (fraudulent) software, and alteration of installed software.

If a hacker sought to steal an election by altering BMD software, what would the hacker program the BMD to do? In cybersecurity practice, we call this the *threat model*.

The simplest threat model is this one: In some contests, not necessarily top-of-the-ticket, change a small percentage of the votes (such as 5%).

In recent national elections, analysts have considered a candidate who received 60% of the vote to have won by a landslide. Many contests are decided by less than a 10% margin. Changing 5% of the votes can change the margin by 10%, because "flipping" a vote for one candidate into a vote for a different candidate changes the difference in their tallies—i.e., the margin—by 2 votes. If hacking or bugs or misconfiguration could change 5% of the votes, that would be a very significant threat.

Although public and media interest often focus on top-of-the-ticket races such as President and Governor, elections for lower offices such as state representatives, who control legislative agendas and redistricting, and county officials, who manage elections and assess taxes, are just as important in our democracy. Altering the outcome of smaller contests requires altering fewer votes, so fewer voters are in a position to notice that their ballots were misprinted. And most voters are not as familiar with the names of the candidates for those offices, so they might be unlikely to notice if their ballots were misprinted, even if they checked.

Research in a real polling place in Tennessee during the 2018 election, found that half the voters *didn't look at all* at the paper ballot printed by a BMD, even when they were holding it in their hand and directed to do so while carrying it from the BMD to the optical scanner [13]. Those voters who did look at the BMD-printed ballot

spent *an average of 4 seconds* examining it to verify that the eighteen or more choices they made were correctly recorded. That amounts to 222 milliseconds per contest, barely enough time for the human eye to move and refocus under perfect conditions and not nearly enough time for perception, comprehension, and recall [27]. A study by other researchers [7], in a simulated polling place using real BMDs deliberately hacked to alter one vote on each paper ballot, found that only 6.6% of voters told a pollworker something was wrong.[15][16] The same study found that among voters who examined their hand-marked ballots, half were unable to recall key features of ballots cast moments before, a prerequisite step for being able to recall their own ballot choices. This finding is broadly consistent with studies of effects like "change blindness" or "choice blindness," in which human subjects fail to notice changes made to choices made only seconds before [19].

Suppose, then, that 10% of voters examine their paper ballots carefully enough to even *see* the candidate's name recorded as their vote for legislator or county commissioner. Of those, perhaps only half will remember the name of the candidate they intended to vote for.[17]

Of those who notice that the vote printed is not the candidate they intended to vote for, what will they think, and what will they do? Will they think, "Oh, I must have made a mistake on the touchscreen," or will they think, "Hey, the machine is cheating or malfunctioning!" There's no way for the voter to know for sure—voters do make mistakes—and there's *absolutely* no way for the voter to prove to a pollworker or election official that a BMD printed something other than what the voter entered on the

[15] You might think, "the voter really *should* carefully review their BMD-printed ballot." But because the scientific evidence shows that voters *do not* [13] and cognitively *cannot* [16] perform this task well, legislators and election administrators should provide a voting system that counts the votes *as voters express them.*

[16] Studies of voter confidence about their ability to verify their ballots are not relevant: in typical situations, subjective confidence and objective accuracy are at best weakly correlated. The relationship between confidence and accuracy has been studied in contexts ranging from eyewitness accuracy [8, 12, 40] to confidence in psychological clinical assessments [14] and social predictions [15]. The disconnect is particularly severe at high confidence. Indeed, this is known as "the overconfidence effect." For a lay discussion, see *Thinking, Fast and Slow* by Nobel economist Daniel Kahnemann [20].

[17] We ask the reader, "do you know the name of the most recent losing candidate for county commissioner?" We recognize that some readers of this document *are* county commissioners, so we ask those readers to imagine the frame of mind of their constituents.

screen.[18][19]

Either way, polling-place procedures generally advise voters to ask a pollworker for a new ballot if theirs does not show what they intended. Pollworkers should void that BMD-printed ballot, and the voter should get another chance to mark a ballot. Anecdotal evidence suggests that many voters are too timid to ask, or don't know that they have the right to ask, or are not sure whom to ask. Even if a voter asks for a new ballot, training for pollworkers is uneven, and we are aware of no formal procedure for resolving disputes if a request for a new ballot is refused. Moreover, there is no sensible protocol for ensuring that BMDs that misbehave are investigated—nor can there be, as we argue below.

Let's summarize. If a machine alters votes on 5% of the ballots (enabling it to change the margin by 10%), and 10% of voters check their ballots carefully and 50% of the voters who check notice the error, then optimistically we might expect $5\% \times 10\% \times 50\%$ or 0.25% of the voters to request a new ballot and correct their vote.[20] This means that the machine will change the margin by 9.75% and get away with it.

In this scenario, 0.25% of the voters, one in every 400 voters, has requested a new ballot. You might think, "that's a form of *detection* of the hacking." But is isn't, as a practical matter: a few individual voters may have detected that there was a problem, but there's no procedure by which this translates into any action that election administrators can take to correct the outcome of the election. Polling-place procedures *cannot correct or deter hacking, or even reliably detect it*, as we discuss next. This is essentially the distinction between a system that is merely software independent and one that is contestable: a change to the software that alters the outcome might generate evidence for an alert, conscientious, individual voter, but it does not generate public evidence that an election official can rely on to conclude there is a problem.

Even if some voters notice that BMDs are altering votes, there's no way to correct the election outcome. That is, BMD voting systems are *not contestable*, *not defen-*

[18] You might think, "the voter can prove it by showing someone that the vote on the paper doesn't match the vote onscreen." But that won't work. On a typical BMD, by the time a paper record is printed and ejected for the voter to hold and examine, the touchscreen no longer shows the voter's choice. You might think, "BMDs should be designed so that the choices still show on the screen for the voter to compare with the paper." But a hacked BMD could easily alter the on-screen choices to match the paper, *after* the voter hits the "print" button.

[19] Voters should *certainly not* videorecord themselves voting! That would defeat the privacy of the secret ballot and is illegal in most jurisdictions.

[20] This calculation assumes that the 10% of voters who check are in effect a random sample of voters: voters' propensity to check BMD printout is not associated with their political preferences.

sible (and therefore *not strongly defensible*), and *not strongly software independent*. Suppose a state election official wanted to detect whether the BMDs are cheating, and correct election results, based on actions by those few alert voters who notice the error. What procedures could possibly work against the manipulation we are considering?

1. How about, "If at least 1 in 400 voters claims that the machine misrepresented their vote, void the entire election."[21] No responsible authority would implement such a procedure. A few dishonest voters could collaborate to invalidate entire elections simply by falsely claiming that BMDs changed their votes.
2. How about, "If at least 1 in 400 voters claims that the machine misrepresented their vote, then investigate." Investigations are fine, but then what? The only way an investigation can ensure that the outcome accurately reflects what voters expressed to the BMDs is to void an election in which the BMDs have altered votes and conduct a new election. But how do you know whether the BMDs have altered votes, except based the claims of the voters?[22] Furthermore, the investigation itself would suffer from the same problem as above: how can one distinguish between voters who detected BMD hacking or bugs from voters who just want to interfere with an election?

This is the essential security flaw of BMDs: few voters will notice and promptly report discrepancies between what they saw on the screen and what is on the BMD printout, and even when they do notice, there's nothing appropriate that can be done. Even if election officials are convinced that BMDs malfunctioned, *there is no way to determine who really won*.

Therefore, BMDs should not be used by most voters.

Why can't we rely on pre-election and post-election logic and accuracy testing, or parallel testing? Most, if not all, jurisdictions perform some kind of *logic and accuracy testing* (LAT) of voting equipment before elections. LAT generally involves voting on the equipment using various combinations of selections, then checking whether the

[21]Note that in many jurisdictions, far fewer than 400 voters use a given machine on election day: BMDs are typically expected to serve fewer than 300 voters per day. (The vendor ES&S recommended 27,000 BMDs to serve Georgia's 7 million voters, amounting to 260 voters per BMD [33].) Recall also that the rate 1 in 400 is tied to the amount of manipulation. What if the malware flipped only one vote in 50, instead of 1 vote in 20? That could still change the margin by 4%, but—in this hypothetical—would be noticed by only one voter in 1,000, rather than one in 400. The smaller the margin, the less manipulation it would have taken to alter the electoral outcome.

[22]Forensic examination of the BMD might show that it *was* hacked or misconfigured, but it cannot prove that the BMD *was not* hacked or misconfigured.

equipment tabulated the votes correctly. As the Volkswagen/Audi "Dieselgate" scandal shows, devices can be programmed to behave properly when they are tested but misbehave in use [11]. Therefore, LAT can never prove that voting machines performed properly in practice.

Parallel or "live" testing involves pollworkers or election officials using some BMDs at random times on election day to mark (but not cast) ballots with test patterns, then check whether the marks match the patterns. The idea is that the testing is not subject to the "Dieselgate" problem, because the machines cannot "know" they are being tested on election day.[23] As a practical matter, the number of tests required to provide a reasonable chance of detecting outcome-changing errors is prohibitive: it would leave no time for actual voting [37]. Moreover, it would require additional staff, infrastructure, and other resources.

Suppose, counterfactually, that it was practical to perform enough parallel testing to guarantee a large chance of detecting a problem if BMD hacking or malfunction altered electoral outcomes. Suppose, counterfactually, that election officials were required to conduct that amount of parallel testing during every election, and that the required equipment, staffing, infrastructure, and other resources were provided. Even then, the system would not be *strongly defensible*; that is, if testing detected a problem, there would be no way to to determine who really won. The only remedy would be a new election.

Don't voters need to check hand-marked ballots, too? It is always a good idea to check one's work, but there is a substantial body of research (e.g., [28]) suggesting that preventing error as a ballot is being marked is a fundamentally different cognitive task than detecting an error on a previously marked ballot. In cognitively similar tasks, such as proof reading for non-spelling errors, ten percent rates of error detection are common [28, pp 167ff], whereas by carefully attending to the task of correctly marking their ballots, voters apparently can largely avoid marking errors.

A fundamental difference between hand-marked paper ballots and ballot-marking devices is that, with hand-marked paper ballots, voters are responsible for catching and

[23] BMDs do "know" their own settings and other aspects of each voting session, so malware can use that information to target sessions that use the audio interface, increase the font size, use the sip-and-puff interface, set the language to something other than English, or take much longer than average to vote. (Voters who use those settings might be less likely to be believed if they report that the equipment altered their votes.) For parallel testing to have a good chance of detecting all outcome-changing problems, the tests must have a large chance of probing *every* combination of settings and voting patterns that includes enough ballots to change any contest result. It is not practical.

correcting *their own errors*, while if BMDs are used, voters are also responsible for catching *machine errors, bugs, and hacking*. Voters are the *only* people who can detect such problems with BMDs—but, as explained above, if voters do find problems, there's no way they can prove to poll workers or election officials that there were problems and no way to ensure that election officials take appropriate remedial action.

4 Other tradeoffs, BMDs versus hand-marked opscan

Supporters of ballot-marking devices advance several other arguments for their use.

- **Mark legibility.** A common argument is that a properly functioning BMD will generate clean, error-free, unambiguous marks, while hand-marked paper ballots may contain mistakes and stray marks that make it impossible to discern a voter's intent. However appealing this argument seems at first blush, the data are not nearly so compelling. Experience with statewide recounts in Minnesota and elsewhere suggest that truly ambiguous handmade marks are very rare.[24] For instance, 2.9 million hand-marked ballots were cast in the 2008 Minnesota race between Al Franken and Norm Coleman for the U.S. Senate. In a manual recount, between 99.95% and 99.99% of ballots were unambiguously marked.[25] [26] In addition, usability studies of hand-marked bubble ballots—the kind in most common use in U.S. elections—indicate a *voter* error rate of 0.6%, much lower than the 2.5–3.7% error rate for machine-marked ballots [16].[27] Moreover, modern image-based opscan equipment (*digital scan* machinery) is better than older

[24] States do need clear and complete regulations for interpreting voter marks.

[25] "During the recount, the Coleman and Franken campaigns initially challenged a total of 6,655 ballot-interpretation decisions made by the human recounters. The State Canvassing Board asked the campaigns to voluntarily withdraw all but their most serious challenges, and in the end approximately 1,325 challenges remained. That is, approximately 5 ballots in 10,000 were ambiguous enough that one side or the other felt like arguing about it. The State Canvassing Board, in the end, classified all but 248 of these ballots as votes for one candidate or another. That is, approximately 1 ballot in 10,000 was ambiguous enough that the bipartisan recount board could not determine an intent to vote." [1] See also [25]

[26] We have found that some local election officials consider marks to be ambiguous if *machines* cannot read the marks. That is a different issue from *humans* being unable to interpret the marks. Errors in machine interpretation of voter intent can be dealt with by manual audits: if the reported outcome is wrong because machines misinterpreted handmade marks, a RLA has a known, large chance of correcting the outcome.

[27] Better designed user interfaces (UI) might reduce the error rate for machine-marked ballots below the historical rate for DREs; however, UI improvements cannot keep BMDs from printing something other than what the voter is shown on the screen.

"marksense" machines at interpreting imperfect marks. Thus, mark legibility is not a good reason to adopt BMDs for all voters.

- **Undervotes, overvotes.** Another argument offered for BMDs is that the machines can alert voters to undervotes and prevent overvotes. That is true, but modern PCOS systems can also alert a voter to overvotes and undervotes, allowing a voter to eject the ballot and correct it.
- **Bad ballot design.** Ill-designed paper ballots, just like ill-designed touchscreen interfaces, may lead to unintentional undervotes [24]. For instance, the 2006 Sarasota, Florida, touchscreen ballot was badly designed. The 2018 Broward County, Florida, opscan ballot was badly designed: it violated three separate guidelines from the EAC's 2007 publication, "Effective Designs for the Administration of Federal Elections, Section 3: Optical scan ballots." [39] In both of these cases (touchscreens in 2006, hand-marked optical-scan in 2018), undervote rates were high. The solution is to follow standard, published ballot-design guidelines and other best practices, both for touchscreens and for hand-marked ballots [3, 24].
- **Low-tech paper-ballot fraud.** All paper ballots, however they are marked, are vulnerable to *loss*, *ballot-box stuffing*, *alteration*, and *substitution* between the time they are cast and the time they are recounted. That's why it is so important to make sure that ballot boxes are always in multiple-person (preferably bipartisan) custody whenever they are handled, and that appropriate physical security measures are in place. Strong, verifiable chain-of-custody protections are essential.

  Hand-marked paper ballots are vulnerable to alteration by anyone with a pen. Both hand-marked and BMD-marked paper ballots are vulnerable to substitution: anyone who has poorly supervised access to a legitimate BMD during election day can create fraudulent ballots, not necessarily to deposit them in the ballot box immediately (in case the ballot box is well supervised on election day) but with the hope of substituting it later in the chain of custody.[28]

  All those attacks (on hand-marked and on BMD-marked paper ballots) are fairly low-tech. There are also higher-tech ways of producing ballots indistinguishable from BMD-marked ballots for substitution into the ballot box if there is inadequate chain-of-custody protection.
- **Accessible voting technology.** When hand-marked paper ballots are used with PCOS, there is (as required by law) also an accessible voting technology available in the polling place for voters unable to mark a paper ballot with a pen. This

[28] Some BMDs print a barcode indicating when and where the ballot was produced, but that does not prevent such a substitution attack against currently EAC-certified, commercially available BMDs. We understand that systems under development might make ballot-substitution attacks against BMDs more difficult.

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is typically a BMD or a DRE. When the accessible voting technology is not the same as what most voters vote on—when it is used by very few voters—it may happen that the accessible technology is ill-maintained or even (in some polling places) not even properly set up by pollworkers. This is a real problem. One proposed solution is to require all voters to use the same BMD or all-in-one technology. But the failure of some election officials to properly maintain their accessible equipment is not a good reason to adopt BMDs for *all* voters. Among other things, it would expose all voters to the security flaws described above.[29] Other advocates object to the idea that disabled voters must use a different method of marking ballots, arguing that their rights are thereby violated. Both HAVA and ADA require reasonable accommodations for voters with physical and cognitive impairments, but neither law requires that those accommodations must be used by all voters. To best enable and facilitate participation by all voters, each voter should be provided with a means of casting a vote best suited to their abilities.

- **Ballot printing costs.** Preprinted optical-scan ballots cost 20–50 cents each.[30] Blank cards for BMDs cost up to 15 cents each, depending on the make and model of BMD.[31] But optical-scan ballots must be preprinted for as many voters as *might* show up, whereas blank BMD cards are consumed in proportion to how many voters *do* show up. The Open Source Election Technology Institute (OSET) conducted an independent study of total life cycle costs[32] for hand-marked paper ballots and BMDs in conjunction with the 2019 Georgia legislative debate regarding BMDs [26]. OSET concluded that, even in the most optimistic (i.e., lowest cost) scenario for BMDs and the most pessimistic (i.e, highest cost) scenario for hand-marked paper ballots and ballot-on-demand (BOD) printers—which can print unmarked ballots as needed—the total lifecycle costs for BMDs would be higher than the corresponding costs for hand-marked paper ballots.[33]
- **Vote centers.** To run a vote center that serves many election districts with different ballot styles, one must be able to provide each voter a ballot containing

[29] Also, some accessibility advocates argue that requiring disabled voters to use BMDs compromises their privacy since hand-marked ballots are easily distinguishable from machine marked ballots. That issue can be addressed without BMDs-for-all: Accessible BMDs are already available and in use that mark ballots with marks that cannot easily be distinguished from hand-marked ballots.

[30] Single-sheet (one- or two-side) ballots cost 20-28 cents; double-sheet ballots needed for elections with many contests cost up to 50 cents.

[31] Ballot cards for ES&S ExpressVote cost about 15 cents. New Hampshire's (One4All / Prime III) BMDs used by sight-impaired voters use plain paper that is less expensive.

[32] They include not only the cost of acquiring and implementing systems but also the ongoing licensing, logistics, and operating (purchasing paper stock, printing, and inventory management) costs.

[33] BOD printers currently on the market arguably are best suited for vote centers, but less expensive options suited for polling places could be developed. Indeed, BMDs that print full-face ballots could be re-purposed as BOD printers for polling place use, with modest changes to the programming.

the contests that voter is eligible to vote in, possibly in a number of different languages. This is easy with BMDs, which can be programmed with all the appropriate ballot definitions. With preprinted optical-scan ballots, the PCOS can be programmed to *accept* many different ballot styles, but the vote center must still maintain *inventory* of many different ballots. BOD printers are another economical alternative for vote centers.[34]

- **Paper/storage.** BMDs that print summary cards rather than full-face ballots can save paper and storage space. However, many BMDs print full-face ballots—so they do not save storage—while many BMDs that print summary cards (which could save storage) use thermal printers and paper that is fragile and can fade in a few months.[35]

Advocates of hand-marked paper ballot systems advance these additional arguments.

- **Cost.** Using BMDs for all voters substantially increases the cost of acquiring, configuring, and maintaining the voting system. One PCOS can serve 1200 voters in a day, while one BMD can serve only about 260 [33]—though both these numbers vary greatly depending on the length of the ballot and the length of the day. OSET analyzed the relative costs of acquiring BMDs for Georgia's nearly seven million registered voters versus a system of hand-marked paper ballots, scanners, and BOD printers [26]. A BMD solution for Georgia would cost taxpayers between 3 and 5 times more than a system based on hand-marked paper ballots. Open-source systems might eventually shift the economics, but current commercial universal-use BMD systems are more expensive than systems that use hand-marked paper ballots for most voters.
- **Mechanical reliability and capacity.** Pens are likely to have less downtime than BMDs. It is easy and inexpensive to get more pens and privacy screens when additional capacity is needed. If a precinct-count scanner goes down, people can still mark ballots with a pen; if the BMD goes down, voting stops. Thermal

[34]Ballot-on-demand printers *may* require maintenance such as replacement of toner cartridges. This is readily accomplished at a vote center with a professional staff. Ballot-on-demand printers may be a less attractive option for many small precincts on election day, where there is no professional staff—but on the other hand, they are less necessary, since far fewer ballot styles will be needed in any one precinct.

[35]The California Top-To-Bottom Review (TTBR) of voting systems found that thermal paper can also be covertly spoiled wholesale using common household chemicals https://votingsystems.cdn.sos.ca.gov/oversight/ttbr/red-diebold.pdf, last visited 8 April 2019. The fact that thermal paper printing can fade or deteriorate rapidly might mean it does not satisfy the federal requirement to preserve voting materials for 22 months. http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title52-section20701&num=0&edition=prelim, last visited 8 April 2019.

printers used in DREs with VVPAT are prone to jams; those in BMDs might have similar flaws.

These secondary pros and cons of BMDs do not outweigh the primary security and accuracy concern: BMDs, if hacked or erroneously programmed, can change votes in a way that is not correctable. BMD voting systems are not contestable or defensible. Audits that rely on BMD printout cannot make up for this defect in the paper trail: they cannot reliably detect or correct problems that altered election outcomes.

Barcodes

A controversial feature of some BMDs allows them to print 1-dimensional or 2-dimensional barcodes on the paper ballots. A 1-dimensional barcode resembles the pattern of vertical lines used to identify products by their universal product codes. A 2-dimensional barcode or QR code is a rectangular area covered in coded image *modules* that encode more complex patterns and information. BMDs print barcodes on the same paper ballot that contains human-readable ballot choices. Voters using BMDs are expected to verify the human-readable printing on the paper ballot card, but the presence of barcodes with human-readable text poses some significant problems.

- **Barcodes are not human readable.** The whole purpose of a paper ballot is to be able to recount (or audit) the *voters'* votes in a way independent of any (possibly hacked or buggy) computers. If the official vote on the ballot card is the barcode, then it is impossible for the voters to verify that the official vote they cast is the vote they expressed. Therefore, before a state even *considers* using BMDs that print barcodes (and we do not recommend doing so), the State must ensure by statute that recounts and audits are based *only* on the human-readable portion of the paper ballot. Even so, audits based on untrustworthy paper trails suffer from the verifiability the problems outlined above.
- **Ballot cards with barcodes contain two different votes.** Suppose a state does ensure by statute that recounts and audits are based on the human-readable portion of the paper ballot. Now a BMD-marked ballot card with both barcodes and human-readable text contains two different votes in each contest: the barcode (used for electronic tabulation), and the human-readable selection printout (official for audits and recounts). In few (if any) states has there even been a discussion of the legal issues raised when the official markings to be counted differ between the original count and a recount.
- **Barcodes pose technical risks.** Any coded input into a computer system—including wired network packets, WiFi, USB thumbdrives, *and barcodes*—pose

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the risk that the input-processing software can be vulnerable to attack via deliberately ill-formed input. Over the past two decades, many such vulnerabilities have been documented on *each* of these channels (including barcode readers) that, in the worst case, give the attacker complete control of a system.[36] If an attacker were able to compromise a BMD, the barcodes are an attack vector for the attacker to take over an optical scanner (PCOS or CCOS), too. Since it is good practice to close down all such unneeded attack vectors into PCOS or CCOS voting machines (e.g., don't connect your PCOS to the Internet!), it is also good practice to avoid unnecessary attack channels such as barcodes.

End-to-End Verifiable BMDs

In all BMD systems currently on the market, and in all BMD systems certified by the EAC, the printed ballot or ballot summary is the only channel by which voters can verify the correct recording of their ballots, independently of the computers. The analysis in this paper applies to all of those BMD systems.

There is a class of voting systems called "end-to-end verifiable" (E2E-V), which provide an alternate mechanism for voters to verify their votes [2]. Some E2E-V systems incorporate BMDs, for instance STAR-Vote[37] [5]. As we discuss above in Section 1, such systems are not contestable, defensible, or strongly software independent. In any event, no E2E-V system is currently certified by the EAC, nor to our knowledge is any such system under review for certification, nor are any of the 5 major voting-machine vendors offering such a system for sale.[38]

[36] An example of a barcode attack is based on the fact that many commercial barcode-scanner components (which system integrators use to build cash registers or voting machines) treat the barcode scanner using the same operating-system interface as if it were a keyboard device; and then some operating systems allow "keyboard escapes" or "keyboard function keys" to perform unexpected operations.

[37] The STAR-Vote system is actually a DRE+VVPAT system with a smart ballot box, rather than a BMD system: voters interact with a device that captures their votes electronically and prints a paper record that voters can inspect, but the electronic votes are held "in limbo" until the paper ballot is deposited in the smart ballot box. The ballot box does not read the votes from the ballot; rather, depositing the ballot tells the system that it has permission to cast the vote that it had already recorded from the touchscreen.

[38] Some vendors, notably Scytl, have sold systems advertised as E2E-V in other countries. Those systems were not in fact E2E-V. Moreover, serious security flaws have been found in their implementations. See, e.g., [21].

5 Insecurity of All-in-One BMDs

Some voting machines incorporate a BMD interface, printer, and optical scanner into the same cabinet. Other DRE+VVPAT voting machines incorporate ballot-marking, tabulation, and paper-printout retention, but without scanning. These are often called "all-in-one" voting machines. To use an all-in-one machine, the voter makes choices on a touchscreen or through a different accessible interface. When the selections are complete, the BMD prints the completed ballot for the voter to review and verify, before depositing the ballot in a ballot box attached to the machine.

Such machines are especially unsafe: like any BMD described in Section 3 they are not contestable or defensible, but in addition, if hacked they can print votes onto the ballot *after* the voter last inspects the ballot.

- The ES&S ExpressVote (in all-in-one mode) allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot card and ejects it from a slot. The voter has the opportunity to review the ballot, then the voter redeposits the ballot into the same slot, where it is scanned and deposited into a ballot box.
- The ES&S ExpressVoteXL allows the voter to mark a ballot by touchscreen or audio interface, then prints a paper ballot and displays it under glass. The voter has the opportunity to review the ballot, then the voter touches the screen to indicate "OK," and the machine pulls paper ballot up (still under glass) and into the integrated ballot box.
- The Dominion ImageCast Evolution (ICE) allows the voter to deposit a hand-marked paper ballot, which it scans and drops into the attached ballot box. *Or*, a voter can use a touchscreen or audio interface to direct the marking of a paper ballot, which the voting machine ejects through a slot for review; then the voter redeposits the ballot into the slot, where it is scanned and dropped into the ballot box.

In all three of these machines, the ballot-marking printer is in the same paper path as the mechanism to deposit marked ballots into an attached ballot box. This opens up a very serious security vulnerability: the voting machine can mark the paper ballot (to add votes or spoil already-cast votes) after the last time the voter sees the paper, and then deposit that marked ballot into the ballot box without the possibility of detection.

Vote-stealing software could easily be constructed that looks for *undervotes* on the ballot, and marks those unvoted spaces for the candidate of the hacker's choice. This is very straightforward to do on optical-scan bubble ballots (as on the Dominion ICE) where undervotes are indicated by no mark at all. On machines such as the ExpressVote

and ExpressVoteXL, the normal software indicates an undervote with the words NO SELECTION MADE on the ballot summary card. Hacked software could simply leave a blank space there (most voters wouldn't notice the difference), and then fill in that space and add a matching bar code after the voter has clicked "cast this ballot."

An even worse feature of the ES&S ExpressVote and the Dominion ICE is the *auto-cast* configuration setting (in the manufacturer's standard software) that allows the voter to indicate, "don't eject the ballot for my review, just print it and cast it without me looking at it." If fraudulent software were installed in the ExpressVote, it could change *all* the votes of any voter who selected this option, because the voting machine software would know *in advance of printing* that the voter had waived the opportunity to inspect the printed ballot. We call this auto-cast feature "permission to cheat" [4].

Regarding these all-in-one machines, we conclude:

- Any machine with ballot printing in the same paper path with ballot deposit is not *software independent*; it is *not* the case that "an error or fault in the voting system software or hardware cannot cause an undetectable change in election results." Therefore such all-in-one machines do not comply with the VVSG 2.0 (the Election Assistance Commission's Voluntary Voting Systems Guidelines). Such machines are not contestable or defensible, either.
- All-in-one machines on which all voters use the BMD interface to mark their ballots (such as the ExpressVote and ExpressVoteXL) *also* suffer from the same serious problem as ordinary BMDs: most voters do not review their ballots effectively, and elections on these machines are not contestable or defensible.
- The auto-cast option for a voter to allow the paper ballot to be cast without human inspection is particularly dangerous, and states must insist that vendors disable or eliminate this mode from the software. However, even disabling the auto-cast feature does not eliminate the risk of undetected vote manipulation.

Remark. The Dominion ImageCast Precinct ICP320 is a precinct-count optical scanner (PCOS) that also contains an audio+buttons ballot-marking interface for disabled voters. This machine can be configured to cast electronic-only ballots from the BMD interface, or an external printer can be attached to print paper optical-scan ballots from the BMD interface. When the external printer is used, that printer's paper path is *not* connected to the scanner+ballot-box paper path (a person must take the ballot from the printer and deposit it into the scanner slot). Therefore this machine is as safe to use as any PCOS with a separate external BMD.

Electronically uploaded to https://www.courtlistener.com/?q=1758

6 Conclusion

Ballot-Marking Devices produce ballots that do not necessarily record the vote expressed by the voter when they enter their selections on the touchscreen: hacking, bugs, and configuration errors can cause the BMDs to print votes that differ from what the voter entered and verified electronically. Because outcome-changing errors in BMD printout do not produce public evidence, BMD systems are not *contestable*. Because there is no way to generate convincing public evidence that reported outcomes are correct despite any BMD malfunctions that might have occurred, BMD systems are not *defensible*. Therefore, BMDs should not be used by voters who can hand mark paper ballots.

All-in-one voting machines, which combine ballot-marking and ballot-box-deposit into the same paper path, are even worse. They have all the disadvantages of BMDs (they are not contestable or defensible), and they can mark the ballot after the voter has inspected it. Therefore they are not even *software independent*, and should not be used by those voters who are capable of marking, handling, and visually inspecting a paper ballot.

When computers are used to record votes, the original transaction (the voter's expression of the votes) is not documented in a verifiable way.[39] When pen-and-paper is used to record the vote, the original expression of the vote *is* documented in a verifiable way (if demonstrably secure chain of custody of the paper ballots is maintained). Audits of elections conducted with hand-marked paper ballots, counted by optical scanners, can ensure that reported election outcomes are correct. Audits of elections conducted with BMDs *cannot* ensure that reported outcomes are correct.

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[39] It is conceivable that cryptographic protocols like those used in E2E-V systems could be used to create BMD-based systems that are contestable and defensible, but no such system exists, nor, to our knowledge, has such a design been worked out in principle. Existing E2E-V systems that use a computer to print (encrypted) selections are neither contestable nor defensible, as explained in Section I.

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EXHIBIT 11 A

The State of Texas

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Ruth R. Hughs
Secretary of State

REPORT OF REVIEW OF DOMINION VOTING SYSTEMS DEMOCRACY SUITE 5.5-A

PRELIMINARY STATEMENT

On October 2-3, 2019, Dominion Voting Systems ("Dominion" or the "Vendor") presented the Democracy Suite 5.5-A system for examination and certification. The examination was conducted in Austin, Texas. Pursuant to Sections 122.035(a) and (b) of the Texas Election Code, the Secretary of State appointed the following examiners:

1. Mr. Tom Watson, an expert in electronic data communication systems;
2. Mr. Brian Mechler, an expert in electronic data communication systems;
3. Mr. Brandon Hurley, an expert in election law and procedure; and
4. Mr. Charles Pinney, an expert in election law and procedure.

Pursuant to Section 122.035(a), the Texas Attorney General appointed the following examiners:

1. Dr. Jim Sneeringer, an expert in electronic data communication systems; and
2. Mr. Ryan Vassar, an employee of the Texas Attorney General.

On October 2, 2019, Mr. Pinney, Mr. Mechler, and Dr. Sneeringer witnessed the installation of the Democracy Suite 5.5-A software and firmware that the Office of the Texas Secretary of State (the "Office") received directly from the Independent Testing Authority. The next day, Mr. Pinney examined the accessibility components of the ImageCast X Ballot Marking Device.

On October 3, 2019, the Vendor demonstrated the Democracy Suite 5.5-A system and answered questions presented by the examiners. Test ballots were then processed on each voting device. The results were accumulated and later verified for accuracy by staff of the Secretary of State.

Examiner reports regarding the Democracy Suite 5.5-A system are attached hereto and incorporated herein by this reference.

On December 27, 2019, pursuant to Section 122.0371 of the Texas Election Code, the Office held a public hearing for interested persons to express views for or against the certification of the Democracy Suite 5.5-A system.

BRIEF DESCRIPTION OF DEMOCRACY SUITE 5.5-A

The Democracy Suite 5.5-A system is an updated version of the Democracy Suite 5.5 system, which was denied certification by the Office on June 20, 2019. The Democracy Suite 5.5-A system includes certain software and hardware updates to the Suite 5.5 version.

Democracy Suite 5.5-A has been evaluated at an accredited independent voting system laboratory for conformance to the 2005 Voluntary Voting System Guidelines (VVSG). Democracy Suite 5.5-A was certified by the Election Assistance Commission (EAC) on January 30, 2019.

The components of Democracy Suite 5.5-A are as follows:

Component	Version	Description
EMS – Election Management System	5.5.12.1	Election Management System
ADJ – Adjudication	5.5.8.1	
ICC – ImageCast Central	5.5.3.0002	Central scanner
ICX – ImageCast X BMD	5.5.10.30	Ballot marking device
ICP – ImageCast Precinct	5.5.3-0002	Precinct scanner

FINDINGS

The following are the findings, based on written evidence submitted by the Vendor in support of its application for certification, oral evidence presented at the examination, and the findings of the voting system examiners as set out in their written reports.

The examiner reports identified multiple hardware and software issues that preclude the Office of the Texas Secretary of State from determining that the Democracy Suite 5.5-A system satisfies each of the voting-system requirements set forth in the Texas Election Code. Specifically, the examiner reports raise concerns about whether the Democracy Suite 5.5-A system is suitable for its intended purpose; operates efficiently and accurately; and is safe from fraudulent or unauthorized manipulation. Therefore, the Democracy Suite 5.5-A system and corresponding hardware devices do not meet the standards for certification prescribed by Section 122.001 of the Texas Election Code.

CONCLUSION

Accordingly, based upon the foregoing, I hereby deny certification of Dominion Voting Systems' Democracy Suite 5.5-A system for use in Texas elections.

Signed under my hand and seal of office, this 24th day of January 2020.

JOSE A. ESPARZA
DEPUTY SECRETARY OF STATE

EXHIBIT 11 B

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On October 3, 2019, the Vendor demonstrated the Democracy Suite 5.5-A system and answered questions presented by the examiners. Test ballots were then processed on each voting device. The results were accumulated and later verified for accuracy by staff of the Secretary of State.

Examiner reports regarding the Democracy Suite 5.5-A system are attached hereto and incorporated herein by this reference.

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CONCLUSION

Accordingly, based upon the foregoing, I hereby deny certification of Dominion Voting Systems' Democracy Suite 5.5-A system for use in Texas elections.

Signed under my hand and seal of office, this 24th day of January 2020.

JOSE A. ESPARZA
DEPUTY SECRETARY OF STATE

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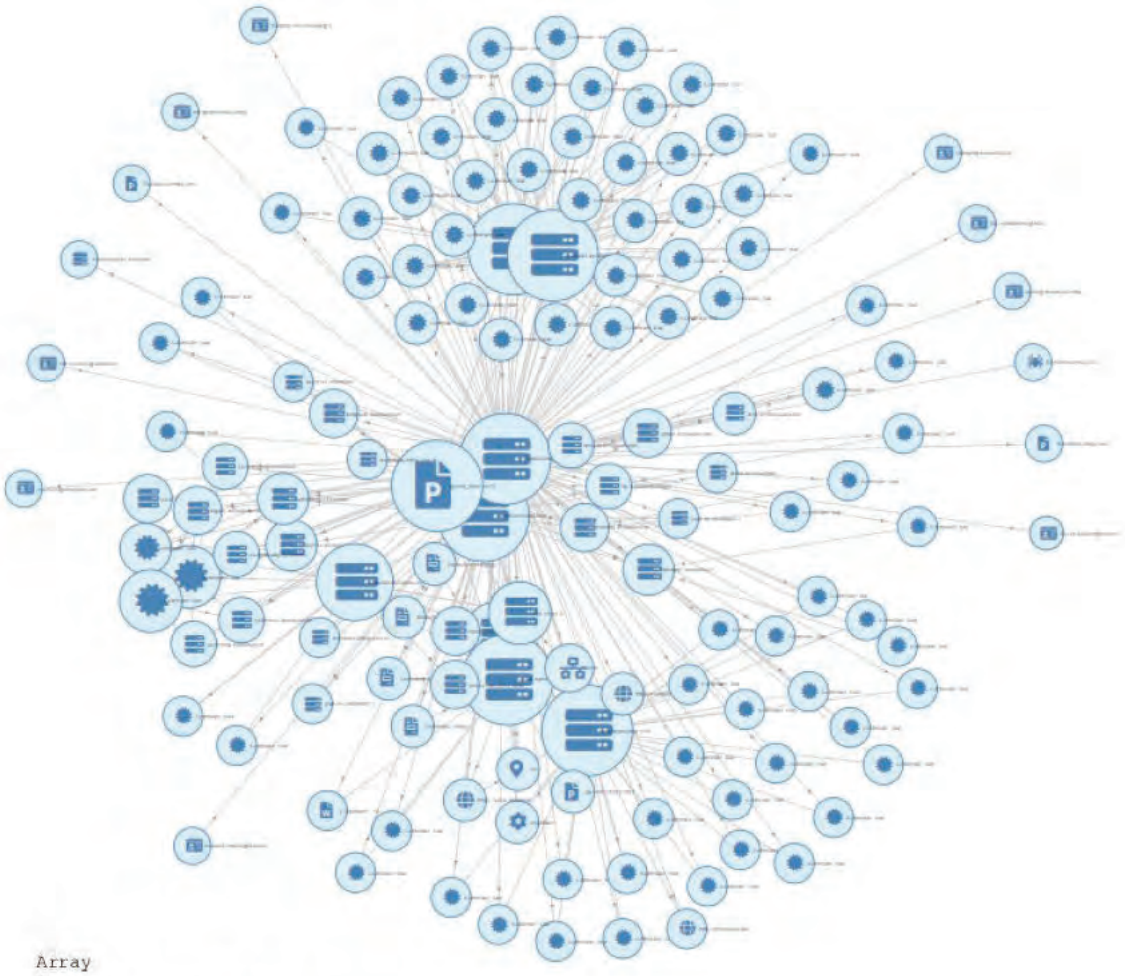
EXHIBIT 12

Declaration of [redacted]
Pursuant to 28 U.S.C Section 1746, [redacted] make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I was an electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence. I have extensive experience as a white hat hacker used by some of the top election specialists in the world. The methodologies I have employed represent industry standard cyber operation toolkits for digital forensics and OSINT, which are commonly used to certify connections between servers, network nodes and other digital properties and probe to network system vulnerabilities.
3. I am a US citizen and I reside [redacted] location in the United States of America.
4. Whereas the Dominion and Edison Research systems exist in the internet of things, and whereas this makes the network connections between the Dominion, Edison Research and related network nodes available for scanning,
5. And whereas Edison Research's primary job is to report the tabulation of the count of the ballot information as received from the tabulation software, to provide to Decision HQ for election results,
6. And whereas Spiderfoot and Robtex are industry standard digital forensic tools for evaluation network security and infrastructure, these tools were used to conduct public security scans of the aforementioned Dominion and Edison Research systems,
7. A public network scan of Dominionvoting.com on 2020-11-08 revealed the following inter-relationships and revealed 13 unencrypted passwords for dominion employees, and 75 hashed passwords available in TOR nodes:

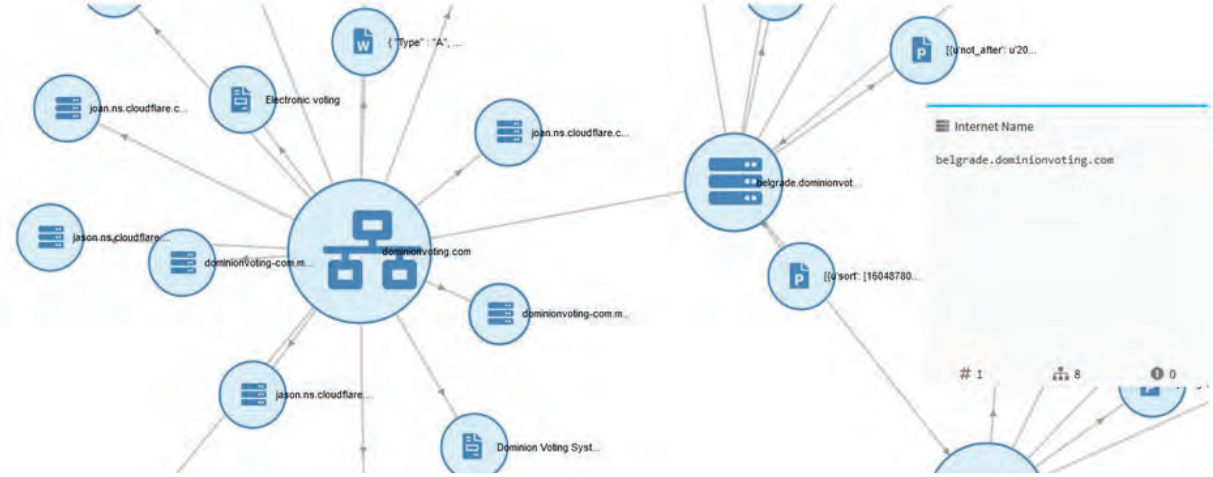


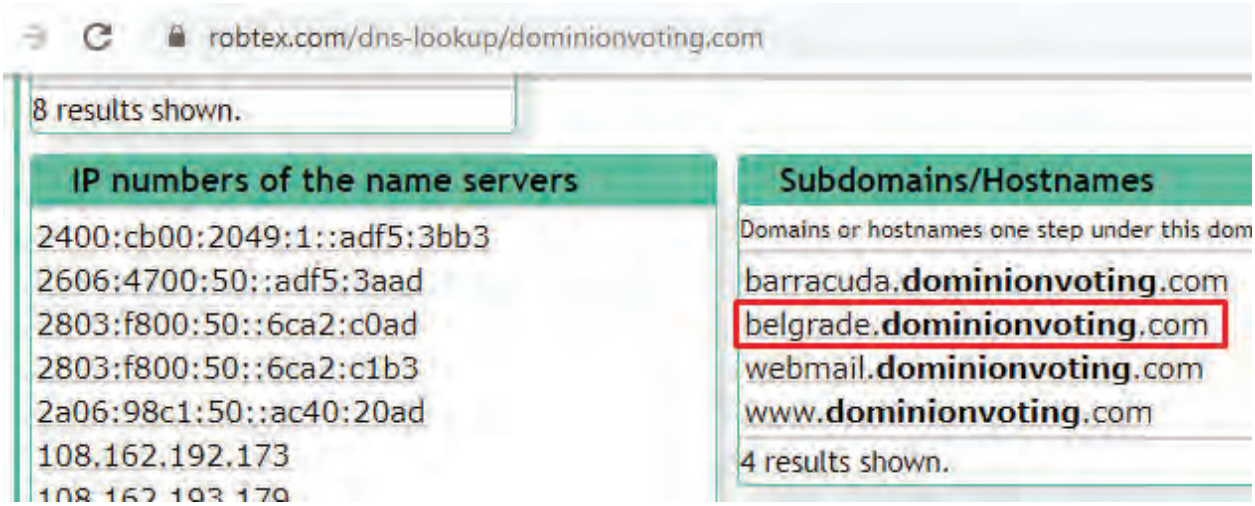
```
Array
(
    [id] => 544167324
    [luser] => ian.macvicar
    [domain] => dominionvoting.com
    [password] => jamley
)

7
Array
(
    [id] => 599400504
    [luser] => jelena.tanaskovic
    [domain] => dominionvoting.com
```

2

8. The same public scan also showed a direct connection to the group in Belgrade as highlighted below:





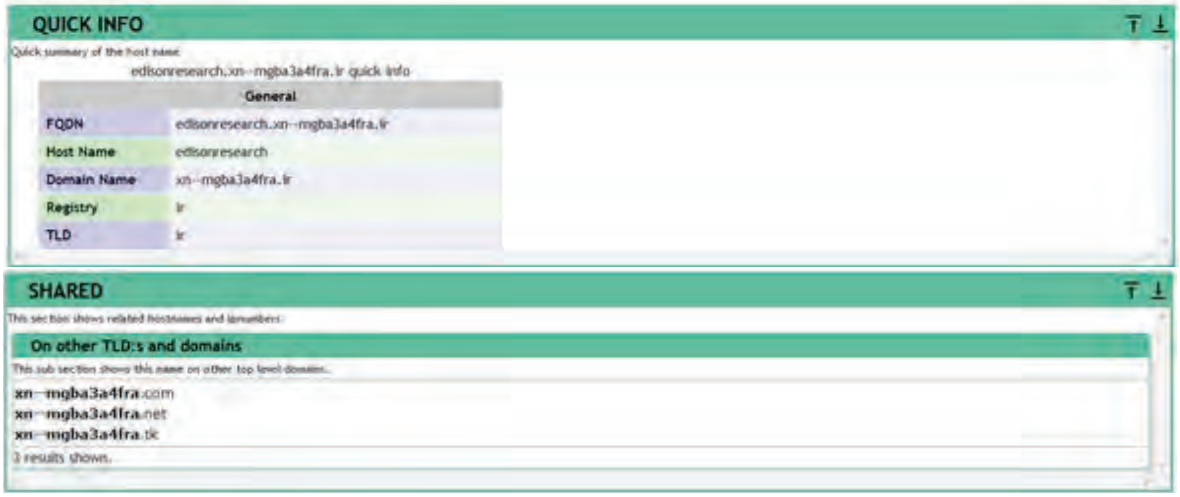
9. A cursory search on LinkedIn of "dominion voting" on 11/19/2020 confirms the numerous employees in Serbia:



10. An additional search of Edison Research on 2020-11-08 showed that Edison Research has an Iranian server seen here:



Inputting the Iranian IP into Robtex confirms the direct connection into the "edisonresearch" host from the perspective of the Iranian domain also. This means that it is not possible that the connection was a unidirectional reference.



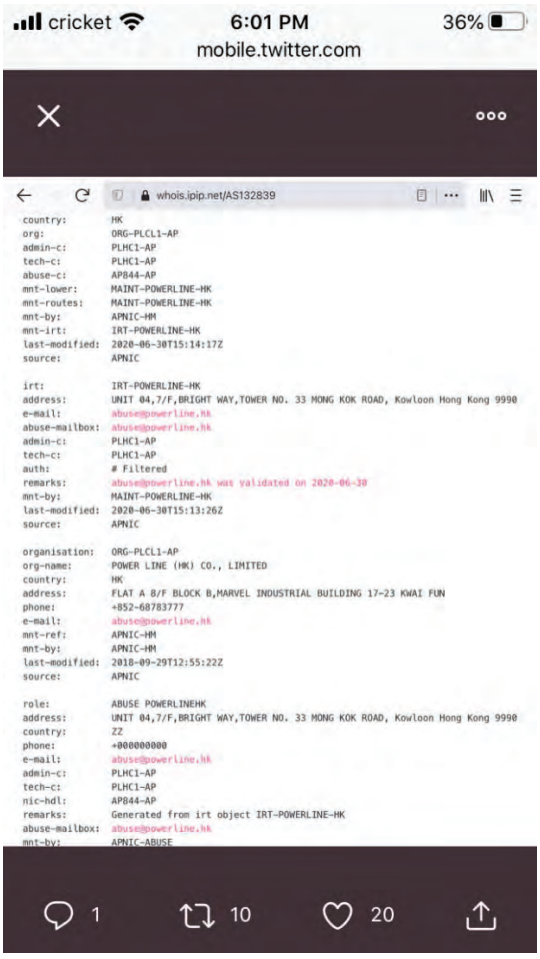
A deeper search of the ownership of Edison Research "edisonresearch.com" shows a connection to BMA Capital Management, where shareofear.com and bmacapital.com are both connected to edisonresearch.com via a VPS or Virtual Private Server, as denoted by the "vps" at the start of the internet name:

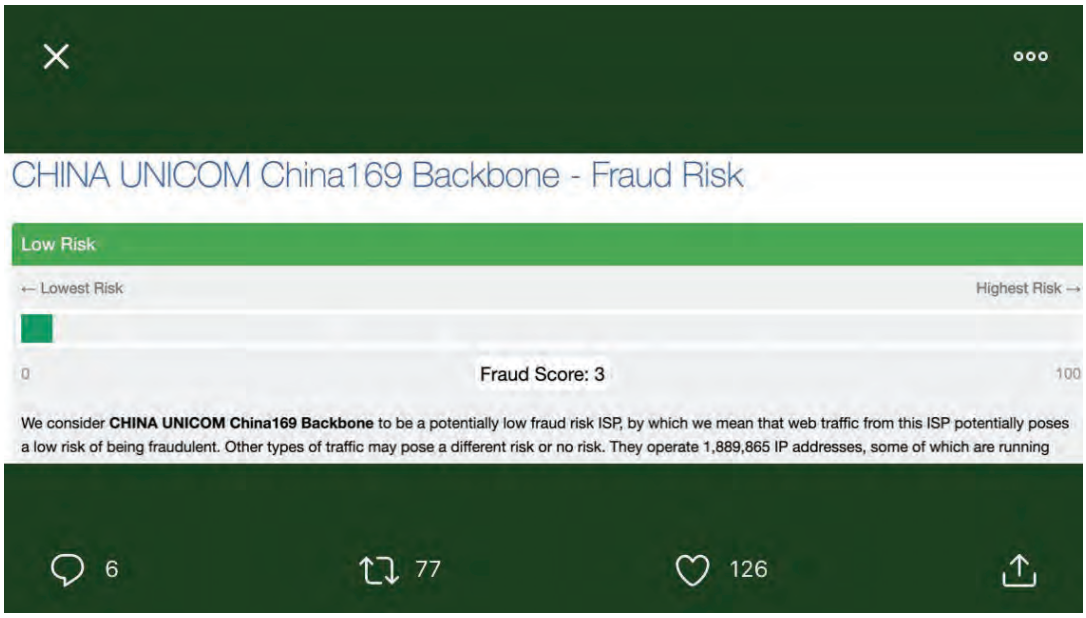




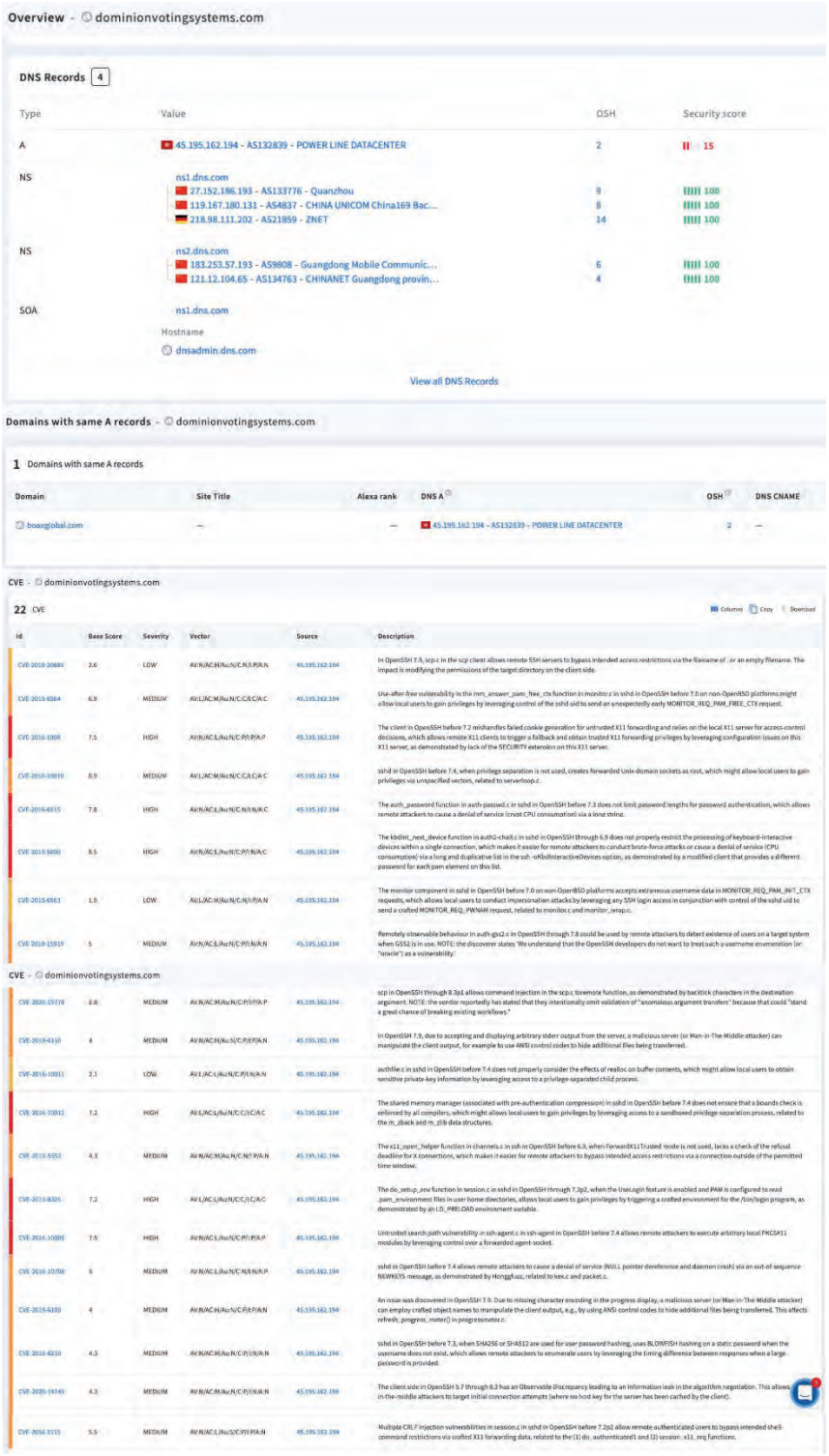
Dominionvoting is also dominionvotingsystems.com, of which there are also many more examples, including access of the network from China. The records of China accessing the server are reliable.







Domain Name: dominionvotingsystems.com
Registry Domain ID: 2530599738_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.godaddy.com
Registrar URL: http://www.godaddy.com
Updated Date: 2020-05-26T15:48:58Z
Creation Date: 2020-05-26T15:48:57Z
Registrar Registration Expiration Date: 2021-05-26T15:48:57Z
Registrar: GoDaddy.com, LLC
Registrar IANA ID: 146
Registrar Abuse Contact Email: abuse@godaddy.com
Registrar Abuse Contact Phone: +1.4806242505
Domain Status: clientTransferProhibited http://www.icann.org/epp#clientTransferProhibited
Domain Status: clientUpdateProhibited http://www.icann.org/epp#clientUpdateProhibited
Domain Status: clientRenewProhibited http://www.icann.org/epp#clientRenewProhibited
Domain Status: clientDeleteProhibited http://www.icann.org/epp#clientDeleteProhibited
Registrant Organization:
Registrant State/Province: Hunan
Registrant Country: CN
Registrant Email: Select Contact Domain Holder link at
https://www.godaddy.com/whois/results.aspx?domain=dominionvotingsystems.com
Admin Email: Select Contact Domain Holder link at
https://www.godaddy.com/whois/results.aspx?domain=dominionvotingsystems.com
Tech Email: Select Contact Domain Holder link at
https://www.godaddy.com/whois/results.aspx?domain=dominionvotingsystems.com
Name Server: NS1.DNS.COM
Name Server: NS2.DNS.COM
DNSSEC: unsigned



11. BMA Capital Management is known as a company that provides Iran access to capital markets with direct links publicly discoverable on LinkedIn (found via google on 11/19/2020):

www.linkedin.com › muhammad-talha-a0759660

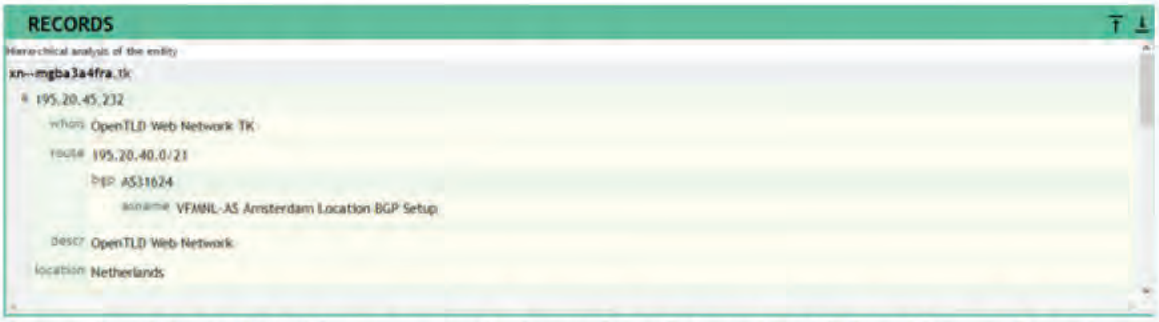
Muhammad Talha - BMA Capital Management Limited

Manager, Money Market & Fixed Income at **BMA Capital** Management Limited. **BMA Capital** ...

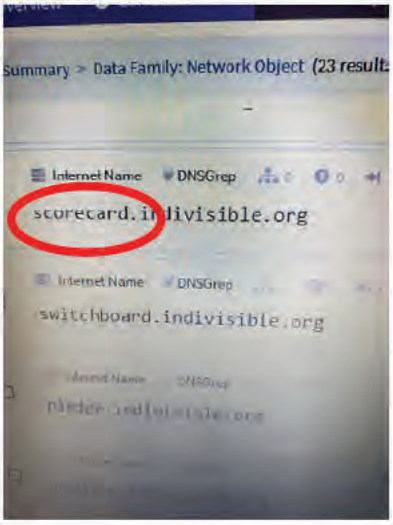
Manager-FMR at Pak **Iran** Joint Investment Company. Pakistan.

Pakistan · Manager, Money Market & Fixed Income · BMA Capital Management Limited

The same Robtex search confirms the Iranian address is tied to the server in the Netherlands, which correlates to known OSINT of Iranian use of the Netherlands as a remote server (See Advanced Persistent Threats: APT33 and APT34):

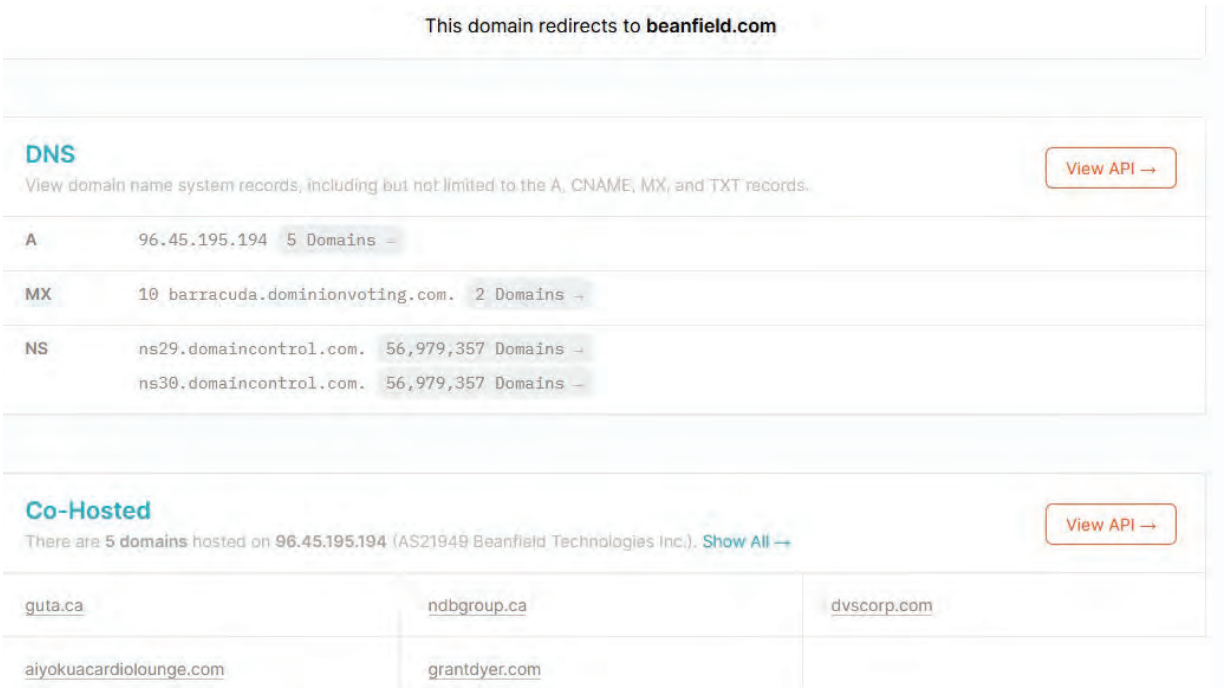


12. A search of the indivisible.org network showed a subdomain which evidences the existence of scorecard software in use as part of the Indivisible (formerly ACORN) political group for Obama:

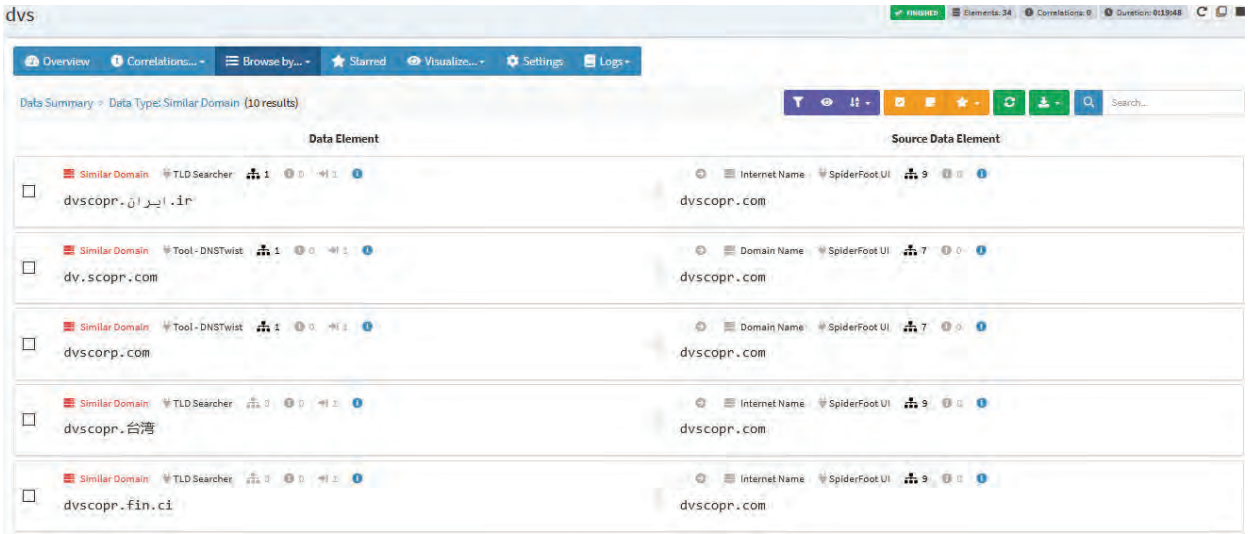


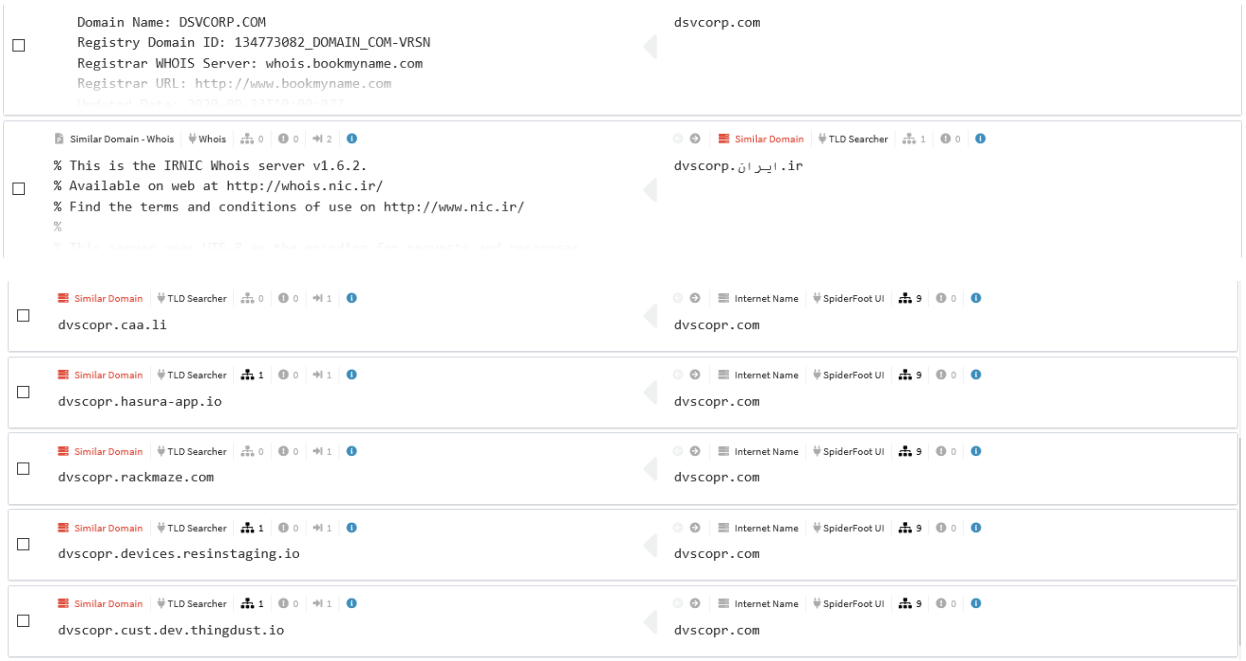
13. Each of the tabulation software companies have their own central reporting "affiliate". Edison Research is the affiliate for Dominion.

14. Beanfield.com out of Canada shows the connections via co-hosting related sites, including dvscorp.com:



This Dominion partner domain “dvscorp” also includes an auto discovery feature, where new in-network devices automatically connect to the system. The following diagram shows some of the related dvscopr.com mappings, which mimic the infrastructure for Dominion and are an obvious typo derivation of the name. Typo derivations are commonly purchased to catch redirect traffic and sometimes are used as honeypots. The diagram shows that infrastructure spans multiple different servers as a methodology.





The above diagram shows how these domains also show the connection to Iran and other places, including the following Chinese domain, highlighted below:



15. The auto discovery feature allows programmers to access any system while it is connected to the internet once it's a part of the constellation of devices (see original Spiderfoot graph).
16. Dominion Voting Systems Corporation in 2019 sold a number of their patents to China (via HSBC Bank in Canada):

Assignment details for assignee "HSBC BANK CANADA, AS COLLATERAL AGENT"

Assignments (1 total)

Assignment 1

Reel/frame	Execution date	Date recorded	Pages
050500/0236	Sep 25, 2019	Sep 26, 2019	7

Conveyance

SECURITY AGREEMENT

Assignors	Correspondent	Attorney docket
DOMINION VOTING SYSTEMS CORPORATION	CHAPMAN & CUTLER LLP 1270 AVENUE OF THE AMERICAS, 30TH FLOOR ATTN: SOREN SCHWARTZ NEW YORK, NY 10020	

Assignee

HSBC BANK CANADA, AS COLLATERAL AGENT

4TH FLOOR, 70 YORK STREET

TORONTO M5J 1S9

CANADA

Properties (18)

Patent	Publication	Application	PCT	International registration
8844813	20130306724	13476836		
8913787	20130301873	13470091		
9202113	20150071501	14539684		
8195505	20050247783	11121997		
9870666	20120232963	13463536		
9710988	20120259680	13525187		
9870667	20120259681	13525208		
7111782	20040238632	10811969		
7422151	20070012767	11526028		
D599131		29324281		

View all

This searchable database contains all recorded Patent Assignment information from August 1980 to the present.

When the USPTO receives relevant information for its assignment database, the USPTO puts the information in the public record and does not verify the validity of the information. Recordation is a ministerial function–the USPTO neither makes a determination of the legality of the transaction nor the right of the submitting party to take the action.

Release 2.0.0 | Release Notes | Send Feedback | Legacy Patent Assignment Search | Legacy Trademark Assignment Search

Of particular interest is a section of the document showing aspects of the nature of the patents dealing with authentication:



Patent assignment 050500/0236

SECURITY AGREEMENT

Date recorded	Reel/frame	Pages
Sep 26, 2019	050500/0236	7

Assignors
DOMINION VOTING SYSTEMS CORPORATION

Execution date
Sep 25, 2019

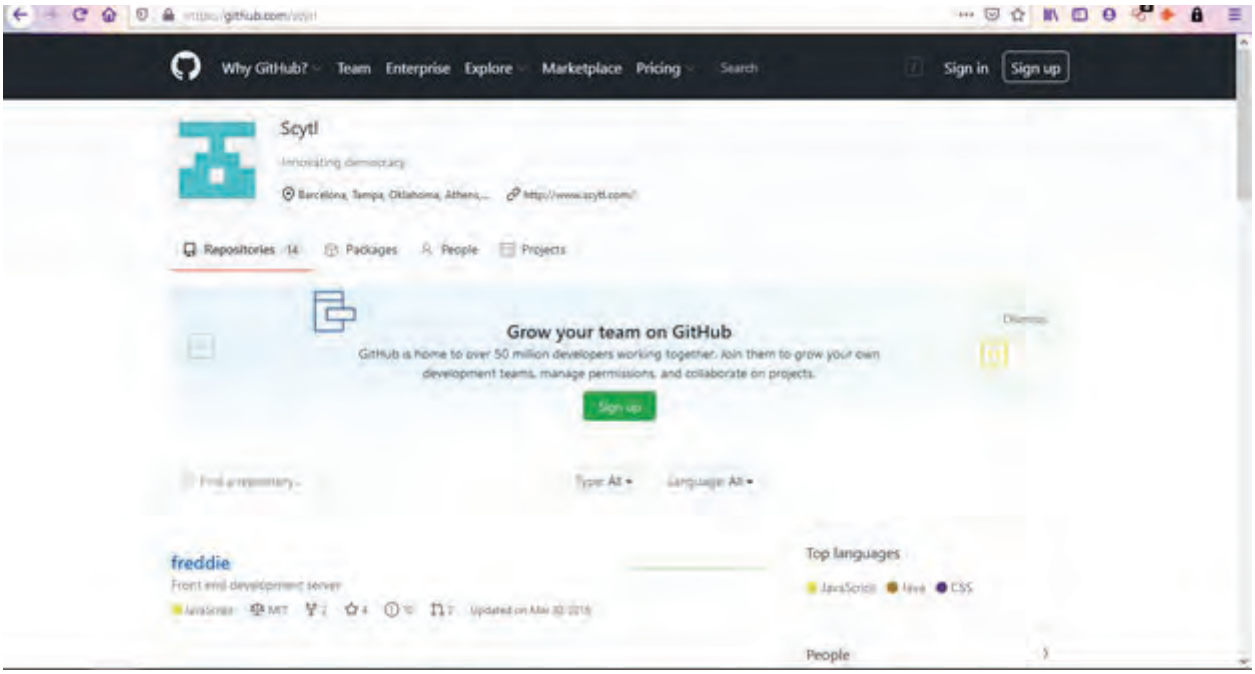
Assignee
HSBC BANK CANADA, AS COLLATERAL AGENT
4TH FLOOR, 70 YORK STREET
TORONTO M5J 1S9
CANADA

Correspondent
CHAPMAN & CUTLER LLP
1270 AVENUE OF THE AMERICAS, 30TH FLOOR
ATTN: SOREN SCHWARTZ
NEW YORK, NY 10020

Properties (18 total)

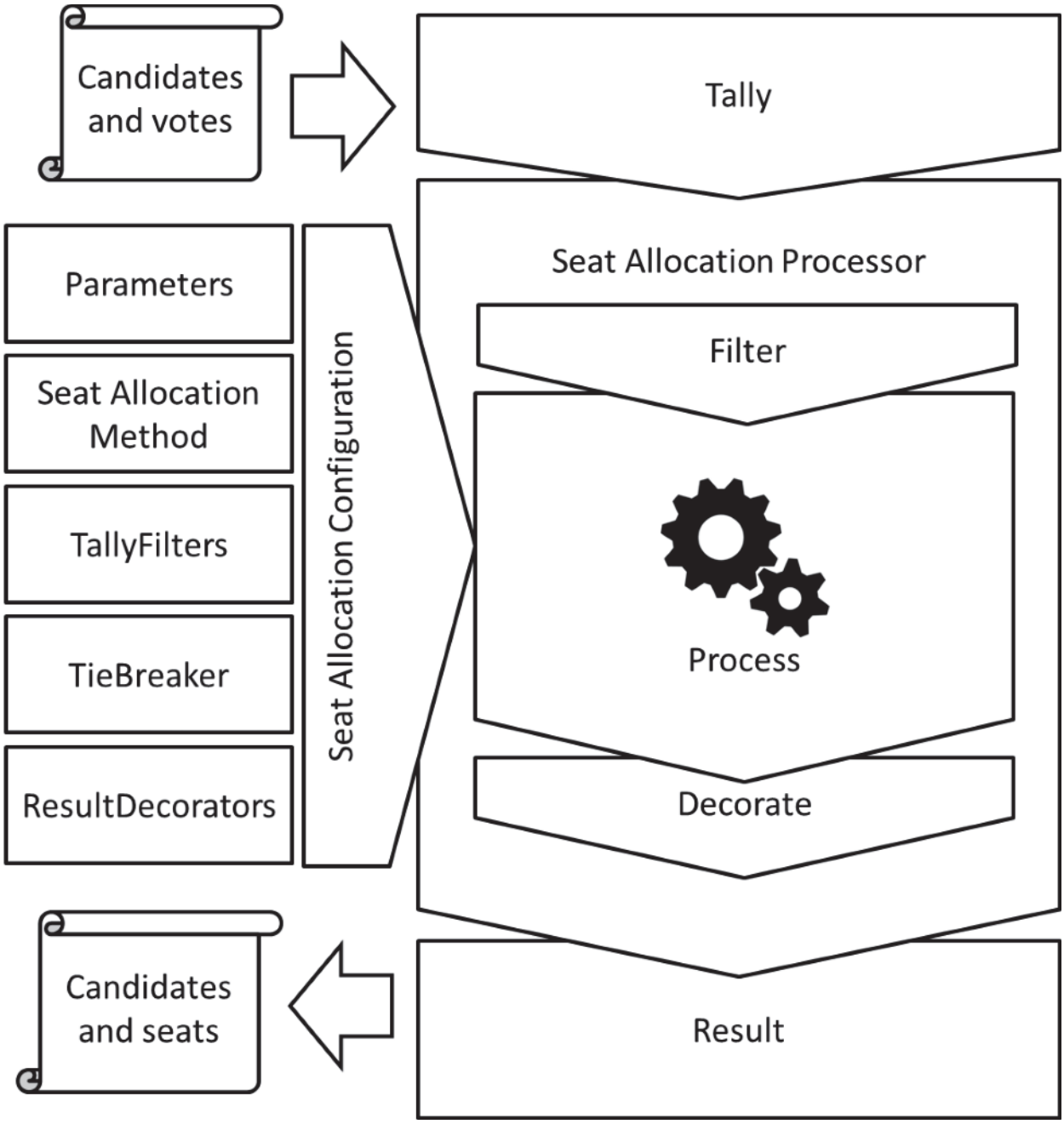
Patent	Publication	Application
1. SYSTEMS AND METHODS FOR PROVIDING SECURITY IN A VOTING MACHINE Inventors: JOHN PAUL HOMEWOOD, THOMAS E. KEELING, PAUL DAVID TERWILLIGER, MARC R. LATOUR		
7111782 Sep 26, 2006	20040238632 Dec 2, 2004	10811969 Mar 30, 2004
2. SYSTEM, METHOD AND COMPUTER PROGRAM FOR VOTE TABULATION WITH AN ELECTRONIC AUDIT TRAIL Inventors: JOHN POULOS, JAMES HOOVER, NICK IKONOMAKIS, GORAN OBRADOVIC		
8195505 Jun 5, 2012	20050247783 Nov 10, 2005	11121997 May 5, 2005
3. SYSTEMS AND METHODS FOR PROVIDING SECURITY IN A VOTING MACHINE Inventors: JOHN PAUL HOMEWOOD, THOMAS E. KEELING, PAUL DAVID TERWILLIGER, MARC R. LATOUR		
7422151 Sep 9, 2008	20070012767 Jan 18, 2007	11526028 Sep 25, 2006
4. BALLOT LEVEL SECURITY FEATURES FOR OPTICAL SCAN VOTING MACHINE CAPABLE OF BALLOT IMAGE PROCESSING, SECURE BALLOT PRINTING, AND BALLOT LAYOUT AUTHENTICATION AND VERIFICATION Inventors: ERIC COOMER, LARRY KORB, BRIAN GLENN LIERMAN		

17. Smartmatic creates the backbone (like the cloud). SCYTL is responsible for the security within the election system.

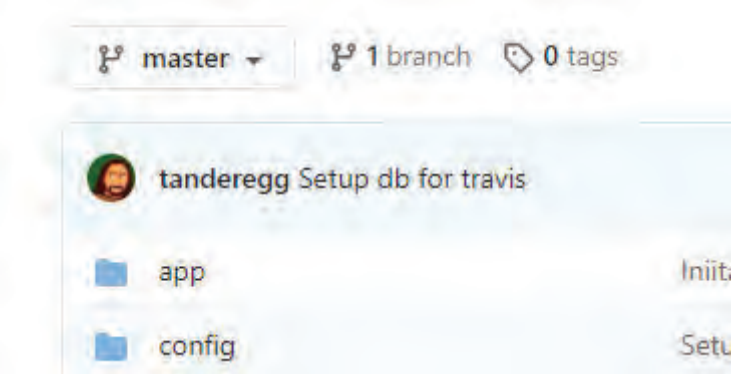




18. In the GitHub account for Scytl, Scytl Jseats has some of the programming necessary to support a much broader set of election types, including a decorator process where the data is smoothed, see the following diagram provided in their source code:



19. Unrelated, but also a point of interest is CTCL or Center for Tech and Civic Life funded by Mark Zuckerberg. Within their github page (https://github.com/ctcl), one of the programmers holds a government position. The Bipcoop repo shows tanderegg as one of the developers, and he works at the Consumer Financial Protection Bureau:





20. As seen in included document titled "AA20-304A-Iranian_Advanced_Persistent_Threat_Actor_Identified_Obtaining_Voter_Registration_Data " that was authored by the Cybersecurity & Infrastructure Security Agency (CISA) with a Product ID of AA20-304A on a specified date of October 30, 2020, CISA and the FBI reports that Iranian APT teams were seen using ACUTENIX, a website scanning software, to find vulnerabilities within Election company websites, confirmed to be used by the Iranian APT teams buy seized cloud storage that I had personally captured and reported to higher authorities. These scanning behaviors showed that foreign agents of aggressor nations had access to US voter lists, and had done so recently.
21. In my professional opinion, this affidavit presents unambiguous evidence that Dominion Voter Systems and Edison Research have been accessible and were certainly compromised by rogue actors, such as Iran and China. By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, these organizations neglectfully allowed foreign adversaries to access data

and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. This represents a complete failure of their duty to provide basic cyber security. This is not a technological issue, but rather a governance and basic security issue: if it is not corrected, future elections in the United States and beyond will not be secure and citizens will not have confidence in the results.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge. Executed this November 23th, 2020.



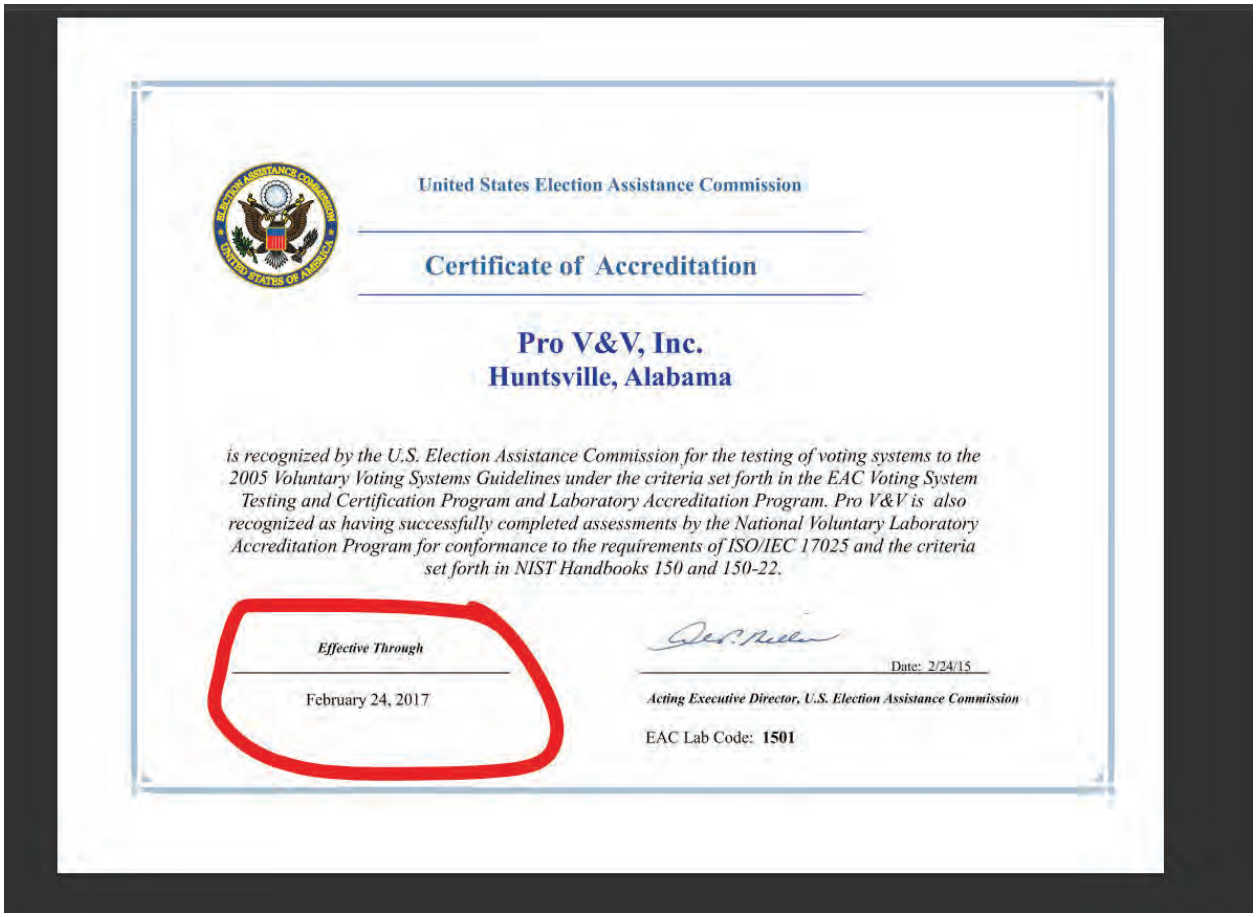
EXHIBIT 13

Declaration of [redacted]

Pursuant to 28 U.S.C Section 1746, I, [redacted], make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I have been a private contractor with experience gathering and analyzing foreign intelligence and acted as a LOCALIZER during the deployment of projects and operations both OCONUS and CONUS. I am a trained Cryptolinguist, hold a completed degree in Molecular and Cellular Physiology and have FORMAL training in other sciences such as Computational Linguistics, Game Theory, Algorithmic Aspects of Machine Learning, Predictive Analytics among others.
3. I have operational experience in sources and methods of implementing operations during elections both CONUS and OCONUS
4. I am an amateur network tracer and cryptographer and have over two decades of mathematical modeling and pattern analysis.
5. In my position from 1999-2014 I was responsible for delegating implementation via other contractors sub-contracting with US or 9 EYES agencies identifying connectivity, networking and subcontractors that would manage the micro operations.
6. My information is my personal knowledge and ability to detect relationships between the companies and validate that with the cryptographic knowledge I know and attest to as well as evidence of these relationships.
7. In addition, I am WELL versed due to my assignments during my time as a private contractor of how elections OCONUS (for countries I have had an assignment at) and CONUS (well versed in HAVA ACT) and more.
8. On or about October 2017 I had reached out to the US Senate Majority Leader with an affidavit claiming that our elections in 2017 may be null and void due to lack of EAC certifications. In fact Sen. Wyden sent a letter to Jack Cobb on 31 OCT 2017 advising discreetly pointing out the importance of being CERTIFIED EAC had issued a certificate to

Pro V & V and that expired on Feb 24, 2017. No other certification has been located.



United States Election Assistance Commission

Certificate of Accreditation

Pro V&V, Inc.
Huntsville, Alabama

is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2005 Voluntary Voting Systems Guidelines under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. Pro V&V is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.

Effective Through

February 24, 2017

Date: 2/24/15

Acting Executive Director, U.S. Election Assistance Commission

EAC Lab Code: **1501**

9. Section 231(b) of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. §15371(b)) requires that the EAC provide for the accreditation and revocation of accreditation of independent, non-federal laboratories qualified to test voting systems to Federal standards. Generally, the EAC considers for accreditation those laboratories evaluated and recommended by the National Institute of Standards and Technology (NIST) pursuant to HAVA Section 231(b)(1). However, consistent with HAVA Section 231(b)(2)(B), the Commission may also vote to accredit laboratories outside of those recommended by NIST upon publication of an explanation of the reason for any such accreditation.

10. 

United States Department of Commerce
National Institute of Standards and Technology

NVLAP®

Certificate of Accreditation to ISO/IEC 17025:2017

NVLAP LAB CODE: 200978-0

Pro V&V
Huntsville, AL

is accredited by the National Voluntary Laboratory Accreditation Program for specific services, listed on the Scope of Accreditation, for:

Voting System Testing

This laboratory is accredited in accordance with the recognized International Standard ISO/IEC 17025:2017. This accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality management system (refer to joint ISO-ILAC-IAF Communique dated January 2009).

2020-03-26 through 2021-03-31
Effective Dates

For the National Voluntary Laboratory Accreditation Program

11. VSTL's are VERY important because equipment vulnerabilities allow for deployment of algorithms and scripts to intercept, alter and adjust voting tallies.
12. There are only TWO accredited VSTLs (VOTING SYSTEM TEST LABORATORIES). In order to meet its statutory requirements under HAVA §15371(b), the EAC has developed the EAC's Voting System Test Laboratory Accreditation Program. The procedural requirements of the program are established in the proposed information collection, the EAC **Voting System Test Laboratory Accreditation Program Manual**. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual will supersede any prior laboratory accreditation requirements issued by the EAC. This manual shall be read in conjunction with the EAC's **Voting System Testing and Certification Program Manual** (OMB 3265-0019).

U.S. Election Assistance Commission

MICHIGAN

State Participation:	**Requires Testing by an Independent Testing Authority.** MI requires that voting systems are certified by an independent testing authority accredited by NASED and the board of state canvassers.
Applicable Statute(s):	"An electronic voting system shall not be used in an election unless it is approved by the board of state canvassers … and unless it meets 1 of the following conditions: (a) Is certified by an independent testing authority accredited by the national association of state election directors and by the board of state canvassers. (b) In the absence of an accredited independent testing authority, is certified by the manufacturer of the voting system as meeting or exceeding the performance and test standards referenced in subdivision (a) in a manner prescribed by the board of state canvassers." MICH. COMP. LAWS ANN § 168.795a (2009).
Applicable Regulation(s):	MI does not have a regulation regarding the federal certification process.
State Certification Process:	The Secretary of State accepts requests from persons/corporations wishing to have their voting system examined. The requestor must pay the Secretary of State an application fee of $1,500.00, file a report listing all of the states in which the voting system has been approved and any reports that these states have made regarding the performance of the voting system. The Board of State Canvassers conducts a field test involving Michigan electors and election officials in simulated election day conditions. The Board of State Canvassers shall approve the voting system if it meets all of the state requirements. MICH. COMP. LAWS ANN § 168.795a (2009).
Fielded Voting Systems:	*[After the EAC completes and issues the 2008 Election Administration and Voting Survey, information about fielded voting systems will be added to this document. In the meantime, readers may find information on the voting systems at the following website (if available)].* http://www.michigan.gov/sos/0,1607,7-127-1633_8716_45458---,00.html

State Participation in EAC Voting System Certification Program 30

13.

WISCONSIN

State Participation:

Requires Testing by a Federally Accredited Laboratory. WI requires that its voting systems receive approval from an independent testing authority accredited by NASED verifying that the voting systems meet all of the recommended FEC standards.

Applicable Statute(s):

"No ballot, voting device, automatic tabulating equipment or relating equipment and materials to be used in an electronic voting system may be utilized in this state unless it is approved by the board [of election commissioners]." WIS. STAT.ANN. § 5.91 (West 2009).

Applicable Regulation(s):

"An application for approval of an electronic voting system shall be accompanied by all of the following … [r]eports from an independent testing authority accredited by the national association of state election directors (NASED) demonstrating that the voting system conforms to all the standards recommended by the federal elections commission." WIS. ADMIN. CODE GAB § 7.01 (2009).

State Certification Process:

The Board of Election Commissioners accepts applications for the approval of electronic voting systems. Once the application is completed, the vendor must set up the voting system for three mock elections using; (1) offices, (2) referenda questions and (3) candidates. A panel of local election officials can assist the Board in the review of the voting system. The Board conducts the test using a mock election for the partisan primary, general election, and nonpartisan election. The Board may also require that the voting system be used in an actual election as a condition of the approval. WIS. ADMIN. CODE GAB §§ 7.01, 7.02 (2009).

Fielded Voting Systems:

[After the EAC completes and issues the 2008 Election Administration and Voting Survey, information about fielded voting systems will be added to this document. In the meantime, readers may find information on the voting systems at the following website (if available)].
http://elections.state.wi.us/section.asp?linkid=643&locid=47

14.

U.S. Election Assistance Commission

GEORGIA

State Participation:	**Requires Federal Certification.** GA requires that its voting systems are tested to EAC standards by EAC accredited labs and certified by the EAC.
Applicable Statute(s):	"Any person or organization owning, manufacturing, or selling, or being interested in the manufacture or sale of, any voting machine may request the Secretary of State to examine the machine. Any ten or more electors of this state may, at any time, request the Secretary of State to reexamine any voting machine previously examined and approved by him or her. Before any such examination or reexamination, the person, persons, or organization requesting such examination or reexamination shall pay to the Secretary of State the reasonable expenses of such examination; provided, however, that in the case of a request by ten or more electors the examination fee shall be $ 250.00. The Secretary of State may, at any time, in his or her discretion, reexamine any voting machine." GA CODE ANN. § 21-2-324 (2008).
Applicable Regulation(s):	"Prior to submitting a voting system for certification by the State of Georgia, the proposed voting system's hardware, firmware, and software must have been issued Qualification Certificates from the EAC. These EAC Qualification Certificates must indicate that the proposed voting system has successfully completed the EAC Qualification testing administered by EAC approved ITAs. If for any reason, this level of testing is not available, the Qualification tests shall be conducted by an agency designated by the Secretary of State. In either event, the Qualification tests shall comply with the specifications of the *Voting Systems Standards* published by the EAC." GA. COMP. R. & RES. 590-8-1-.01 (2009).
State Certification Process:	After the voting system has passed EAC Qualification testing, the vendor of the voting system submits a letter to the Office of the Secretary of State requesting certification for the voting system along with a technical data package to the certification agent. An evaluation proposal is created by the certification agent after a preliminary view of the Technical Data Package and sent to the vendor. Any additional EAC ITA testing identified in the evaluation proposal is arranged by the vendor and the certification agent will perform all other tests identified in the evaluation proposal. The certification agent submits a report of their findings to the Secretary of State. Based on these findings the Secretary of State will make a final determination on whether to certify the voting system. GA. COMP. R. & RES. 590-8-1-.01 (2009).
Fielded Voting Systems:	*[After the EAC completes and issues the 2008 Election Administration and Voting Survey, information about fielded voting systems will be added to this document. In the meantime, readers may find information on the voting systems at the following website (if available)].* http://www.sos.georgia.gov/Elections/

State Participation in EAC Voting System Certification Program 17

15.

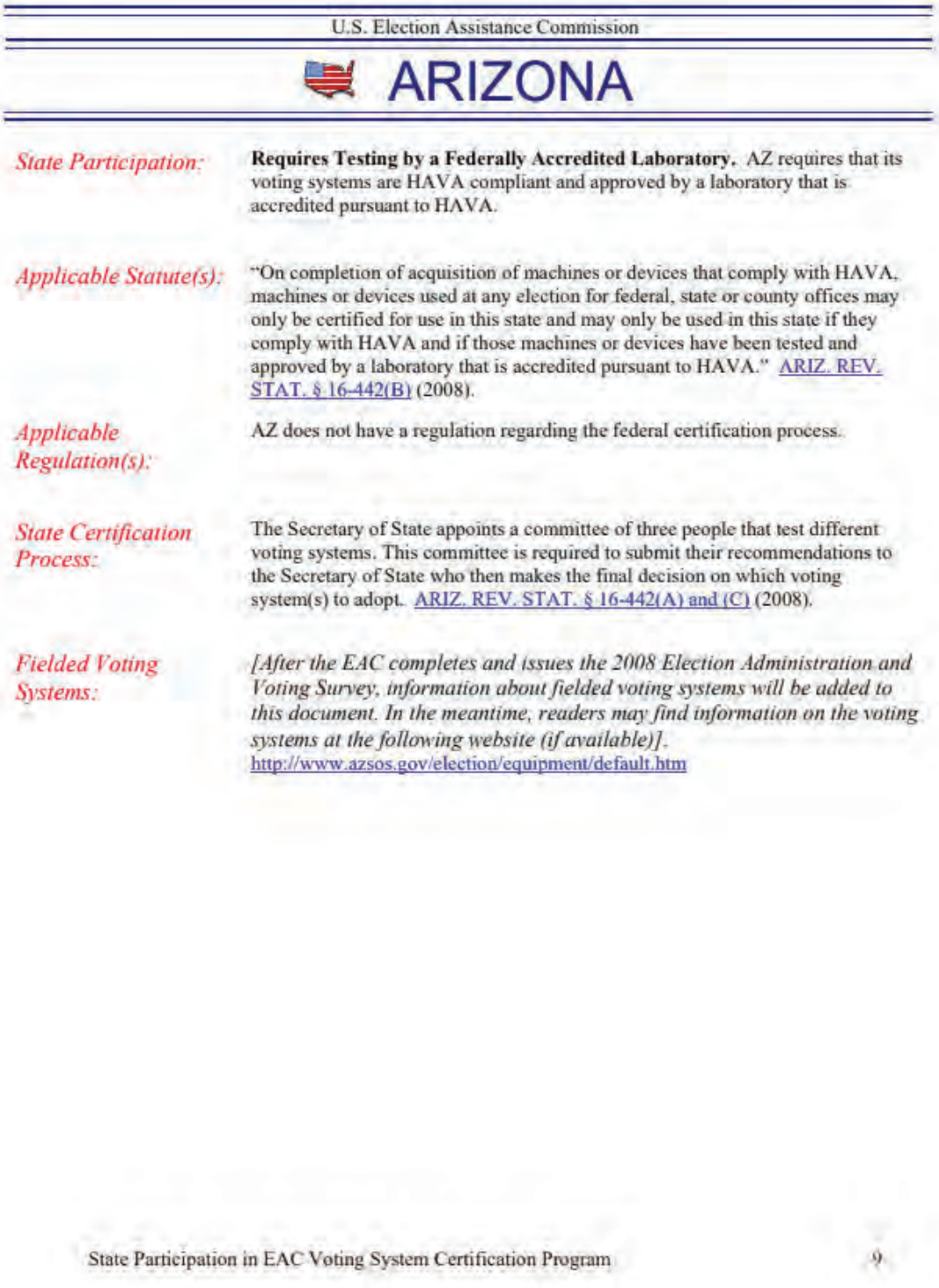
U.S. Election Assistance Commission

PENNSYVANIA

State Participation:	**Requires Testing by a Federally Accredited Laboratory.** PA requires that its voting systems are approved by a federally recognized independent testing laboratory as meeting federal voting system standards.
Applicable Statute(s):	"Any person or corporation owning, manufacturing or selling, or being interested in the manufacture or sale of, any electronic voting system, may request the Secretary of the Commonwealth to examine such system if the voting system has been examined and approved by a federally recognized independent testing authority and if it meets any voting system performance and test standards established by the Federal Government." 25 PA. CONS. STAT. ANN. Code § 3031.5 (West 2008).
Applicable Regulation(s):	PA does not have a regulation regarding the federal certification process.
State Certification Process:	The Secretary of State examines voting systems, upon request, once the voting systems have received approval by a federally recognized independent testing authority. The person(s) requesting the examination of the voting system are responsible for the cost of the examination. After the examination, the Secretary of State issues a report stating whether or not the voting systems are safe and compliant with state and federal requirements. If the voting systems are deemed safe and compliant by the Secretary of State then the systems may be adopted and approved for use in elections by each county through a majority vote of its qualified electors. 25 PA. CONS. STAT. ANN. Code §§ 3031.5, 3031.2 (West 2008).
Fielded Voting Systems:	*[After the EAC completes and issues the 2008 Election Administration and Voting Survey, information about fielded voting systems will be added to this document. In the meantime, readers may find information on the voting systems at the following website (if available)].* http://www.votespa.com/HowtoVote/tabid/74/language/en-US/Default.aspx

State Participation in EAC Voting System Certification Program 46

16.



U.S. Election Assistance Commission

ARIZONA

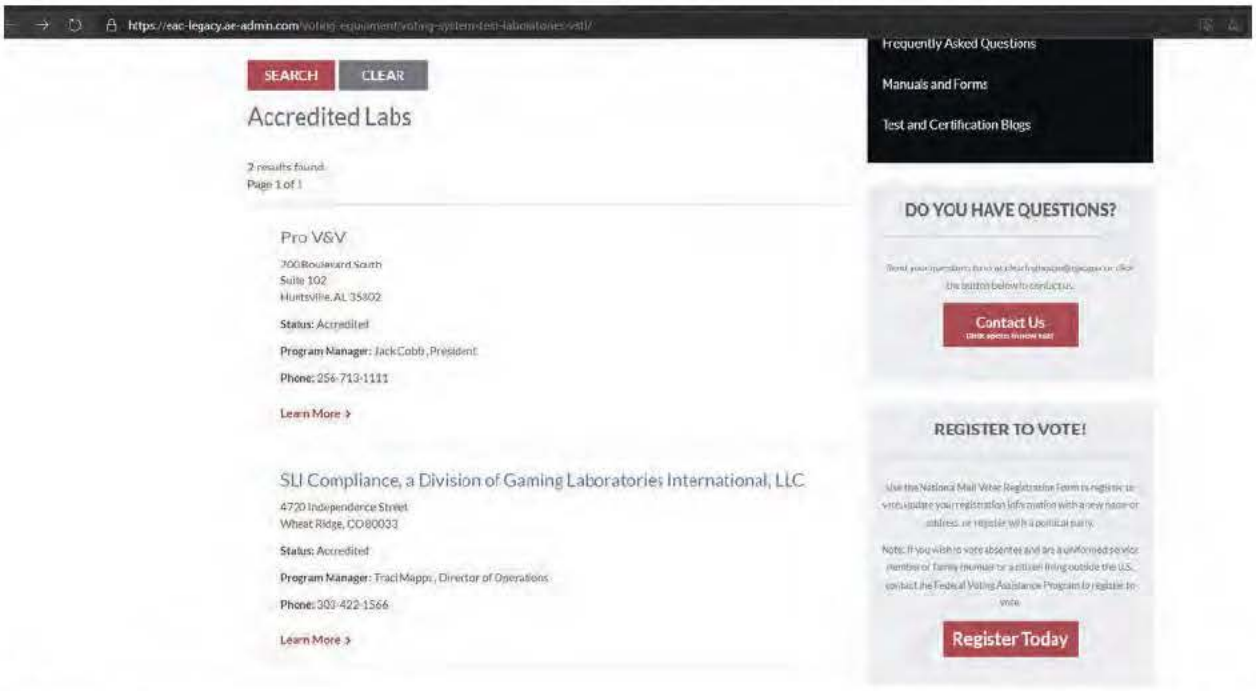
State Participation:	**Requires Testing by a Federally Accredited Laboratory.** AZ requires that its voting systems are HAVA compliant and approved by a laboratory that is accredited pursuant to HAVA.
Applicable Statute(s):	"On completion of acquisition of machines or devices that comply with HAVA, machines or devices used at any election for federal, state or county offices may only be certified for use in this state and may only be used in this state if they comply with HAVA and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to HAVA." ARIZ. REV. STAT. § 16-442(B) (2008).
Applicable Regulation(s):	AZ does not have a regulation regarding the federal certification process.
State Certification Process:	The Secretary of State appoints a committee of three people that test different voting systems. This committee is required to submit their recommendations to the Secretary of State who then makes the final decision on which voting system(s) to adopt. ARIZ. REV. STAT. § 16-442(A) and (C) (2008).
Fielded Voting Systems:	*[After the EAC completes and issues the 2008 Election Administration and Voting Survey, information about fielded voting systems will be added to this document. In the meantime, readers may find information on the voting systems at the following website (if available)].* http://www.azsos.gov/election/equipment/default.htm

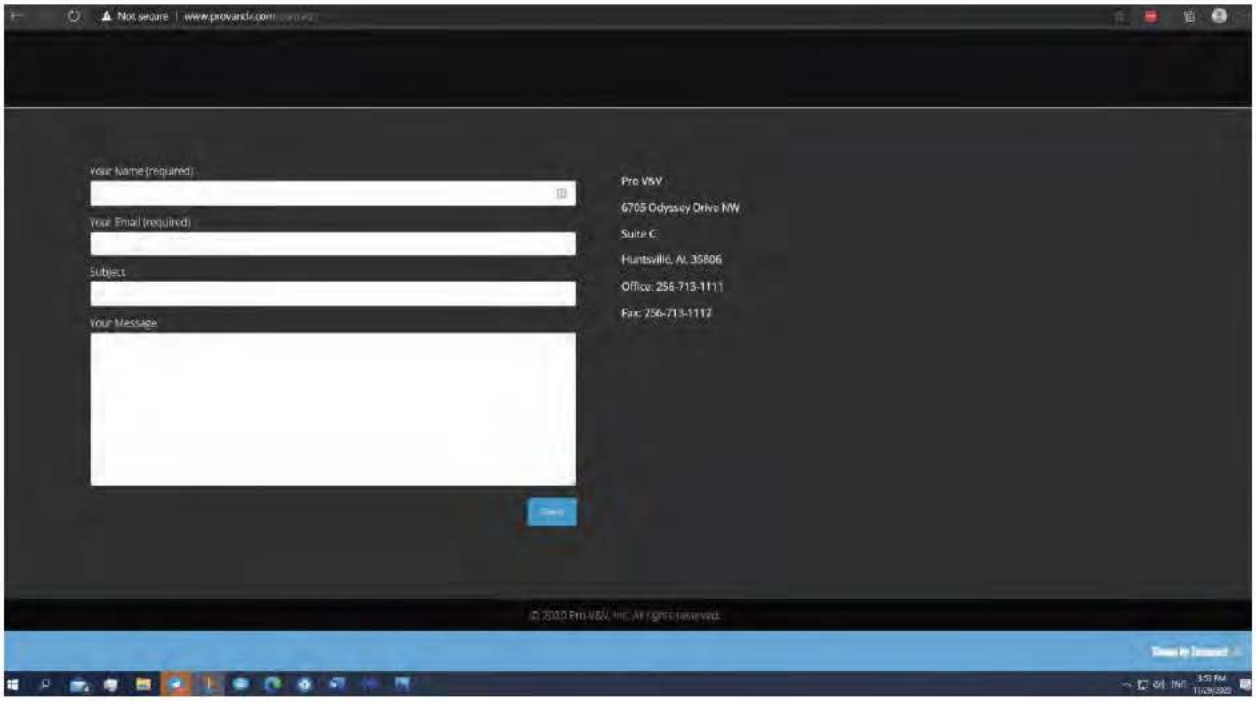
State Participation in EAC Voting System Certification Program 9

17.

18. **Pro V& V** and **SLI Gaming** both lack evidence of EAC Accreditation as per the Voting System Testing and Certification Manual.

19. **Pro V& V** is owned and Operated by Jack Cobb. Real name is Ryan Jackson Cobb. The company ProV&V was founded and run by Jack Cobb who formerly worked under the entity of Wyle Laboratories which is an AEROSPACE DEFENSE CONTRACTING ENTITY. The address information on the EAC, NIST and other entities for Pro V& V are different than that of what is on ProV&V website. The EAC and NIST (ISO CERT) issuers all have another address.





20. VSTLs are the most important component of the election machines as they examine the use of COTS (Commercial Off–The-Shelf)
21. "Wyle became involved with the testing of electronic voting systems in the early 1990's and has tested over 150 separate voting systems. Wyle was the first company to obtain accreditation by the National Association of State Election Directors (NASED). Wyle is accredited by the Election Assistance Commission (EAC) as a Voting System Testing Laboratory (VSTL). Our scope of accreditation as a VSTL encompasses all aspects of the hardware and software of a voting machine. Wyle also received NVLAP accreditation to ISO/IEC 17025:2005 from NIST." Testimony of Jack Cobb 2009
22. COTS are preferred by many because they have been tried and tested in the open market and are most economic and readily available. COTS are also the SOURCE of vulnerability therefore VSTLs are VERY important. COTS components by voting system machine manufacturers can be used as a "Black Box" and changes to their specs and hardware make up change continuously. Some changes can be simple upgrades to make them more efficient in operation, cost efficient for production, end of life (EOL) and even complete reworks to meet new standards. They key issue in this is that MOST of the COTS used by Election Machine Vendors like Dominion, ES&S, Hart Intercivic, Smartmatic and others is that such manufacturing for COTS have been outsourced to China which if implemented in our Election Machines make us vulnerable to BLACK BOX antics and backdoors due to hardware changes that can go undetected. This is why VSTL's are VERY important.
23. The proprietary voting system software is done so and created with cost efficiency in mind and therefore relies on 3rd party software that is AVAILABLE and HOUSED on the HARDWARE. This is a vulnerability. Exporting system reporting using software like Crystal Reports, or PDF software allows for vulnerabilities with their constant updates.
24. As per the COTS hardware components that are fixed, and origin may be cloaked under proprietary information a major vulnerability exists since once again third-party support software is dynamic and requires FREQUENT updates. The hardware components of the computer components, and election machines that are COTS may have slight updates that can be overlooked as they may be like those designed that support the other third -party software. COTS origin is important and the US Intelligence Community report in 2018 verifies that.
25. The Trump Administration made it clear that there is an absence of a major U.S. alternative to foreign suppliers of networking equipment. This highlights the growing dominance of

Chinese manufacturers like Huawei that are the world's LARGEST supplier of telecom and other equipment that endangers national security.

26. China, is not the only nation involved in COTS provided to election machines or the networking but so is Germany via a LAOS founded Chinese linked cloud service company that works with SCYTL named Akamai Technologies that have offices in China and are linked to the server that Dominion Software.

28 046 Madrid

Asian offices

Akamai Technologies - India
111, Brigade Court
Koramangala Industrial Area
Bangalore 560 095, India
Telephone: 91-80-575-99222
Fax: 91-80-575-99209
Regional Manager: Stuart Spiteri

Akamai Technologies - China
Suite 1560, 15th Floor
NCI Tower
12A Jianguomenwai Avenue
Chaoyang District,
Beijing 100022
China
Telephone: 86-10-8523-3097
Fax: 86-10-8523-3001
Regional Manager: Stuart Spiteri

Akamai Japan K.K.
The Executive Centre Japan K.K.
15F Tokyo Ginko Kyokai building
1-3-1 Marunouchi, Chiyoda-ku, Tokyo 100-0005
Telephone: 81-3-3216-7200 (Centre)
81-3-3216-7300 (Akamai direct)
Fax: 81-3-3216-7390 (Centre)
Regional Manager: Stuart Spiteri

Akamai Technologies - Singapore
Akamai, Regus Centre, 36-01 UOB Plaza 1
80 Raffles Place
Singapore 048624
Driving directions
Telephone: +65 6248 4614
Fax: +65 6248-4501
Regional Manager: Stuart Spiteri

Akamai Technologies - Australia and New Zealand
201 Sussex St
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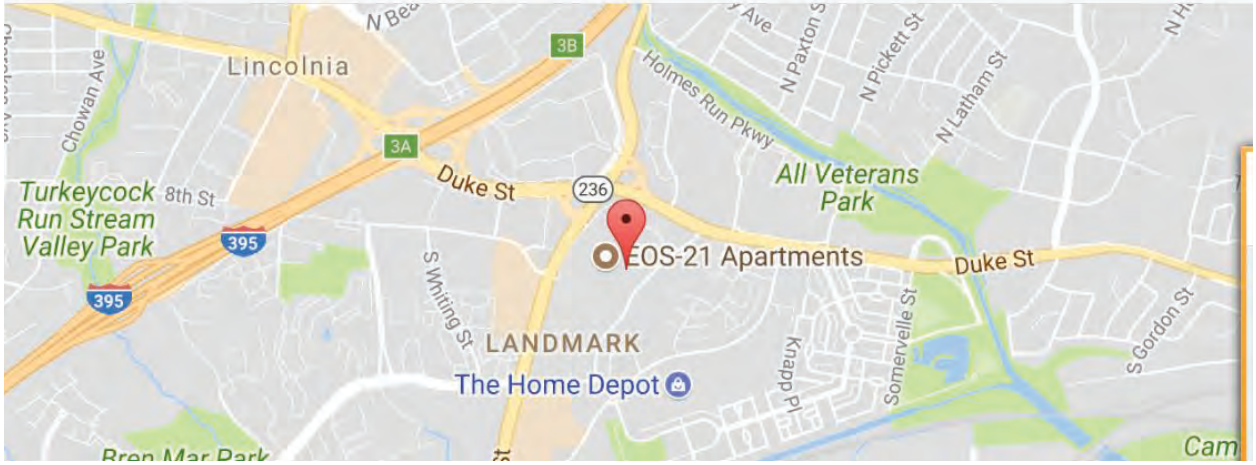
Sydney, NSW 2000, Australia
info@au.akamai.com
Telephone: 61 2 9006 1325
Fax: 61 2 9475 0343
Regional Manager: Stuart Spiteri

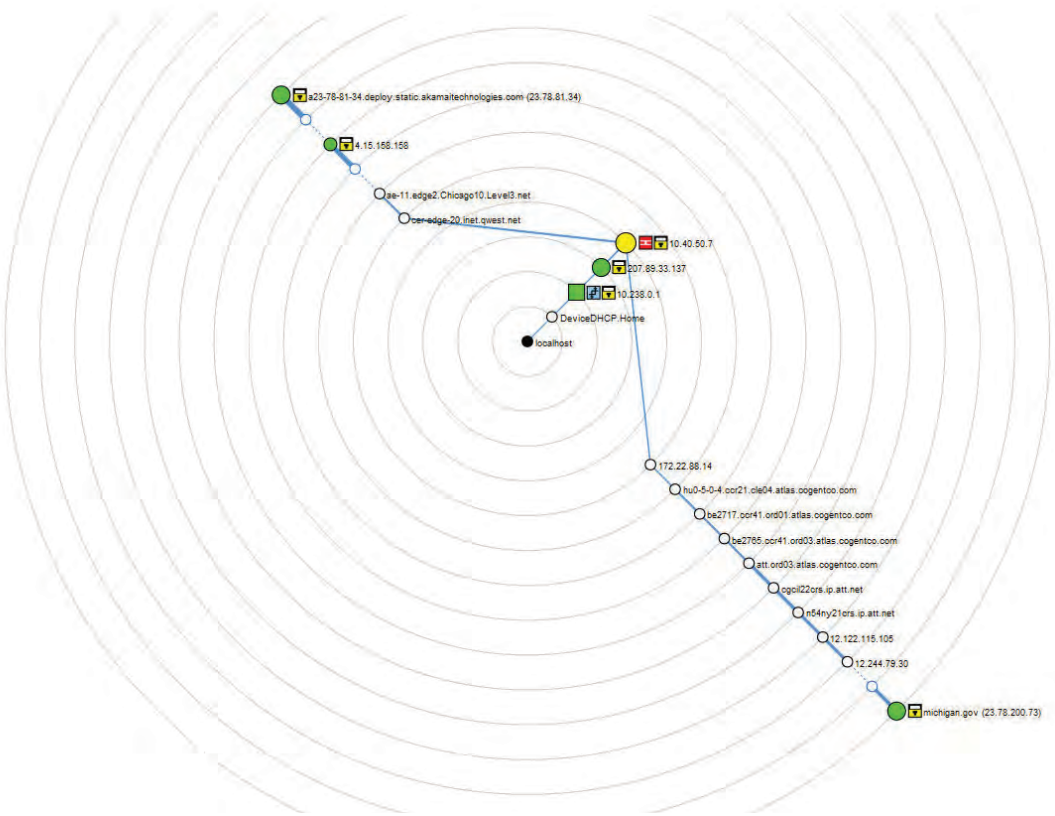
ptt.gov resolves to 4.30.228.74. According to our data this IP address belongs to *Level 3 Communications* and is located in *Alexandria, Virginia, United States*. Please have a look at the information provided below for further details.

4.30.228.74	
ISP/Organization	Level 3 Communications
Location	Alexandria 22304, Virginia (VA), United States (US)
Latitude	38.8115 / 38°48'41" N
Longitude	-77.1285 / 77°7'42" W
Timezone	America/New_York
Local Time	Thu, 12 Jul 2018 19:27:40 -0400

27. 

28. L3 Level Communications is federal contractor that is partially owned by foreign lobbyist George Soros. An article that AP ran in 2010 – spoke out about the controversy of this that has been removed. (LINK) "As for the company's other political connections, it also appears that none other than George Soros, the billionaire funder of the country's liberal political infrastructure, owns 11,300 shares of OSI Systems Inc., the company that owns Rapiscan. Not surprisingly, OSI's stock has appreciated considerably over the course of the year. Soros certainly is a savvy investor." Washington Examiner re-write.

29.


a23-78-81-34.deploy.static.akamaitechnologies.com (23.78.81.34)
4.15.156.156
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cer-edge-20.inet.qwest.net
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10.238.0.1
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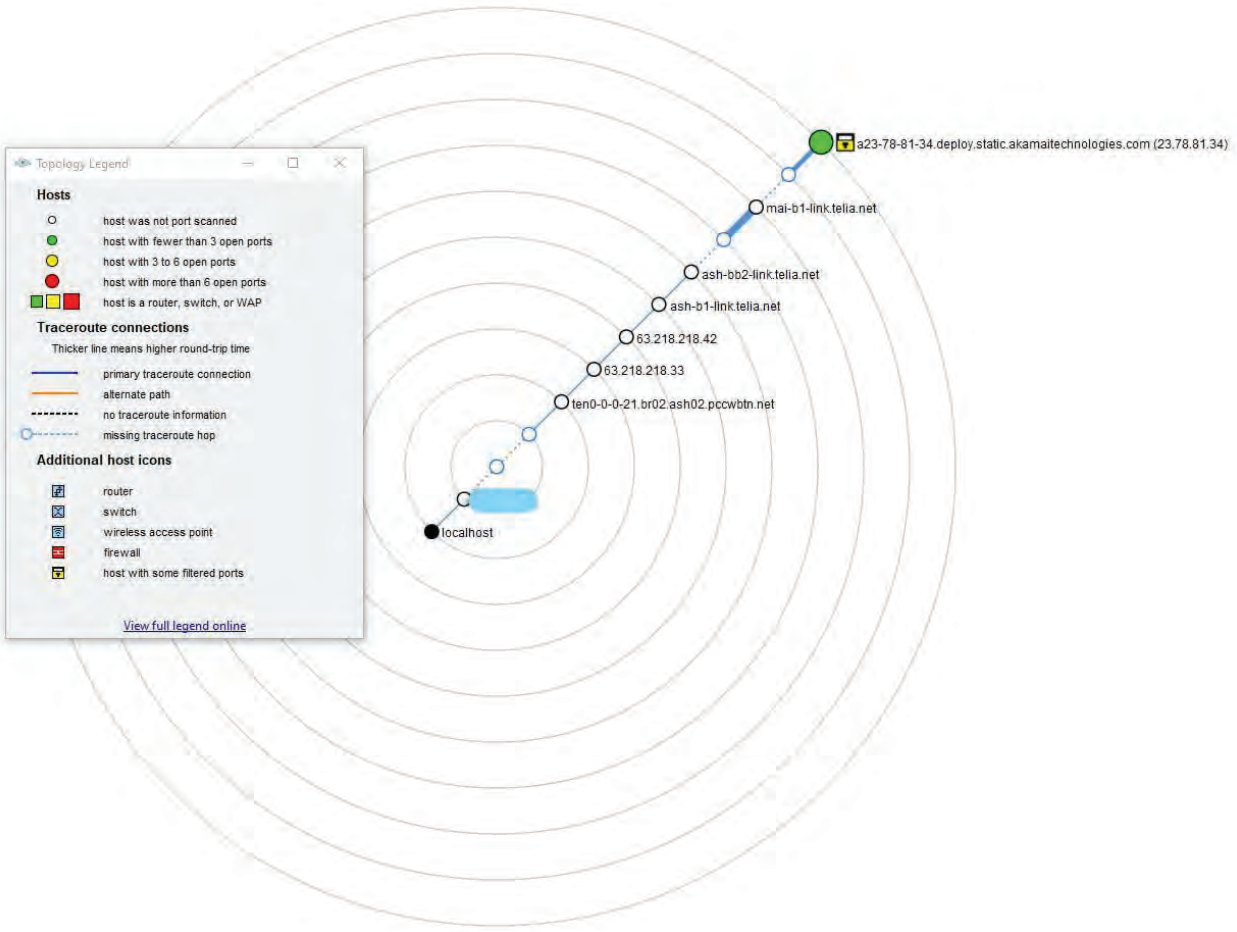
michigan.gov (23.78.200.73)



30.

31. **L-3 Communication** Systems-East designs, develops, produces and integrates communication systems and support equipment for space, air, ground, and naval applications, including C4I systems and products; integrated Navy communication systems; integrated space communications and RF payloads; recording systems; secure communications, and information security systems. In addition, their site claims that MARCOM is an integrated communications system and The Marcom® is the foundation of the Navy's newest digital integrated voice / data switching system for affordable command and control equipment supporting communications and radio room automation. The MarCom® uses the latest **COTS** digital technology and open systems standards to offer the command and control user a low cost, user friendly, solution to the complex voice, video and data communications needs of present and future joint / allied missions. Built in reliability, rugged construction, and fail-safe circuits ensure your call and messages will go through. Evidently a HUGE vulnerability.

32. Michigan's government site is thumped off Akamai Technologies servers which are housed on **TELIA AB** a foreign server located in Germany.
33. Scytl, who is contracted with AP that receives the results tallied BY Scytl on behalf of Dominion – During the elections the AP reporting site had a disclaimer.
    AP – powered by SCYTL.



Advertisements

Geolocation on IP Map

Basic Tracking Info

Domain:	Michigan.gov [Whois Lookup - Domain Country - Domain To IP]
IP Address:	23.78.81.34 [IP Blacklist Check]
Reverse DNS:	34.81.78.23.in-addr.arpa
Hostname:	a23-78-81-34.deploy.static.akamaitechnologies.com
Nameservers:	a12-67.akam.net >> 184.26.160.67 a11-66.akam.net >> 84.53.139.66 a1-35.akam.net >> 193.108.91.35 a5-66.akam.net >> 95.100.168.66 a18-64.akam.net >> 95.101.36.64 a24-65.akam.net >> 2.16.130.65

Location For an IP: Michigan.gov

Continent:	North America (NA)
Country:	United States (US)
Capital:	Washington
State:	Unknown
City Location:	Unknown
ISP:	Akamai Technologies
Organization:	Akamai Technologies
AS Number:	AS1299 Telia Company AB
something went wrong!	something went wrong!
Time Zone:	America/North_Dakota/Center
Local Time:	13:48:46
Timezone GMT offset:	-21600
Sunrise / Sunset:	07:27 / 17:12

Extra Information for an IP: Michigan.gov

Continent Lat/Lon:	46.07305 / -100.546
Country Lat/Lon:	38 / -98
City Lat/Lon:	(37.751) / (-97.822)
IP Language:	English

34. "Scytl was selected by the Federal Voting Assistance Program of the U.S. Department of Defense to provide a secure online ballot delivery and onscreen marking systems under a program to support overseas military and civilian voters for the 2010 election cycle and beyond. Scytl was awarded 9 of the 20 States that agreed to participate in the program (New York, Washington, Missouri, Nebraska, Kansas, New Mexico, South Carolina, Mississippi and Indiana), making it the provider with the highest number of participating States." PDF
35. According to DOMINION : 1.4.1Software and Firmware The software and firmware employed by Dominion D-Suite 5.5-Aconsists of 2 types, custom and commercial off the shelf (COTS). COTS applications were verified to be pristine or were subjected to source code review for analysis of any modifications and verification of meeting the pertinent standards.
36. The concern is the HARDWARE and the NON – ACCREDITED VSTLs as by their own admittance use COTS.
37. The purpose of VSTL's being accredited and their importance in ensuring that there is no foreign interference/ bad actors accessing the tally data via backdoors in equipment software. The core software used by ALL SCYTL related Election Machine/Software manufacturers ensures "anonymity" .
38. Algorithms within the area of this "shuffling" to maintain anonymity allows for setting values to achieve a desired goal under the guise of "encryption" in the trap-door.
39. The actual use of trapdoor commitments in Bayer-Groth proofs demonstrate the implications for the verifiability factor. This means that no one can SEE what is going on during the process of the "shuffling" therefore even if you deploy an algorithms or manual scripts to fractionalize or distribute pooled votes to achieve the outcome you wish – you cannot prove they are doing it! See STUDY : "The use of trapdoor commitments in Bayer-Groth proofs and the implications for the verifiability of the Scytl-SwissPost Internet voting system"
40. **Key Terms**
41. **UNIVERSAL VERIFIABILITY**: Votes cast are the votes counted and integrity of the vote is verifiable (the vote was tallied for the candidate selected) . **SCYTL FAILS UNIVERSAL VERIFIABILITY** because no mathematical proofs can determine if any votes have been manipulated.
42. **INDIVIDUAL VERIFIABILITY**: Voter cannot verify if their ballot got correctly counted. Like, if they cast a vote for ABC they want to verify it was ABC. That notion clearly discounts the need for anonymity in the first place.

43. To understand what I observed during the 2020 I will walk you through the process of one ballot cast by a voter.
44. STEP 1 |Config Data | All non e-voting data is sent to Scytl (offshore) for configuration of data. All e-voting is sent to CONFIGURATION OF DATA then back to the e-voting machine and then to the next phase called CLEANSING. **CONCERNS**: Here we see an "OR PROOF" as coined by mathematicians – an "or proof" is that votes that have been pre-tallied parked in the system and the algorithm then goes back to set the outcome it is set for and seeks to make adjustments if there is a partial pivot present causing it to fail demanding manual changes such as block allocation and narrowing of parameters or self-adjusts to ensure the predetermined outcome is achieved.
45. STEP 2|CLEANSING | The Process is when all the votes come in from the software run by Dominion and get "cleansed" and put into 2 categories: invalid votes and valid votes.
46. STEP 3|Shuffling /Mixing | This step is the most nefarious and exactly where the issues arise and carry over into the decryption phase. Simply put, the software takes all the votes, literally mixes them a and then re-encrypts them. This is where if ONE had the commitment key- TRAPDOOR KEY – one would be able to see the parameters of the algorithm deployed as the votes go into this mixing phase, and how algorithm redistributes the votes.
47. This published PAPER FROM University College London depicts how this shuffle works. In essence, when this mixing/shuffling occurs, then one doesn't have the ability to know that vote coming out on the other end is actually their vote; therefore, ZERO integrity of the votes when mixed.

48.

Background - ElGamal encryption

- Setup: Group $\mathcal{G}$ of prime order q with generator g
- Public key: $pk = y = g^x$
- Encryption: $\mathcal{E}_{pk}(m; r) = (g^r, y^r m)$
- Decryption: $\mathcal{D}_x(u, v) = vu^{-x}$
- Homomorphic:

$$\mathcal{E}_{pk}(m; r) \times \mathcal{E}_{pk}(M; R) = \mathcal{E}_{pk}(mM; r + R)$$

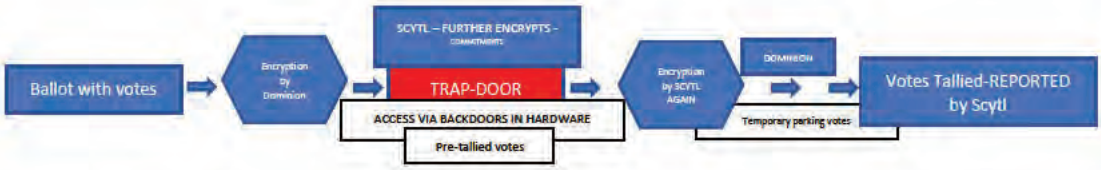
- Re-encryption:

$$\mathcal{E}_{pk}(m; r) \times \mathcal{E}_{pk}(1; R) = \mathcal{E}_{pk}(m; r + R)$$

UCL

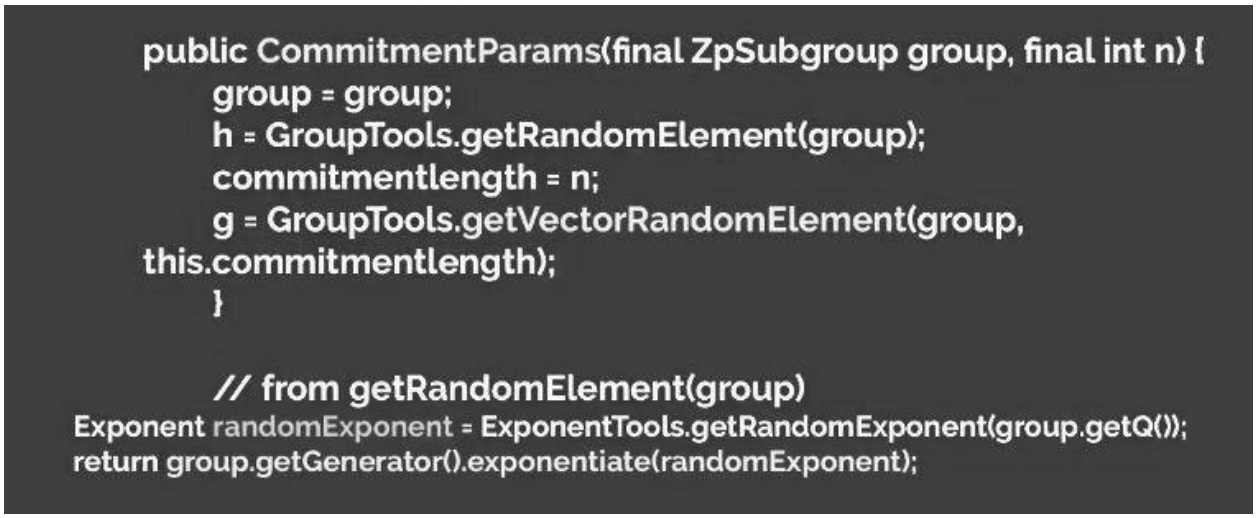
49. When this mixing/shuffling occurs, then one doesn't have the ability to know that vote coming out on the other end is actually their vote; therefore, ZERO integrity of the votes.
50. When the votes are sent to Scytl via Dominion Software EMS (Election Management System) the Trap Door is accessed by Scytl or TRAP DOOR keys (Commitment Parameters).

51.



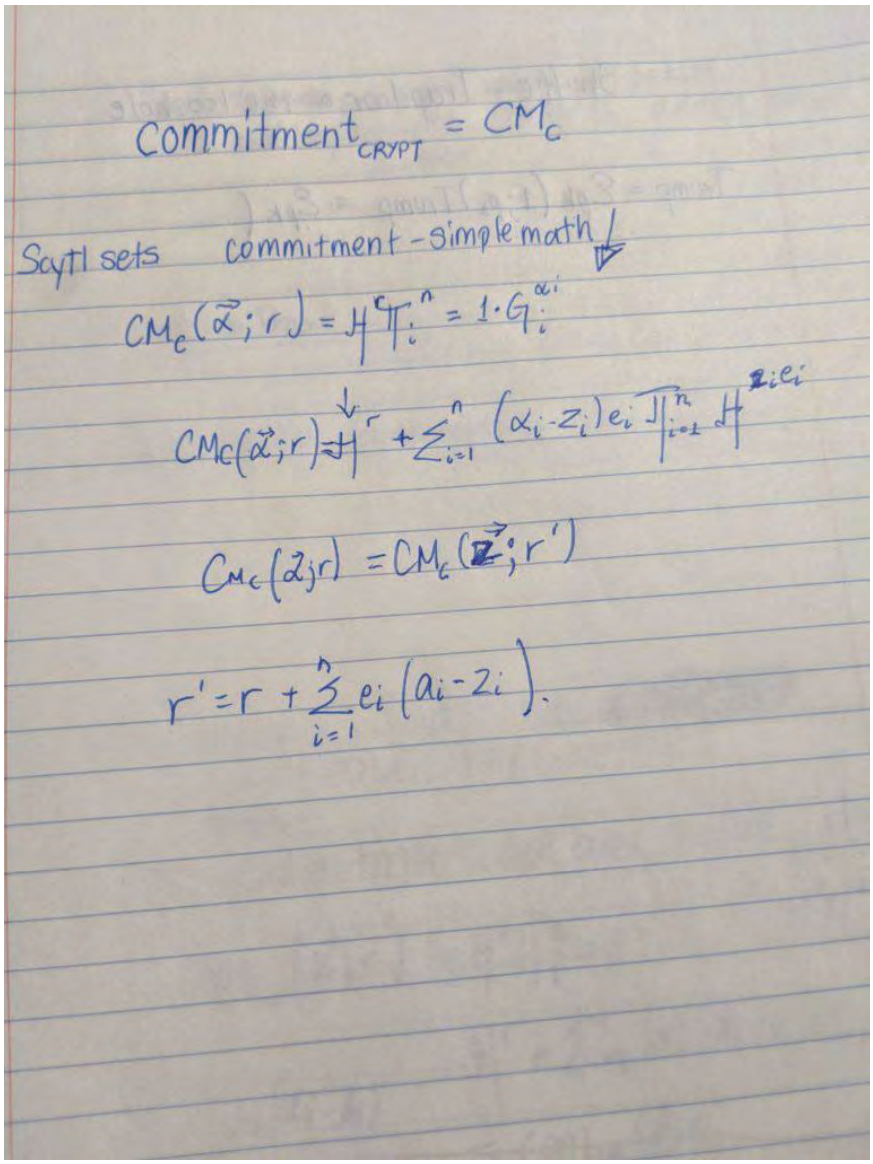
52. The encrypted data is shifted into Scytl's platform in the form of ciphertexts – this means it is encrypted and a key based on commitments is needed to read the data. The ballot data can only be read if the person has a key that is set on commitments.
53. A false sense of security is provided to both parties that votes are not being "REPLACED" during the mixing phase. Basically, Scytl re-encrypts the ballot data that comes in from Dominion (or any other voting software company) as ciphertexts. Scytl is supposed to prove that votes A, B, C are indeed X, Y, Z under their new re-encryption when sending back the votes that are tallied coding them respectively. This is done by Scytl and the Election Software company that agrees to certain

"Generators" and therefore together build "commitments."



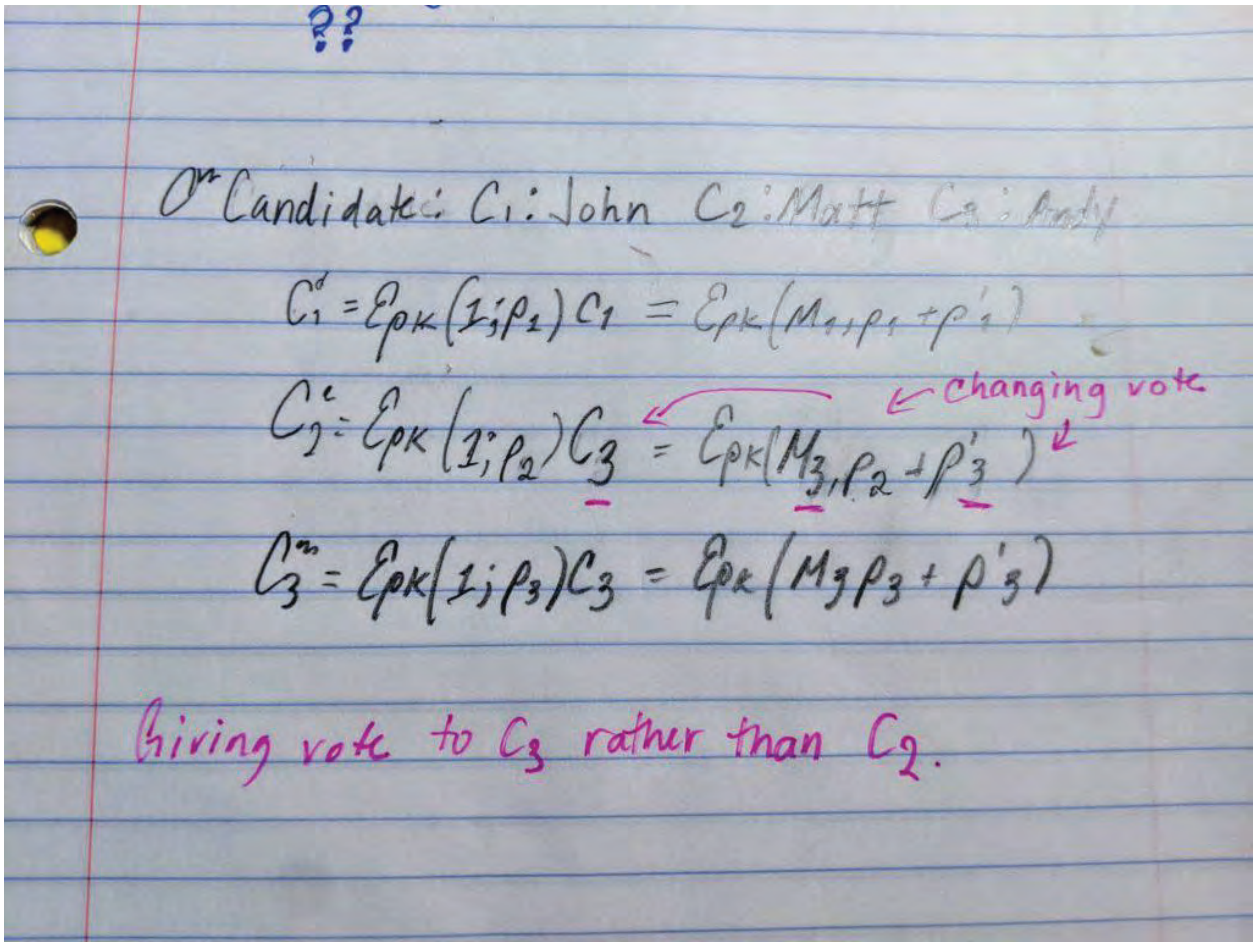
```
public CommitmentParams(final ZpSubgroup group, final int n) {
    group = group;
    h = GroupTools.getRandomElement(group);
    commitmentlength = n;
    g = GroupTools.getVectorRandomElement(group,
this.commitmentlength);
    }

    // from getRandomElement(group)
Exponent randomExponent = ExponentTools.getRandomExponent(group.getQ());
return group.getGenerator().exponentiate(randomExponent);
```

54. Scytl and Dominion have an agreement – only the two would know the parameters. This means that access is able to occur through backdoors in hardware if the parameters of the commitments are known in order to alter the range of the algorithm deployed to satisfy the outcome sought in the case of algorithm failure.
55. Trapdoor is a cryptotech term that describes a state of a program that knows the commitment parameters and therefore is able change the value of the commitments however it likes. In other words, Scytl or anyone that knows the commitment parameters can take all the votes and give them to any one they want. If they have a total of 1000 votes an algorithm can distribute them among all races as it deems necessary to achieve the goals it wants. (Case Study: Estonia)

56. 

57. Within the trapdoor this is how the algorithm behaves to move the goal posts in elections without being detected by this proof . During the mixing phase this is the algorithm you would use to

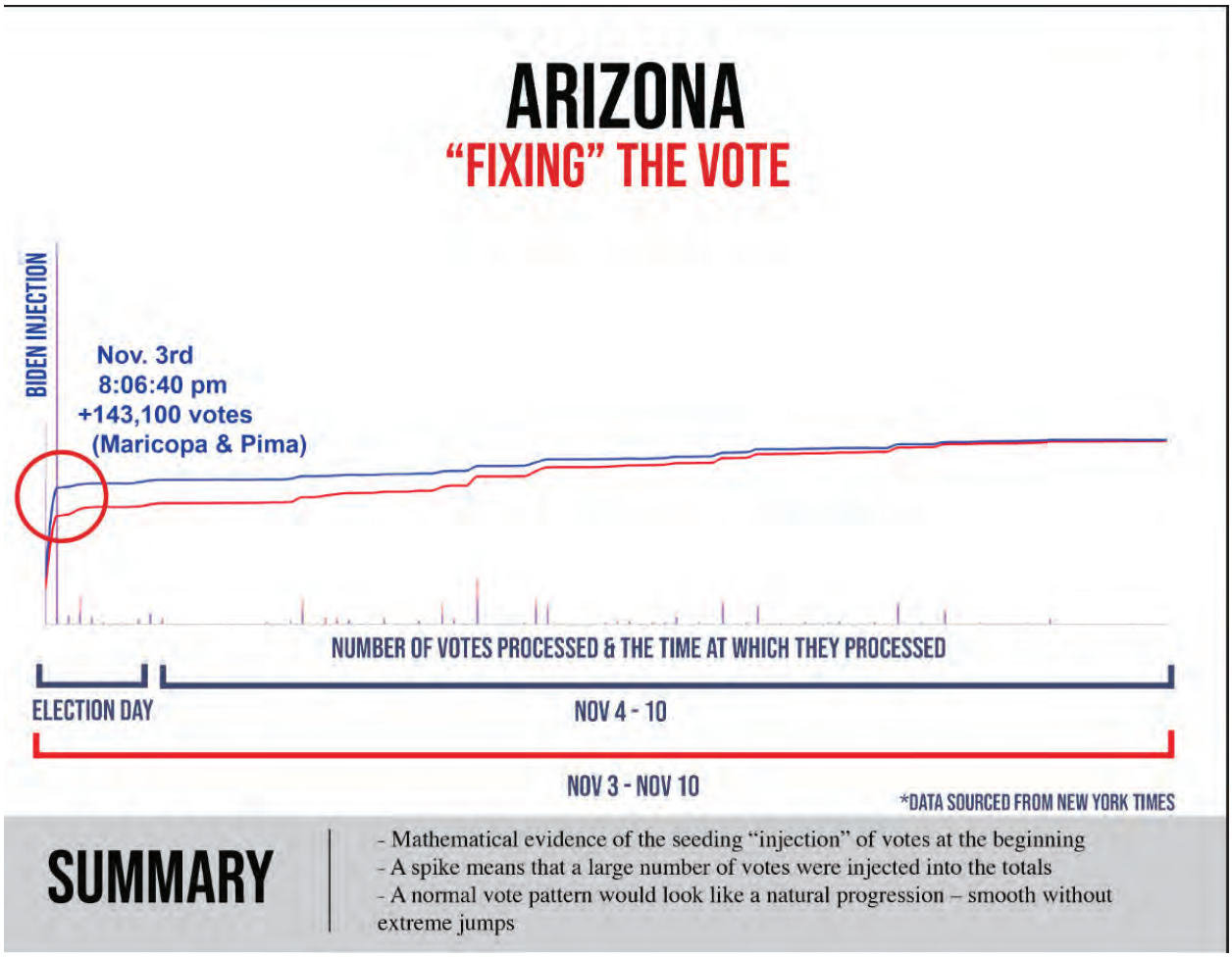
"reallocate" votes via an algorithm to achieve the goal set.



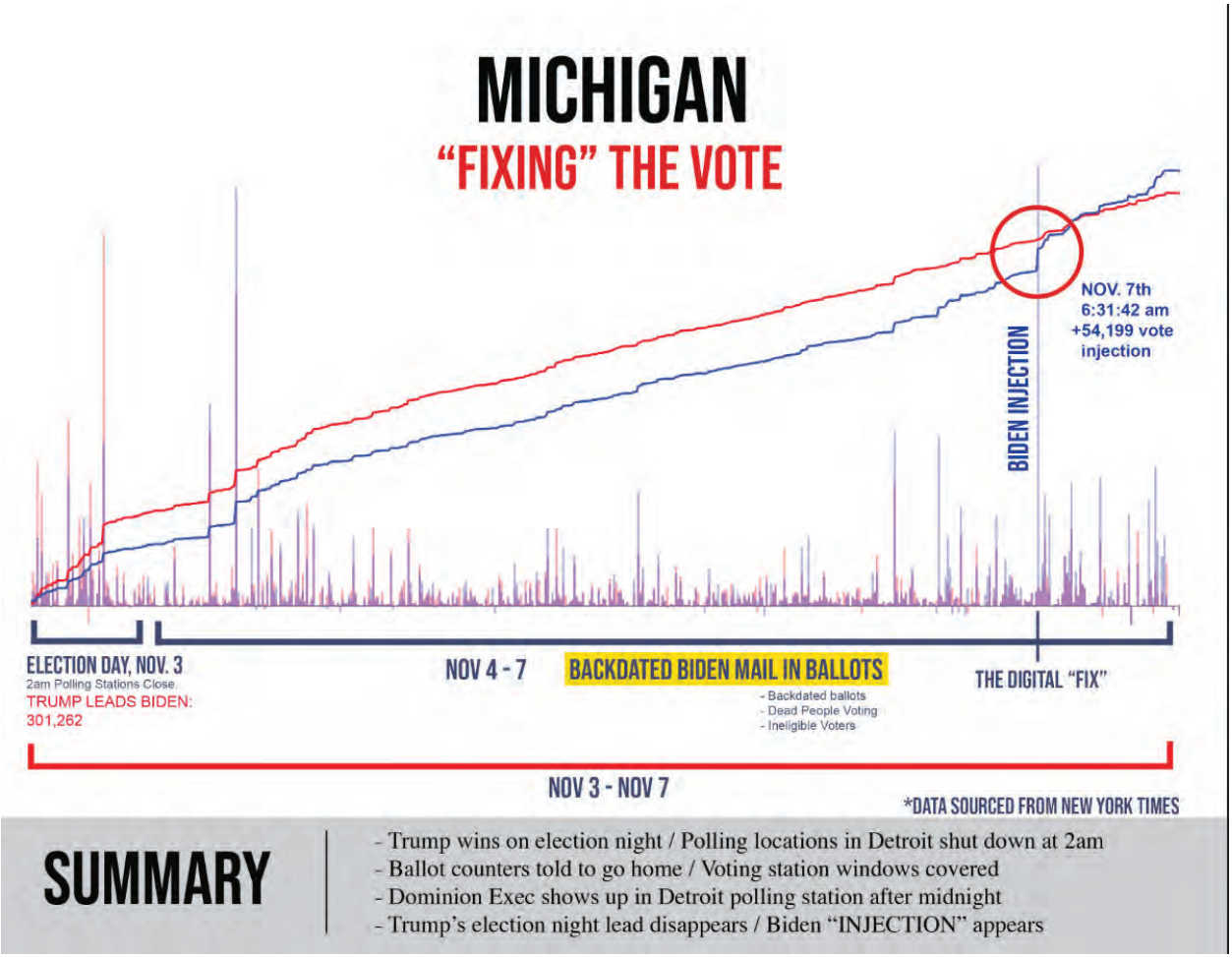
58. STEP 4|Decryption would be the decryption phase and temporary parking of vote tallies before reporting. In this final phase before public release the tallies are released from encrypted format into plain text. As previously explained, those that know the trapdoor can easily change any votes that the randomness is applied and used to generate the tally vote ciphertext. Thus in this case, Scytl who is the mixer can collude with their vote company clients or an agency (-------) to change votes and get away with it. This is because the receiver doesn't have the decryption key so they rely solely on Scytl to be ***honest*** or free from any foreign actors within their backdoor or the Election Company (like Dominion) that can have access to the key.
59. In fact, a study from the University of Bristol made claim that interference can be seen when there is a GREAT DELAY in reporting and finalizing numbers University of Bristol : How not to Prove Yourself: Pitfalls of the Fiat-Shamir Heuristic and Applications to Helios
60. "Zero-knowledge proofs of knowledge allow a prover to convince a verifier that she holds information satisfying some desirable properties without revealing anything else." David Bernhard, Olivier Pereira,and Bogdan Warinschi.

61. Hence, you can't prove anyone manipulated anything. The TRAP DOOR KEY HOLDERS can offer you enough to verify to you what you need to see without revealing anything and once again indicating the inability to detect manipulation. **ZERO PROOF of INTEGRITY OF THE VOTE.**
62. Therefore, if decryption is challenged, the administrator or software company that knows the trap door key can provide you proof that would be able to pass verification (blind). This was proven to be factually true in the case study by The University of Melbourne in March. White Hat Hackers purposely altered votes by knowing the parameters set in the commitments and there was no way to prove they did it – or any way to prove they didn't.
63. IT'S THE PERFECT THREE CARD MONTY. That's just how perfect it is. They fake a proof of ciphertexts with KNOWN "RANDOMNESS" .This rolls back to the integrity of the VOTE. The vote is not safe using these machines not only because of the method used for ballot "cleansing" to maintain anonymity but the EXPOSURE to foreign interference and possible domestic bad actors.
64. In many circumstances, manipulation of the algorithm is NOT possible in an undetectable fashion. This is because it is one point heavy. Observing the elections in 2020 confirm the deployment of an algorithm due to the BEHAVIOR which is indicative of an algorithm in play that had no pivoting parameters applied.
65. The behavior of the algorithm is that one point (B) is the greatest point within the allocated set. It is the greatest number within the A B points given. Point A would be the smallest. Any points outside the A B points are not necessarily factored in yet can still be applied.
66. The points outside the parameters can be utilized to a certain to degree such as in block allocation.
67. The algorithm geographically changed the parameters of the algorithm to force blue votes and ostracize red.
68. Post block allocation of votes the two points of the algorithm were narrowed ensuring a BIDEN win hence the observation of NO Trump Votes and some BIDEN votes for a period of time.

69.


ARIZONA
"FIXING" THE VOTE
BIDEN INJECTION
Nov. 3rd
8:06:40 pm
+143,100 votes
(Maricopa & Pima)
NUMBER OF VOTES PROCESSED & THE TIME AT WHICH THEY PROCESSED
ELECTION DAY
NOV 4 - 10
NOV 3 - NOV 10
*DATA SOURCED FROM NEW YORK TIMES
SUMMARY
- Mathematical evidence of the seeding "injection" of votes at the beginning
- A spike means that a large number of votes were injected into the totals
- A normal vote pattern would look like a natural progression – smooth without extreme jumps

70. Gaussian Elimination without pivoting explains how the algorithm would behave and the election results and data from Michigan confirm FAILURE of algorithm.



71. The "Digital Fix" observed with an increased spike in VOTES for Joe Biden can be determined as evidence of a pivot. Normally it would be assumed that the algorithm had a Complete Pivot. Wilkinson's demonstrated the guarantee as :

$$\frac{\|U\|_\infty}{\|A\|_\infty} \leq n^{\frac{1}{2}\log(n)}$$

72.

73. Such a conjecture allows the growth factor the ability to be upper bound by values closer to n. Therefore, complete pivoting can't be observed because there would be too many floating points. Nor can partial as the partial pivoting would overwhelm after the "injection" of votes. Therefore, external factors were used which is evident from the "DIGITAL FIX"

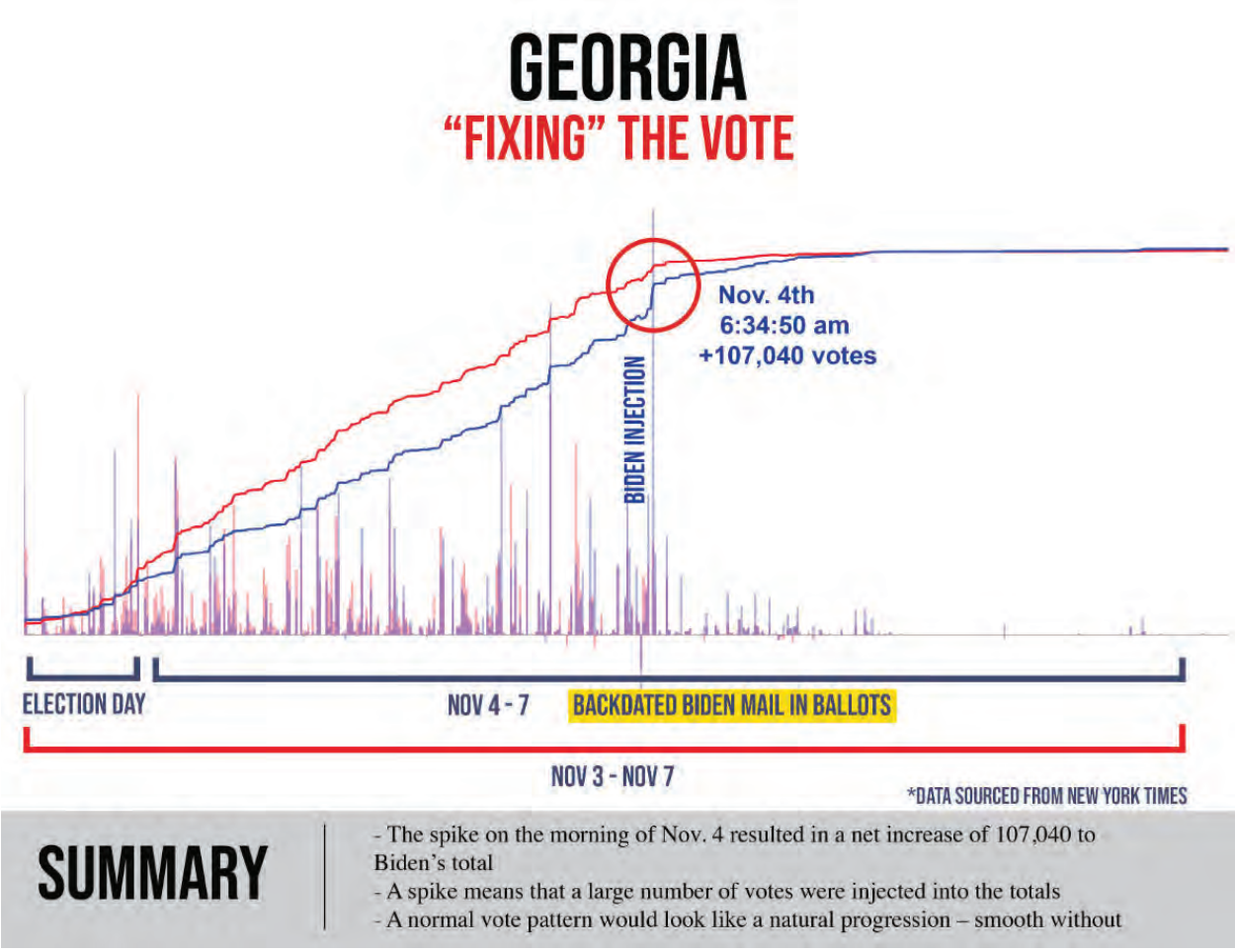
74. Observing the elections, after a review of Michigan's data a spike of 54,199 votes to Biden. Because it is pushing and pulling and keeping a short distance between the 2 candidates; but then a spike, which is how an algorithm presents; - and this spike means there was a pause and an insert was made, where they insert an algorithm. Block spikes in votes for JOE BIDEN were NOT paper

ballots being fed or THUMB DRIVES. The algorithm block adjusted itself and the PEOPLE were creating the evidence to BACK UP the block allocation.

75. I have witnessed the same behavior of the election software in countries outside of the United States and within the United States. In -------, the elections conducted behaved in the same manner by allocating BLOCK votes to the candidate "chosen" to win.

76. Observing the data of the contested states (and others) the algorithm deployed is identical to that which was deployed in 2012 providing Barack Hussein Obama a block allocation to win the 2012 Presidential Elections.

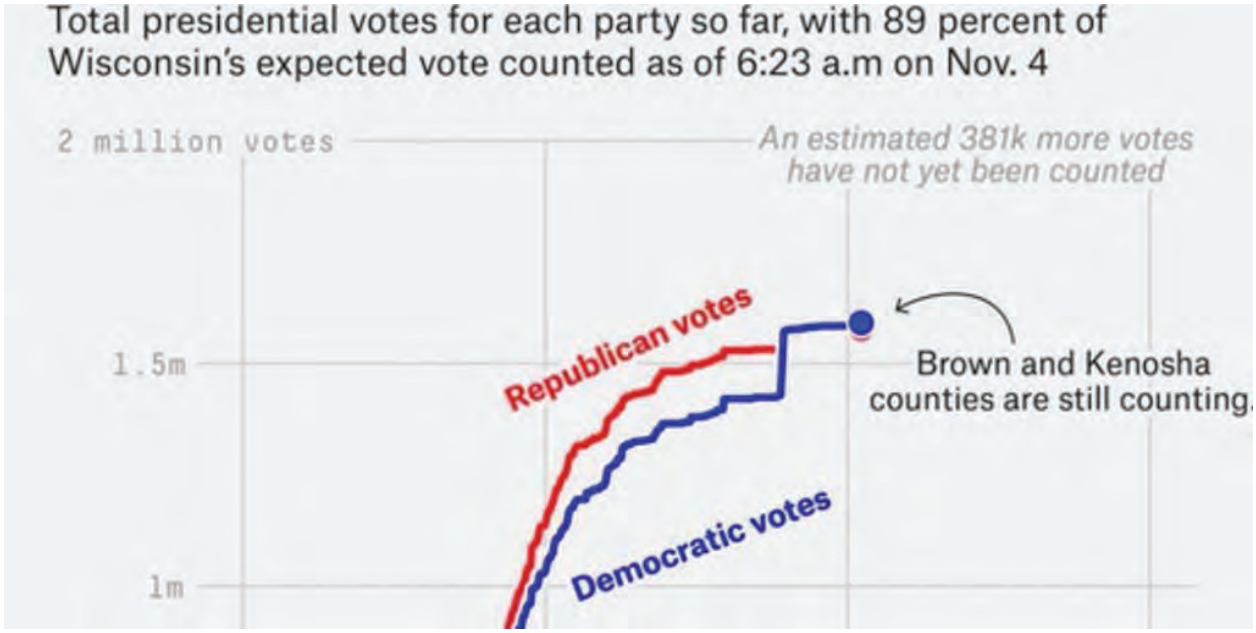
77. The algorithm looks to have been set to give Joe Biden a 52% win even with an initial 50K+ vote block allocation was provided initially as tallying began (as in case of Arizona too). In the am of November 4, 2020 the algorithm stopped working, therefore another "block allocation" to remedy the failure of the algorithm. This was done manually as ALL the SYSTEMS shut down NATIONWIDE to avoid detection.

78. 

79. In Georgia during the 2016 Presidential Elections a failed attempt to deploy the scripts to block allocate votes from a centralized location where the "trap-door" key lay an attempt by someone using

the DHS servers was detected by the state of GA. The GA leadership assumed that it was "Russians" but later they found out that the IP address was that of DHS.

80. In the state of Wisconsin, we observed a considerable BLOCK vote allocation by the algorithm at the SAME TIME it happened across the nation. All systems shut down at around the same time.

81. 

82. In Wisconsin there are also irregularities in respect to BALLOT requests. (names AND address Hidden for privacy)

83.

F	G	H	V	W	X	Y	AB	AC	AD	AG	AH	AI	AJ	AK	AL	AM
ctive	Registered	Military	Brown County	11/01/2020	Online	Military		Official	Active	Not Returned	Online	11/01/2020				
ctive	Registered	Regular	Brown County	10/23/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	10/23/2020	10/23/2020			
ctive	Registered	Military	Brown County	11/01/2020	Online	Military		Official	Active	Not Returned	Online	11/01/2020				
ctive	Registered	Regular	Brown County	11/01/2020	Online											
ctive	Registered	Regular	Brown County	11/01/2020	Email	Regular		Official	Active	Returned	Mail	10/31/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/01/2020	Email	Regular		Official	Active	Returned	Mail	10/31/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Voted in Person	Regular		Official	Active	Returned	Voted In Person	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Online											
ctive	Registered	Regular	Brown County	11/02/2020	Received In Person	Hospitaliz		Official	Active	Returned	Appointed Agent	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Email	Hospitaliz		Official	Active	Returned	Appointed Agent	11/02/2020	11/02/2020			
ctive	Registered	Military	Brown County	11/02/2020	Mail											
ctive	Registered	Regular	Brown County	11/02/2020	Mail	Regular		Official	Active	Returned	Appointed Agent	11/02/2020	11/02/2020			
ctive	Registered	Regular	Brown County	11/02/2020	Mail	Regular		Official	Active	Returned	Appointed Agent		11/02/2020			
ctive	Registered	Military	Brown County	11/02/2020	Online	Military		Official	Active	Not Returned	Online	11/02/2020				
ctive	Registered	Military	Brown County	11/02/2020	Online	Military		Official	Active	Not Returned	Online	11/02/2020				
ctive	Registered	Regular	Brown County	11/02/2020	Online											
ctive	Registered	Military	Brown County	11/02/2020	FPCA	Military		Official	Active	Not Returned	Mail	11/02/2020				
ctive	Registered	Military	Brown County	11/02/2020	FPCA	Military		Official	Active	Returned	Email	11/02/2020	11/03/2020			
ctive	Registered	Regular	Brown County	11/03/2020	Voted in Person	Regular		Official	Inactive	Voter Spoiled	Voted In Person	11/03/2020	11/03/2020			
ctive	Registered	Military	Brown County	11/03/2020	Mail	Military	Certification insufficient	Federal Absenti	Active	Returned, to be Rejected	Mail	11/03/2020	11/03/2020			
ctive	Registered	Military	Brown County	11/03/2020	Mail	Military		Official	Active	Not Returned	Mail	11/03/2020				
ctive	Registered	Military	Brown County	11/03/2020	Online											
ctive	Registered	Regular	Brown County	11/03/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											
ctive	Registered	Regular	Brown County	11/04/2020	Online											

84.

Active	Registered	Regular	Brown County	11/03/2020	Online
Active	Registered	Regular	Brown County	11/04/2020	Online
Active	Registered	Regular	Brown County	11/04/2020	Online
Active	Registered	Regular	Brown County	11/04/2020	Online
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Active	Registered	Regular	Brown County	11/05/2020	Online
Active	Registered	Regular	Brown County	11/06/2020	Online
Active	Registered	Regular	Brown County	11/06/2020	Online

85. I can personally attest that in 2013 discussions by the Obama / Biden administration were being had with various agencies in the deployment of such election software to be deployed in ----- in 2013.
86. On or about April 2013 a one year plan was set to fund and usher elections in -----.
87. Joe Biden was designated by Barack Hussein Obama to ensure the ----- accepted assistance.
88. John Owen Brennan and James (Jim) Clapper were responsible for the ushering of the intelligence surrounding the elections in -----.
89. Under the guise of Crisis support the US Federal Tax Payers funded the deployment of the election software and machines in ------ signing on with Scytl.

90.

The White House

Office of the Press Secretary

For Immediate Release

April 21, 2014

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FACT SHEET: U.S. Crisis Support Package for Ukraine

President Obama and Vice President Biden have made U.S. support for Ukraine an urgent priority as the Ukrainian government works to establish security and stability, pursue democratic elections and constitutional reform, revive its economy, and ensure government institutions are transparent and accountable to the Ukrainian people. Ukraine embarks on this reform path in the face of severe challenges to its sovereignty and territorial integrity, which we are working to address together with Ukraine and our partners in the international community. The United States is committed to ensuring that Ukrainians alone are able to determine their country's future without intimidation or coercion from outside forces. To support Ukraine, we are today announcing a new package of assistance totaling **$50 million** to help Ukraine pursue political and economic reform and strengthen the partnership between the United States and Ukraine.

91. Right before the ----- elections it was alleged that CyberBerkut a pro-Russia group infiltrated --- central election computers and **deleted key files**. These actions supposedly rendered the vote-tallying system inoperable.
92. In fact, the KEY FILES were the Commitment keys to allow Scytl to tally the votes rather than the election machines. The group had disclosed emails and other documents proving that their election was rigged and that they tried to avoid a fixed election.
93. The elections were held on May 25, 2014 but in the early AM hours the election results were BLOCKED and the final tally was DELAYED flipping the election in favor of -----.
94. The claim was that there was a DDoS attack by Russians when in actual fact it was a mitigation of the algorithm to inject block votes as we observed was done for Joe Biden because the KEYS were unable to be deployed. In the case of -----, the trap-door key was "altered"/deleted/ rendered ineffective. In the case of the US elections, representatives of Dominion/ ES&S/ Smartmatic/ Hart Intercivic would have to manually deploy them since if the entry points into the systems seemed to have failed.
95. The vote tallying of all states NATIONWIDE stalled and hung for days – as in the case of Alaska that has about 300K registered voters but was stuck at 56% reporting for almost a week.
96. This "hanging" indicates a failed deployment of the scripts to block allocate remotely from one location as observed in ------ on May 26, 2014.
97. This would justify the presence of the election machine software representatives making physical appearances in the states where the election results are currently being contested.
98. A Dominion Executive appeared at the polling center in Detroit after midnight.
99. Considering that the hardware of the machines has NOT been examined in Michigan since 2017 by Pro V& V according to Michigan's own reporting. COTS are an avenue that hackers and bad actors seek to penetrate in order to control operations. Their software updates are the reason vulnerabilities to foreign interference in all operations exist.
100. The importance of VSTLs in underrated to protect up from foreign interference by way of open access via COTS software. Pro V& V who's EAC certification EXPIRED on 24 FEB 2017 was contracted with the state of WISCONSIN.
101. In the United States each state is tasked to conduct and IV& V (Independent Verification and Validation) to provide assurance of the integrity of the votes.
102. If the "accredited" non-federal entities have NOT received EAC accreditation this is a failure of the states to uphold their own states standards that are federally regulated.
103. In addition, if the entities had NIST certificates they are NOT sufficing according the HAVA ACT 2002 as the role of NIST is clear.
104. Curiously, both companies PRO V&V and SLI GAMING received NIST certifications OUTSIDE the 24 month scope.

105. PRO V& V received a NIST certification on 26MAR2020 for ONE YEAR. Normally the NIST certification is good for two years to align with that of EAC certification that is good for two years.

106.



United States Department of Commerce
National Institute of Standards and Technology

NVLAP®

Certificate of Accreditation to ISO/IEC 17025:2017

NVLAP LAB CODE: 200978-0

Pro V&V
Huntsville, AL

is accredited by the National Voluntary Laboratory Accreditation Program for specific services, listed on the Scope of Accreditation, for:

Voting System Testing

This laboratory is accredited in accordance with the recognized International Standard ISO/IEC 17025:2017. This accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality management system (refer to joint ISO-ILAC-IAF Communique dated January 2009).

2020-03-26 through 2021-03-31
Effective Dates

DEPARTMENT OF COMMERCE · UNITED STATES OF AMERICA

For the National Voluntary Laboratory Accreditation Program

107. The last PRO V& V EAC accreditation certificate (Item 8) of this declaration expired in February 2017 which means that the IV & V conducted by Michigan claiming that they were accredited is false.

108. The significance of VSTLs being accredited and examining the HARDWARE is key. COTS software updates are the avenues of entry.

109. As per DOMINION'S own petition, the modems they use are COTS therefore failure to have an accredited VSTL examine the hardware for points of entry by their software is key.

*Compact Flash Cards	***SanDisk Ultra: SDCFHS-004G SDCFHS-008G RiData: CFC-14A RDF8G-233XMCB2-1 RDF16G-233XMCB2-1 RDF32G-233XMCB2-1 SanDisk Extreme: SDCFX-016G SDCFX-032G SanDisk: SDFAA-008G		Memory device for ICP and ICE tabulators.
*Modems	Verizon USB Modem Pantech UMW190NCD USB Modem MultiTech MT9234MU CellGo Cellular Modem E-Device 3GPUSUS AT&T USB Modem MultiTech GSM MTD-H5 Fax Modem US Robotics 56K V.92.		Analog and wireless modems for transmitting unofficial election night results.

110.

111. For example and update of Verizon USB Modem Pantech undergoes multiple software updates a year for it's hardware. That is most likely the point of entry into the systems.

112. During the 2014 elections in ---- it was the modems that gave access to the systems where the commitment keys were deleted.

113. SLI Gaming is the other VSTL "accredited" by the EAC BUT there is no record of their accreditation. In fact, SLI was NIST ISO Certified 27 days before the election which means that PA IV&V was conducted without NIST cert for SLI being valid.

114.



United States Department of Commerce
National Institute of Standards and Technology

NVLAP®

Certificate of Accreditation to ISO/IEC 17025:2017

NVLAP LAB CODE: 200733-0

SLI Compliance
Wheat Ridge, CO

is accredited by the National Voluntary Laboratory Accreditation Program for specific services, listed on the Scope of Accreditation, for:

Voting System Testing

This laboratory is accredited in accordance with the recognized International Standard ISO/IEC 17025:2017. This accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality management system (refer to joint ISO-ILAC-IAF Communique dated January 2009).

2020-10-07 through 2020-12-31
Effective Dates

DEPARTMENT OF COMMERCE · UNITED STATES OF AMERICA

For the National Voluntary Laboratory Accreditation Program

115. In fact SLI was NIST ISO Certified for less than 90 days.

116. I can personally attest that high-level officials of the Obama/Biden administration and large private contracting firms met with a software company called GEMS which is ultimately the software ALL election machines run now running under the flag of DOMINION.

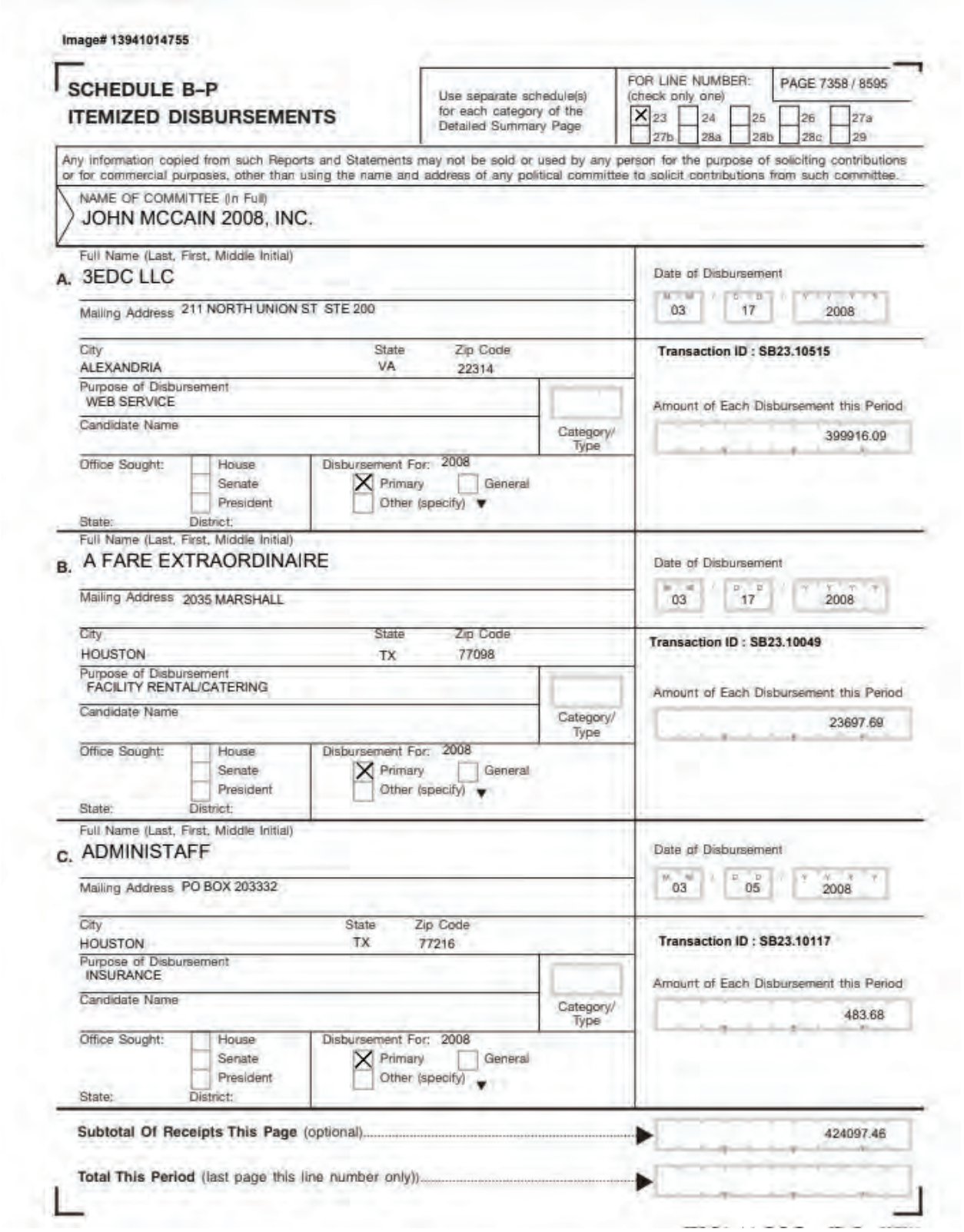
117. GEMS was manifested from SOE software purchased by SCYTL developers and US Federally Funded persons to develop it.

118. The only way GEMS can be deployed across ALL machines is IF all counties across the nation are housed under the same server networks.

119. GEMS was tasked in 2009 to a contractor in Tampa, Fl.

120. GEMS was also fine-tuned in Latvia, Belarus, Serbia and Spain to be localized for EU deployment as observed during the Swissport election debacle.

121. John McCain's campaign assisted in FUNDING the development of GEMS web monitoring via WEB Services with 3EDC and Dynology.



Image# 13941014755

SCHEDULE B–P
ITEMIZED DISBURSEMENTS

Use separate schedule(s) for each category of the Detailed Summary Page

FOR LINE NUMBER: (check only one)
☒ 23 ☐ 24 ☐ 25 ☐ 26 ☐ 27a
☐ 27b ☐ 28a ☐ 28b ☐ 28c ☐ 29

PAGE 7358 / 8595

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NAME OF COMMITTEE (In Full)
JOHN MCCAIN 2008, INC.

A. Full Name (Last, First, Middle Initial)
3EDC LLC
Mailing Address 211 NORTH UNION ST STE 200
City ALEXANDRIA State VA Zip Code 22314
Purpose of Disbursement: WEB SERVICE
Candidate Name
Category/ Type
Office Sought: ☐ House ☐ Senate ☐ President
State: District:
Disbursement For: 2008 ☒ Primary ☐ General ☐ Other (specify)
Date of Disbursement: 03 / 17 / 2008
Transaction ID : SB23.10515
Amount of Each Disbursement this Period: 399916.09

B. Full Name (Last, First, Middle Initial)
A FARE EXTRAORDINAIRE
Mailing Address 2035 MARSHALL
City HOUSTON State TX Zip Code 77098
Purpose of Disbursement: FACILITY RENTAL/CATERING
Candidate Name
Category/ Type
Office Sought: ☐ House ☐ Senate ☐ President
State: District:
Disbursement For: 2008 ☒ Primary ☐ General ☐ Other (specify)
Date of Disbursement: 03 / 17 / 2008
Transaction ID : SB23.10049
Amount of Each Disbursement this Period: 23697.69

C. Full Name (Last, First, Middle Initial)
ADMINISTAFF
Mailing Address PO BOX 203332
City HOUSTON State TX Zip Code 77216
Purpose of Disbursement: INSURANCE
Candidate Name
Category/ Type
Office Sought: ☐ House ☐ Senate ☐ President
State: District:
Disbursement For: 2008 ☒ Primary ☐ General ☐ Other (specify)
Date of Disbursement: 03 / 05 / 2008
Transaction ID : SB23.10117
Amount of Each Disbursement this Period: 483.68

Subtotal Of Receipts This Page (optional) ▶ 424097.46

Total This Period (last page this line number only)) ▶

122.

123.

124. AKAMAI Technologies services SCYTL.

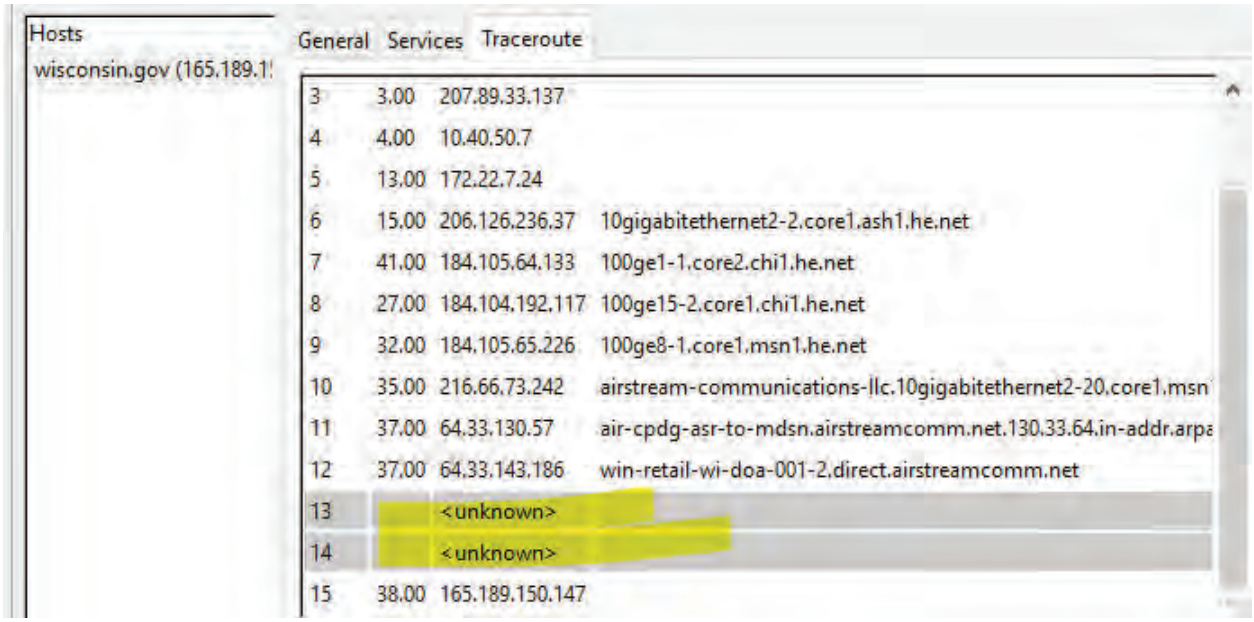
125. AKAMAI Technologies Houses ALL foreign government sites. (Please see White Paper by Akamai.)

126. AKAMAI Technologies houses ALL .gov state sites. (ref Item 123 Wisconsin.gov Example)

127. 

128. Wisconsin has EDGE GATEWAY port which is AKAMAI TECHNOLOGIES based out of GERMANY.

129. Using AKAMAI Technologies is allowing .gov sites to obfuscate and mask their systems by way of HURRICANE ELECTRIC (he.net) Kicking it to anonymous (AKAMAI Technologies) offshore servers.

130. 

131. AKAMAI Technologies has locations around the world.

132. AKAMAI Technologies has locations in China (ref item 22)

133. AKAMAI Technologies has locations in Iran as of 2019.

134. AKAMAI Technologies merged with UNICOM (CHINESE TELECOMM) in 2018.

135. AKAMAI Technologies house all state .gov information in GERMANY via TELIA AB.

136. In my professional opinion, this affidavit presents unambiguous evidence:

137. That there was Foreign interference, complicit behavior by the previous administrations from 1999 up until today to hinder the voice of the people and US persons knowingly and willingly colluding with foreign powers to steer our 2020 elections that can be named in a classified setting.

138. Foreign interference is present in the 2020 election in various means namely,

139. Foreign nationals assisted in the creation of GEMS (Dominion Software Foundation)

140. Akamai Technologies merged with a Chinese company that makes the COTS components of the election machines providing access to our electronic voting machines.

141. Foreign investments and interests in the creation of the GEMS software.

142. US persons holding an office and private individuals knowingly and willingly oversaw fail safes to secure our elections.

143. The EAC failed to abide by standards set in HAVA ACT 2002.

144. The IG of the EAC failed to address complaints since their appointment regarding vote integrity

145. Christy McCormick of the EAC failed to ensure that EAC conducted their duties as set forth by HAVA ACT 2002

146. Both Patricia Layfield (IG of EAC) and Christy McCormick (Chairwoman of EAC) were appointed by Barack Hussein Obama and have maintained their positions since then.

147. The EAC failed to have a quorum for over a calendar year leading to the inability to meet the standards of the EAC.

148. AKAMAI Technologies and Hurricane Electric raise serious concerns for NATSEC due to their ties with foreign hostile nations.

149. For all the reasons above a complete failure of duty to provide safe and just elections are observed.

150. For the people of the United States to have confidence in their elections our cybersecurity standards should not be in the hands of foreign nations.

151. Those responsible within the Intelligence Community directly and indirectly by way of procurement of services should be held accountable for assisting in the development, implementation and promotion of GEMS.

152. GEMS ------- General Hayden.

153. In my opinion and from the data and events I have observed ---------- with the assistance of SHADOWNET under the guise of L3-Communications which is MPRI. This is also confirmed by us.army.mil making the statement that shadownet has been deployed to 30 states which all

happen to be using Dominion Machines.



FAIRFAX, Va. -The Virginia National Guard's Bowling Green-based 91st Cyber Brigade completed the nationwide rollout of its ShadowNet enterprise solution July 19, 2019, with the integration of the 125th Cyber Protection Battalion into the solution's virtual private network. ShadowNet is a custom-built private cloud-based out of the brigade's data center in Fairfax, Virginia, that uses VPN connectivity to provide its aligned units with 24-hour, seven-days-a-week remote access to critical cyber training at both the collective and individual levels. The brigade successfully integrated its three other cyber protection battalions - the 123rd, 124th, and 126th Cyber Protection Battalions - into the ShadowNet platform last January.

"I'm extremely proud to announce that the Soldiers of the 91st Cyber Brigade have completed the construction and rollout of ShadowNet, a world-class enterprise solution designed to propel operational innovation in the field of cyber training," said Col. Adam C. Volant, commander of the 91st Cyber Brigade. "ShadowNet will allow us to leverage the expertise of cyber professionals across our four cyber protection battalions to build Soldier-centric programs and collective training environments that deliver

OCTOBER 26, 2020
U.S. Army STAND-TO! | Army Readines
Training

SEPTEMBER 12, 2019
September 2017 Nominative Sergeants
Major Assignments

SEPTEMBER 12, 2019
DA ANNOUNCES ROTATIONAL
DEPLOYMENTS

154. Based on my research of voter data – it appears that there are approximately 23,000 residents of a Department of Corrections Prison with requests for absentee ballot in Wisconsin. We are currently reviewing and verifying the data and will supplement.

155.

23231	**23231**	Hansen	Luann	M		(262)994-9050	
23232	**23232**	Neberman	John	C		(262)994-9050	
23233	**23233**	Reynolds	Devi	J		(262)994-9050	
23234	**23234**	Rieckhoff	Kathryn	Susan		(262)994-9050	
23235	**23235**	Edwards	Mark	Landon		(262)994-9050	
23236	**23236**	Pfeiffer	Joseph	Patrick		(262)994-9050	
23237	**23237**	Hines	Dianna	K		(262)994-9050	
23238	**23238**	Beachem	Janice	F		(262)994-9050	
23239	**23239**	Blackstone	Thomas	Wayne		(262)994-9050	
23240	**23240**	Braun	Patricia	Ann		(262)994-9050	
23241	**23241**	Smith	Raymond	L		(262)994-9050	
23242	**23242**	Meyer	Steven	R		(262)994-9050	
23243	**23243**	Vincent	Herbert			(262)994-9050	
23244	**23244**	Guajardo	Juan	P		(262)994-9050	
23245	**23245**	Wallace	Kirk	R		(262)994-9050	
23246	**23246**	Kaplan	Bernard	L		(262)994-9050	
23247	**23247**	Bahrs	Michelle	M		(262)994-9050	
23248	**23248**	Shattuck	Elizabeth	L		(262)994-9050	
23249	**23249**	Munoz	Rosalio	S	JR	(262)994-9050	
23250	**23250**	Strunk	Amy	C		(262)994-9050	
23251	**23251**	Schendel	Michael	P	JR	(262)994-9050	
23252	**23252**	Mack	Kimberly	N		(262)994-9050	
23253	**23253**	Spikes	Debra	A		(262)994-9050	
23254	**23254**	Busarow	Suzanne	M		(262)994-9050	
23255	**23255**	Oliver	Timmy			(262)994-9050	
23256	**23256**	Wember	Jimmy	Dean		(262)994-9050	
23257	**23257**	Kosterman	Michael	Richard		(262)994-9050	
23258	**23258**	Szaradowski	Paul	M		(262)994-9050	
23259	**23259**	Oliver	Dale			(262)994-9050	
23260	**23260**	Derango	Nancy			(262)994-9050	
23261	**23261**	Smith	Arthur	J		(262)994-9050	SMITH24.3059@YAHOO
23262	**23262**	Brown	Michael	Edward		(262)994-9050	

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.
Executed this November 29th, 2020.





EXHIBIT 14

DECLARATION OF RONALD WATKINS

I, Ronald Watkins, hereby state the following:

1.Ā My name is Ronald Watkins. I am a United States citizen currently residing in Japan.

2.Ā I am an adult of sound mind. All statements in this declaration are based on my personal knowledge and are true and correct. I am making this statement voluntarily and on my own initiative. I have not been promised, nor do I expect to receive, anything in exchange for my testimony and giving this statement. I have no expectation of any profit or reward and understand that there are those who may seek to harm me for what I say in this statement.

3.Ā I make this declaration because I want to alert the public and let the world know the truth about the insecurity of actual voting tabulation software used in various states for administering the 2020 Presidential and other elections. The software is designed, whether with malicious intent or through plain incompetence, in such a way so as to facilitate digital ballot stuffing via simple vote result manipulation and abuse of the digital adjudication manual review system. Specifically, the Dominion Democracy Suite both enables voter fraud by unethical officials out to undermine the will of the people and facilitates tabulation errors by honest officials making simple, nearly untraceable mistakes.

4.Ā I believe voting is a fundamental manifestation of our right to self-government, including our right to free speech. Under no circumstance should we allow a conspiracy of people and companies to subvert and destroy our most sacred rights.

5.Ā I am a network and information security expert with nine years of experience as a network and information defense analyst and a network security engineer. In my nine years of network and information security experience, I have successfully defended large websites and complex networks against powerful cyberattacks. I have engaged in extensive training and education and learned through experience how to secure websites and networks.

6.Ā In preparation for making this declaration, I have reviewed extensive technical materials relating to the Dominion Voting Democracy Suite, including those cited herein.

7.Ā The Dominion Voting Systems ImageCast Central system is a software and hardware workstation system designed to work with just a common "Windows 10 Pro"[12] computer

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(

paired via data cable[3] to an off- the-shelf document scanner[4] "for high speed scanning and counting of paper ballots."[5]

8.Ā When bulk ballot scanning and tabulation begins, the "ImageCast Central" workstation operator will load a batch of ballots into the scanner feed tray and then start the scanning procedure within the software menu.[6] The scanner then begins to scan the ballots which were loaded into the feed tray while the "ImageCast Central" software application

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MXL^VNW]#ĀQ]]Y\1&&```%\X\%\]J]N%LX%^\&Y^K\&NUNL]RXW\&DX]RWPAb\]
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NUNL]RXW\&DX]RWPAb\]NV\&5DA$5NVXL[JLbA^R]N,((&MXL^VNW]J]RXW&C8$:44$C\N[8^RMN$,$(($
4>%YMOĀGJ[LQR_NH%Ā

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I@NZI,,,*,.I.%YMOĀ!JLLN\\NMĀ=X_NVKN[Ā)*#Ā)')'"#Ā
Q]]Y\1&&`NK%J[LQR_N%X[P&`NK&)')'(((,'/+"+&Q]]Y\1&&```%MX\%YJ%PX_&DX]RWP6UNL]RXW\&5XL^VNW]\&\X\&'.(3..
"((.I5XVRWRXWI6aQRKR]I)I]XIALQI2IBNLQI@NZI,,,*,.I.%YMOĀGJ[LQR_

#Ā4XVVXW`NJU]QĀXOĀ?NWW\bU_JWRJĀ5NYJ[]VNW]ĀXOĀ[W]RJW#ĀY@NYX[]%YMOĀGJ[LQR_NH%Ā
@N\^U]\ĀXOĀ5XVRWRXWĀDX]RWPĀAb\]NV\Ā5NVXL[JLbĀ#

tabulates votes in real-time. Information about scanned ballots can be tracked inside the "ImageCast Central" software application.[7]

9.Ā After all of the ballots loaded into the scanner's feed tray have been through the scanner, the "ImageCast Central" operator will remove the ballots from the tray and then will have the option to "Accept Batch" on the scanning menu.[8] Accepting the batch saves the results into the local file system within the "Windows 10 Pro" machine.[9] Any "problem ballots" that may need to be examined or adjudicated at a later time can be found as ballot scans saved as image files into a standard Windows folder named "NotCastImages".[10] These "problem ballots" are automatically detected during the scanning phase and digitally set aside for manual review based on exception criteria.[11] Examples of exceptions may include: overvotes, undervotes, blank contests, blank ballots, write-in selections, and marginal

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marks."[12] Customizable outstack conditions and marginal mark detection lets [Dominion's Customers] decide which ballots are sent for Adjudication.[13]

10.Ā During the ballot scanning process, the "ImageCast Central" software will detect how much of a percent coverage of the oval was filled in by the voter.[14] The Dominion customer determines the thresholds of which the oval needs to be covered by a mark in order to qualify as a valid vote.[15][16] If a ballot has a marginal mark which did not meet the specific thresholds set by the customer, then the ballot is considered a "problem ballot" and may be set aside into a folder named "NotCastImages."[17] "The ImageCast Central's advanced

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settings allow for adjustment of the scanning properties to "[set] the clarity levels at which the ballot should be scanned at." Levels can be set as a combination of brightness and contrast values, or as a gamma value."[18]

11.Ā Based on my review of these materials, I conclude the system is designed in such a way that it allows a dishonest or otherwise unethical election administrator to creatively tweak the oval coverage threshold settings and advanced settings on the ImageCast Central scanners to set thresholds in such a way that a non-trivial amount of properly-marked ballots are marked as "problem ballots" and sent to the "NotCastImages" folder.

12.Ā The administrator of the ImageCast Central work-station may view all images of scanned ballots which were deemed "problem ballots" by simply navigating via the standard "Windows File Explorer" to the folder named "NotCastImages" which holds ballot scans of "problem ballots."[19][20] Under this system, it is possible for an administrator of the "ImageCast Central" workstation to view and delete any individual ballot scans from the "NotCastImages" folder by simply using the standard Windows delete and recycle bin functions provided by the Windows 10 Pro operating system. Adjudication is "the process of examining voted ballots to determine, and, in the judicial sense, adjudicate voter intent."[21]

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13.Ā Based on my review of these materials, I conclude that a biased poll worker without sufficient and honest oversight could abuse the adjudication system to fraudulently switch votes for a specific candidate.

14.Ā After the tabulation process, the ImageCast Central software saves a copy of the tabulation results locally to the "Windows 10 Pro" machine's internal storage. The results data is located in an easy-to-find path which is designed to easily facilitate the uploading of tabulation results to flash memory cards. The upload process is just a simple copying of a "Results" folder containing vote tallies to a flash memory card connected to the "Windows 10 Pro" machine. The copy process uses the standard drag-and-drop or copy/paste mechanisms within "Windows File Explorer."[22] It is my conclusion that while this is a simple procedure, the report results process is subject to user errors and is very vulnerable to corrupt manipulation by a malicious administrator. It is my conclusion that, before delivering final tabulation results to the county, it is possible for an administrator to mistakenly copy the wrong "Results" folder or even maliciously copy a false "Results" folder, which could contain a manipulated data set, to the flash memory card and deliver those false "Results" as the outcome of the election.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Japan on November 24, 2020.

Ronald Watkins

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EXHIBIT 15

Congress of the United States

Washington, DC 20515

October 6, 2006

Henry M. Paulson, Jr.
Secretary
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Mr. Secretary:

I am writing to follow up on my letter of May 4, 2006, to Secretary Snow, seeking review by the Committee on Foreign Investment in the United States of the acquisition of Sequoia Voting Systems by Smartmatic, a foreign-owned company. I believe this transaction raises exactly the sort of foreign ownership issues that CFIUS is best positioned to examine for national security concerns. As discussed below, publicly reported information about Smartmatic's ownership and about the vulnerability of electronic voting machines to tampering raises serious concerns. I strongly urge CFIUS to independently verify the information provided to American officials and the public by Sequoia/Smartmatic, and to take all appropriate measures to safeguard our national security.

It is undisputed that Smartmatic is foreign-owned and it has acquired Sequoia, one of the three major voting machine companies doing business in the U.S. According to a Sequoia press release in May 2006 (copy attached) Sequoia voting machines were used to record over 125 million votes during the 2004 Presidential election in the United States. As we confront another election, Americans deserve to know that the Administration has made sure that any foreign ownership of voting machines poses no national security threat.

Although many press reports have tried, it appears that it is not possible to discern the true owners of Smartmatic from information available to the public. Smartmatic now acknowledges that Antonio Mugica, a Venezuelan businessman, has a controlling interest in Smartmatic, but the company has not revealed who all the other Smartmatic owners are. According to the press, Smartmatic's owners are hidden through a web of off-shore private entities. (See attached articles.)

The opaque nature of Smartmatic's ownership is particularly troubling since Smartmatic has been associated by the press with the Venezuelan government led by Hugo Chavez, which is openly hostile to the United States. According to press reports, Smartmatic shared a founder, officers, directors and a principal place of business with Bizta, a company in which, according to Smartmatic, the Venezuelan government previously held a 28% stake. Mugica is also a director of Bizta.

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According to Smartmatic press releases, (copies attached) Smartmatic and Bizta were part of the consortium that received the government contract to provide the voting machines for the 2004 referendum election to recall Chavez as Venezuela's president, and have since been awarded other contracts by the Venezuelan government.

Smartmatic's possible connection to the Venezuelan government poses a potential national security concern in the context of its acquisition of Sequoia because electronic voting machines are susceptible to tampering and insiders are in the best position to engage in such tampering. The 2005 Government Accountability Office Report on electronic voting, GAO-05-956, and other private sector studies consistently support this conclusion. Thus, the reports that Sequoia brought Venezuelan nationals to the United States to work on the Chicago 2006 primary election raises questions about whether these individuals are subject to direction from a foreign interest that might pose a threat to the integrity of the election. Similarly, the use of Smartmatic software and machines developed in Venezuela, such as the HAAT software that was at issue in Chicago, raises questions as to whether this software is susceptible to manipulation by its unknown creators. Reportedly, Smartmatic may soon be introducing into the United States the type of electronic voting machines that were used (with Bizta software) in the controversial 2004 Venezuelan recall election, under the label AVC Edge II Plus.

In reviewing the Smartmatic acquisition of Sequoia, it is important that CFIUS understand the products and services that are of Venezuelan origin and evaluate Smartmatic's ownership to determine who could have influence and control over these and other Sequoia products and services that are in use or intended for use in U.S. elections. In light of Smartmatic's failure fully to answer these questions to date, this issue demands the most thorough independent investigation by CFIUS.

Thank you for your consideration of this letter.

Sincerely,

Carolyn B. Maloney

Carolyn B. Maloney
Member of Congress

Attachments

EXHIBIT 16

Congress of the United States

Washington, DC 20510

December 6, 2019

Sami Mnaymneh
Founder and Co-Chief Executive Officer
H.I.G. Capital, LLC
[redacted]

Tony Tamer
Founder and Co-Chief Executive Officer
H.I.G. Capital, LLC
[redacted]

Dear Messrs. Mnaymneh and Tamer:

We are writing to request information regarding H.I.G. Capital's (H.I.G.) investment in Hart InterCivic Inc. (Hart InterCivic) one of three election technology vendors responsible for developing, manufacturing and maintaining the vast majority of voting machines and software in the United States, and to request information about your firm's structure and finances as it relates to this company.

Some private equity funds operate under a model where they purchase controlling interests in companies and implement drastic cost-cutting measures at the expense of consumers, workers, communities, and taxpayers. Recent examples include Toys "R" Us and Shopko.[1] For that reason, we have concerns about the spread and effect of private equity investment in many sectors of the economy, including the election technology industry—an integral part of our nation's democratic process. We are particularly concerned that secretive and "trouble-plagued companies,"[2] owned by private equity firms and responsible for manufacturing and maintaining voting machines and other election administration equipment, "have long skimped on security in favor of convenience," leaving voting systems across the country "prone to security problems."[3] In light of these concerns, we request that you provide information about your firm, the portfolio

[1] Atlantic, "The Demise of Toys 'R' Us Is a Warning," Bryce Covert, July/August 2018 issue, https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/; Axios, "How workers suffered from Shopko's bankruptcy while Sun Capital made money," Dan Primack, "How workers suffered from Shopko's bankruptcy while Sun Capital made money," June 11, 2019, https://www.axios.com/shopko-bankruptcy-sun-capital-547b97ba-901c-4201-92cc-6d3168357fa3.html.

[2] ProPublica, "The Market for Voting Machines Is Broken. This Company Has Thrived in It.," Jessica Huseman, October 28, 2019, https://www.propublica.org/article/the-market-for-voting-machines-is-broken-this-company-has-thrived-in-it.

[3] Associated Press News, "US Election Integrity Depends on Security-Challenged Firms," Frank Bajak, October 28, 2019, https://apnews.com/f6876669cb6b4e4c9850844f8e015b4c.

companies in which it has invested, the performance of those investments, and the ownership and financial structure of your funds.

Over the last two decades, the election technology industry has become highly concentrated, with a handful of consolidated vendors controlling the vast majority of the market. In the early 2000s, almost twenty vendors competed in the election technology market.[4] Today, three large vendors—Election Systems & Software, Dominion Voting Systems, and Hart InterCivic—collectively provide voting machines and software that facilitate voting for over 90% of all eligible voters in the United States.[5] Private equity firms reportedly own or control each of these vendors, with very limited "information available in the public domain about their operations and financial performance."[6] While experts estimate that the total revenue for election technology vendors is about $300 million, there is no publicly available information on how much those vendors dedicate to research and development, maintenance of voting systems, or profits and executive compensation.[7]

Concentration in the election technology market and the fact that vendors are often "more seasoned in voting machine and technical services contract negotiations" than local election officials, give these companies incredible power in their negotiations with local and state governments. As a result, jurisdictions are often caught in expensive agreements in which the same vendor both sells or leases, and repairs and maintains voting systems–leaving local officials dependent on the vendor, and the vendor with little incentive to substantially overhaul and improve its products.[8] In fact, the Election Assistance Commission (EAC), the primary federal body responsible for developing voluntary guidance on voting technology standards, advises state and local officials to consider "the cost to purchase or lease, operate, and maintain a voting system over its life span … [and to] know how the vendor(s) plan to be profitable" when signing contracts, because vendors typically make their profits by ensuring "that they will be around to maintain it after the sale." The EAC has warned election officials that "[i]f you do not manage the vendors, they will manage you."[9]

Election security experts have noted for years that our nation's election systems and infrastructure are under serious threat. In January 2017, the U.S. Department of Homeland Security designated the United States' election infrastructure as "critical infrastructure" in order to prioritize the protection of our elections and to more effectively assist state and local election

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[4] Bloomberg, "Private Equity Controls the Gatekeepers of American Democracy," Anders Melin and Reade Pickert, November 3, 2018, https://www.bloomberg.com/news/articles/2018-11-03/private-equity-controls-the-gatekeepers-of-american-democracy.

[5] Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[6] Id.

[7] Id.

[8] Brennan Center for Justice, "America's Voting Machines at Risk," Lawrence Norden and Christopher Famighetti, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf; Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[9] U.S. Election Assistance Commission, "Ten Things to Know About Selecting a Voting System," October 14, 2017, https://www.eac.gov/documents/2017/10/14/ten-things-to-know-about-selecting-a-voting-system-cybersecurity-voting-systems-voting-technology/.

officials in addressing these risks.[10] However, voting machines are reportedly falling apart across the country, as vendors neglect to innovate and improve important voting systems, putting our elections at avoidable and increased risk.[11] In 2015, election officials in at least 31 states, representing approximately 40 million registered voters, reported that their voting machines needed to be updated, with almost every state "using some machines that are no longer manufactured."[12] Moreover, even when state and local officials work on replacing antiquated machines, many continue to "run on old software that will soon be outdated and more vulnerable to hackers."[13]

In 2018 alone "voters in South Carolina [were] reporting machines that switched their votes after they'd inputted them, scanners [were] rejecting paper ballots in Missouri, and busted machines [were] causing long lines in Indiana."[14] In addition, researchers recently uncovered previously undisclosed vulnerabilities in "nearly three dozen backend election systems in 10 states."[15] And, just this year, after the Democratic candidate's electronic tally showed he received an improbable 164 votes out of 55,000 cast in a Pennsylvania state judicial election in 2019, the county's Republican Chairwoman said, "[n]othing went right on Election Day. Everything went wrong. That's a problem."[16] These problems threaten the integrity of our elections and demonstrate the importance of election systems that are strong, durable, and not vulnerable to attack.

H.I.G. reportedly owns or has had investments in Hart InterCivic, a major election technology vendor. In order to help us understand your firm's role in this sector, we ask that you provide answers to the following questions no later than December 20, 2019.

1. Please provide the disclosure documents and information enumerated in Sections 501 and 503 of the *Stop Wall Street Looting Act*.[17]

2. Which election technology companies, including all affiliates or related entities, does H.I.G. have a stake in or own? Please provide the name of and a brief description of the services each company provides.

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[10] Department of Homeland Security, "Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector," January 6, 2017, https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical.
[11] AP News, "US election integrity depends on security-challenged firms," Frank Bajak, October 29, 2018, https://apnews.com/f6876669cb6b4e4c9850844f8e015b4c; Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.
[12] Brennan Center for Justice, "America's Voting Machines at Risk," Lawrence Norden and Christopher Famighetti, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf.
[13] Associated Press, "AP Exclusive: New election systems use vulnerable software," Tami Abdollah, July 13, 2019, https://apnews.com/e5e070c31f3c497fa9e6875f426ccde1.
[14] Vice, "Here's Why All the Voting Machines Are Broken and the Lines Are Extremely Long," Jason Koebler and Matthew Gault, November 6, 2018, https://www.vice.com/en_us/article/59vzgn/heres-why-all-the-voting-machines-are-broken-and-the-lines-are-extremely-long.
[15] Vice, "Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials," Kim Zetter, August 8, 2019, https://www.vice.com/en_us/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials.
[16] New York Times, "A Pennsylvania Country's Election Day Nightmare Underscores Voting Machine Concerns," Nick Corasaniti, November 30, 2019, https://www.nytimes.com/2019/11/30/us/politics/pennsylvania-voting-machines.html.
[17] Stop Wall Street Looting Act, S.2155, https://www.congress.gov/bill/116th-congress/senate-bill/2155.

a. Which election technology companies, including all affiliates or related entities, has H.I.G. had a stake in or owned in the past twenty years? Please provide the name of and a brief description of the services each company provides or provided.

b. For each election technology company H.I.G. had a stake in or owned in the past twenty years, including all affiliates or related entities, please provide the following information for each year that the firm has had a stake in or owned this company and the five years preceding the firm's investment.
   i. The name of the company
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   vi. Total number of employees
   vii. A list of all state and local jurisdictions with which the company has a contract to provide election related products or services
   viii. Other private-equity firms that own a stake in the company

3. Has any election technology company, including all affiliates or related entities, in which H.I.G. has an ownership stake or has had an ownership stake in the last twenty years, been found to have been in noncompliance with the EAC's Voluntary Voting System Guidelines? If so, please provide a copy of each EAC noncompliance notice received by the company and a description of what steps the company took to resolve each issue.

4. Has any election technology company, including all affiliates or related entities, in which H.I.G. has an ownership stake or has had an ownership stake in the last twenty years, been found to have been in noncompliance with any state or local voting system guidelines or practices? If so, please provide a list of all such instances and a description of what steps the company took to resolve each issue.

5. Has any election technology company, including all affiliates or related entities, in which H.I.G. has an ownership stake or has had an ownership stake in the last twenty years, been found to have violated any federal or state laws or regulations? If so, please provide a complete list, including the date and description, of all such violations.

6. Has any election technology company, including all affiliates or related entities, in which H.I.G. has an ownership stake or has had an ownership stake in the last twenty years, reached a settlement with any federal or state law enforcement entity related to a potential violation of any federal or state laws or regulations? If so, please provide a complete list, including the date and description, of all such settlements.

7. Has any election technology company, including all affiliates or related entities, in which H.I.G. has an ownership stake or has had an ownership stake in the past twenty years, reached a settlement with any state or local jurisdiction related to a potential violation of or breach of contract? If so, please provide a complete list, including the date and description, of all such settlements.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Amy Klobuchar
United States Senator

Ron Wyden
United States Senator

Mark Pocan
Member of Congress

Congress of the United States

Washington, DC 20510

December 6, 2019

Michael McCarthy
Chairman
McCarthy Group, LLC
[redacted]

Dear Mr. McCarthy:

We are writing to request information regarding McCarthy Group, LLC's (McCarthy Group) investment in Election Systems & Software (ES&S), one of three election technology vendors responsible for developing, manufacturing and maintaining the vast majority of voting machines and software in the United States, and to request information about your firm's structure and finances as it relates to this company.

Some private equity funds operate under a model where they purchase controlling interests in companies and implement drastic cost-cutting measures at the expense of consumers, workers, communities, and taxpayers. Recent examples include Toys "R" Us and Shopko.[1] For that reason, we have concerns about the spread and effect of private equity investment in many sectors of the economy, including the election technology industry—an integral part of our nation's democratic process. We are particularly concerned that secretive and "trouble-plagued companies,"[2] owned by private equity firms and responsible for manufacturing and maintaining voting machines and other election administration equipment, "have long skimped on security in favor of convenience," leaving voting systems across the country "prone to security problems."[3] In light of these concerns, we request that you provide information about your firm, the portfolio companies in which it has invested, the performance of those investments, and the ownership and financial structure of your funds.

Over the last two decades, the election technology industry has become highly concentrated, with a handful of consolidated vendors controlling the vast majority of the market. In the early

[1] Atlantic, "The Demise of Toys 'R' Us Is a Warning," Bryce Covert, July/August 2018 issue, https://www.theatlantic.com/magazine/archive/2018/07/toys-r-us-bankruptcy-private-equity/561758/; Axios, "How workers suffered from Shopko's bankruptcy while Sun Capital made money," Dan Primack, "How workers suffered from Shopko's bankruptcy while Sun Capital made money," June 11, 2019, https://www.axios.com/shopko-bankruptcy-sun-capital-547b97ba-901c-4201-92cc-6d3168357fa3.html.

[2] ProPublica, "The Market for Voting Machines Is Broken. This Company Has Thrived in It.," Jessica Huseman, October 28, 2019, https://www.propublica.org/article/the-market-for-voting-machines-is-broken-this-company-has-thrived-in-it.

[3] Associated Press News, "US Election Integrity Depends on Security-Challenged Firms," Frank Bajak, October 28, 2019, https://apnews.com/f6876669cb6b4e4c9850844f8e015b4c.

2000s, almost twenty vendors competed in the election technology market.[4] Today, three large vendors—ES&S, Dominion Voting Systems, and Hart InterCivic—collectively provide voting machines and software that facilitate voting for over 90% of all eligible voters in the United States.[5] Private equity firms reportedly own or control each of these vendors, with very limited "information available in the public domain about their operations and financial performance."[6] While experts estimate that the total revenue for election technology vendors is about $300 million, there is no publicly available information on how much those vendors dedicate to research and development, maintenance of voting systems, or profits and executive compensation.[7]

Concentration in the election technology market and the fact that vendors are often "more seasoned in voting machine and technical services contract negotiations" than local election officials, give these companies incredible power in their negotiations with local and state governments. As a result, jurisdictions are often caught in expensive agreements in which the same vendor both sells or leases, and repairs and maintains voting systems–leaving local officials dependent on the vendor, and the vendor with little incentive to substantially overhaul and improve its products.[8] In fact, the Election Assistance Commission (EAC), the primary federal body responsible for developing voluntary guidance on voting technology standards, advises state and local officials to consider "the cost to purchase or lease, operate, and maintain a voting system over its life span … [and to] know how the vendor(s) plan to be profitable" when signing contracts, because vendors typically make their profits by ensuring "that they will be around to maintain it after the sale." The EAC has warned election officials that "[i]f you do not manage the vendors, they will manage you."[9]

Election security experts have noted for years that our nation's election systems and infrastructure are under serious threat. In January 2017, the U.S. Department of Homeland Security designated the United States' election infrastructure as "critical infrastructure" in order to prioritize the protection of our elections and to more effectively assist state and local election officials in addressing these risks.[10] However, voting machines are reportedly falling apart across the country, as vendors neglect to innovate and improve important voting systems, putting our

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[4] Bloomberg, "Private Equity Controls the Gatekeepers of American Democracy," Anders Melin and Reade Pickert, November 3, 2018, https://www.bloomberg.com/news/articles/2018-11-03/private-equity-controls-the-gatekeepers-of-american-democracy.

[5] Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[6] Id.

[7] Id.

[8] Brennan Center for Justice, "America's Voting Machines at Risk," Lawrence Norden and Christopher Famighetti, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf; Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[9] U.S. Election Assistance Commission, "Ten Things to Know About Selecting a Voting System," October 14, 2017, https://www.eac.gov/documents/2017/10/14/ten-things-to-know-about-selecting-a-voting-system-cybersecurity-voting-systems-voting-technology/.

[10] Department of Homeland Security, "Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector," January 6, 2017, https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical.

elections at avoidable and increased risk.[11] In 2015, election officials in at least 31 states, representing approximately 40 million registered voters, reported that their voting machines needed to be updated, with almost every state "using some machines that are no longer manufactured."[12] Moreover, even when state and local officials work on replacing antiquated machines, many continue to "run on old software that will soon be outdated and more vulnerable to hackers."[13]

In 2018 alone "voters in South Carolina [were] reporting machines that switched their votes after they'd inputted them, scanners [were] rejecting paper ballots in Missouri, and busted machines [were] causing long lines in Indiana."[14] In addition, researchers recently uncovered previously undisclosed vulnerabilities in "nearly three dozen backend election systems in 10 states."[15] And, just this year, after the Democratic candidate's electronic tally showed he received an improbable 164 votes out of 55,000 cast in a Pennsylvania state judicial election in 2019, the county's Republican Chairwoman said, "[n]othing went right on Election Day. Everything went wrong. That's a problem."[16] These problems threaten the integrity of our elections and demonstrate the importance of election systems that are strong, durable, and not vulnerable to attack.

McCarthy Group reportedly owns or has had investments in ES&S, a major election technology vendor. In order to help us understand your firm's role in this sector, we ask that you provide answers to the following questions no later than December 20, 2019.

1. Please provide the disclosure documents and information enumerated in Sections 501 and 503 of the *Stop Wall Street Looting Act*.[17]

2. Which election technology companies, including all affiliates or related entities, does McCarthy Group have a stake in or own? Please provide the name of and a brief description of the services each company provides.

    a. Which election technology companies, including all affiliates or related entities, has McCarthy Group had a stake in or owned in the past twenty

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[11] AP News, "US election integrity depends on security-challenged firms," Frank Bajak, October 29, 2018, https://apnews.com/f6876669cb6b4e4c9850844f8e015b4c; Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[12] Brennan Center for Justice, "America's Voting Machines at Risk," Lawrence Norden and Christopher Famighetti, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf.

[13] Associated Press, "AP Exclusive: New election systems use vulnerable software," Tami Abdollah, July 13, 2019, https://apnews.com/e5e070c31f3c497fa9e6875f426ccde1.

[14] Vice, "Here's Why All the Voting Machines Are Broken and the Lines Are Extremely Long," Jason Koebler and Matthew Gault, November 6, 2018, https://www.vice.com/en_us/article/59vzgn/heres-why-all-the-voting-machines-are-broken-and-the-lines-are-extremely-long.

[15] Vice, "Exclusive: Critical U.S. Election Systems Have Been Left Exposed Online Despite Official Denials," Kim Zetter, August 8, 2019, https://www.vice.com/en_us/article/3kxzk9/exclusive-critical-us-election-systems-have-been-left-exposed-online-despite-official-denials.

[16] New York Times, "A Pennsylvania Country's Election Day Nightmare Underscores Voting Machine Concerns," Nick Corasaniti, November 30, 2019, https://www.nytimes.com/2019/11/30/us/politics/pennsylvania-voting-machines.html.

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past twenty years, reached a settlement with any state or local jurisdiction related to a potential violation of or breach of contract? If so, please provide a complete list, including the date and description, of all such settlements.

Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Amy Klobuchar
United States Senator

Ron Wyden
United States Senator

Mark Pocan
Member of Congress

Congress of the United States

Washington, DC 20510

December 6, 2019

Stephen D. Owens
Managing Director
Staple Street Capital Group, LLC
[redacted]

Hootan Yaghoobzadeh
Managing Director
Staple Street Capital Group, LLC
[redacted]

Dear Messrs. Owens and Yaghoobzadeh:

We are writing to request information regarding Staple Street Capital Group, LLC's (Staple Street) investment in Dominion Voting System (Dominion) one of three election technology vendors responsible for developing, manufacturing and maintaining the vast majority of voting machines and software in the United States, and to request information about your firm's structure and finances as it relates to this company.

Some private equity funds operate under a model where they purchase controlling interests in companies and implement drastic cost-cutting measures at the expense of consumers, workers, communities, and taxpayers. Recent examples include Toys "R" Us and Shopko.[1] For that reason, we have concerns about the spread and effect of private equity investment in many sectors of the economy, including the election technology industry—an integral part of our nation's democratic process. We are particularly concerned that secretive and "trouble-plagued companies,"[2] owned by private equity firms and responsible for manufacturing and maintaining voting machines and other election administration equipment, "have long skimped on security in favor of convenience," leaving voting systems across the country "prone to security problems."[3] In light of these concerns, we request that you provide information about your firm, the portfolio

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[3] Associated Press News, "US Election Integrity Depends on Security-Challenged Firms," Frank Bajak, October 28, 2019, https://apnews.com/f6876669cb6b4e4c9850844f8e015b4c.

companies in which it has invested, the performance of those investments, and the ownership and financial structure of your funds.

Over the last two decades, the election technology industry has become highly concentrated, with a handful of consolidated vendors controlling the vast majority of the market. In the early 2000s, almost twenty vendors competed in the election technology market.[4] Today, three large vendors—Election Systems & Software, Dominion, and Hart InterCivic—collectively provide voting machines and software that facilitate voting for over 90% of all eligible voters in the United States.[5] Private equity firms reportedly own or control each of these vendors, with very limited "information available in the public domain about their operations and financial performance."[6] While experts estimate that the total revenue for election technology vendors is about $300 million, there is no publicly available information on how much those vendors dedicate to research and development, maintenance of voting systems, or profits and executive compensation.[7]

Concentration in the election technology market and the fact that vendors are often "more seasoned in voting machine and technical services contract negotiations" than local election officials, give these companies incredible power in their negotiations with local and state governments. As a result, jurisdictions are often caught in expensive agreements in which the same vendor both sells or leases, and repairs and maintains voting systems–leaving local officials dependent on the vendor, and the vendor with little incentive to substantially overhaul and improve its products.[8] In fact, the Election Assistance Commission (EAC), the primary federal body responsible for developing voluntary guidance on voting technology standards, advises state and local officials to consider "the cost to purchase or lease, operate, and maintain a voting system over its life span … [and to] know how the vendor(s) plan to be profitable" when signing contracts, because vendors typically make their profits by ensuring "that they will be around to maintain it after the sale." The EAC has warned election officials that "[i]f you do not manage the vendors, they will manage you."[9]

Election security experts have noted for years that our nation's election systems and infrastructure are under serious threat. In January 2017, the U.S. Department of Homeland Security designated the United States' election infrastructure as "critical infrastructure" in order to prioritize the protection of our elections and to more effectively assist state and local election

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[4] Bloomberg, "Private Equity Controls the Gatekeepers of American Democracy," Anders Melin and Reade Pickert, November 3, 2018, https://www.bloomberg.com/news/articles/2018-11-03/private-equity-controls-the-gatekeepers-of-american-democracy.

[5] Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

[6] Id.

[7] Id.

[8] Brennan Center for Justice, "America's Voting Machines at Risk," Lawrence Norden and Christopher Famighetti, 2015, https://www.brennancenter.org/sites/default/files/publications/Americas_Voting_Machines_At_Risk.pdf; Penn Wharton Public Policy Initiative, "The Business of Voting," July 2018, https://publicpolicy.wharton.upenn.edu/live/files/270-the-business-of-voting.

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officials in addressing these risks.[10] However, voting machines are reportedly falling apart across the country, as vendors neglect to innovate and improve important voting systems, putting our elections at avoidable and increased risk.[11] In 2015, election officials in at least 31 states, representing approximately 40 million registered voters, reported that their voting machines needed to be updated, with almost every state "using some machines that are no longer manufactured."[12] Moreover, even when state and local officials work on replacing antiquated machines, many continue to "run on old software that will soon be outdated and more vulnerable to hackers."[13]

In 2018 alone "voters in South Carolina [were] reporting machines that switched their votes after they'd inputted them, scanners [were] rejecting paper ballots in Missouri, and busted machines [were] causing long lines in Indiana."[14] In addition, researchers recently uncovered previously undisclosed vulnerabilities in "nearly three dozen backend election systems in 10 states."[15] And, just this year, after the Democratic candidate's electronic tally showed he received an improbable 164 votes out of 55,000 cast in a Pennsylvania state judicial election in 2019, the county's Republican Chairwoman said, "[n]othing went right on Election Day. Everything went wrong. That's a problem."[16] These problems threaten the integrity of our elections and demonstrate the importance of election systems that are strong, durable, and not vulnerable to attack.

Staple Street reportedly owns or has had investments in Dominion, a major election technology vendor. In order to help us understand your firm's role in this sector, we ask that you provide answers to the following questions no later than December 20, 2019.

1. Please provide the disclosure documents and information enumerated in Sections 501 and 503 of the *Stop Wall Street Looting Act*.[17]

2. Which election technology companies, including all affiliates or related entities, does Staple Street have a stake in or own? Please provide the name of and a brief description of the services each company provides.

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[10] Department of Homeland Security, "Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector," January 6, 2017, https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical.

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[16] New York Times, "A Pennsylvania Country's Election Day Nightmare Underscores Voting Machine Concerns," Nick Corasaniti, November 30, 2019, https://www.nytimes.com/2019/11/30/us/politics/pennsylvania-voting-machines.html.

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Thank you for your attention to this matter.

Sincerely,

Elizabeth Warren
United States Senator

Amy Klobuchar
United States Senator

Ron Wyden
United States Senator

Mark Pocan
Member of Congress

EXHIBIT 17

Declaration of Russell James Ramsland, Jr.

1. My name is Russell James Ramsland, Jr., and I am a resident of Dallas County, Texas. I submit this declaration pursuant to 28 USC sec 1746. I am over 18 years of age. I hold an MBA from Harvard University, and a political science degree from Duke University. I have worked with the National Aeronautics and Space Administration (NASA) and the Massachusetts Institute of Technology (MIT), among other organizations, and have run businesses all over the world, many of which are highly technical in nature. I have served on technical government panels.

2. I am part of the management team of Allied Security Operations Group, LLC, (ASOG). ASOG is a group of globally engaged professionals who come from various disciplines to include Department of Defense, Secret Service, Department of Homeland Security, and the Central Intelligence Agency. It provides a range of security services, but has a particular emphasis on cybersecurity, open source investigation and penetration testing of networks. We employ a wide variety of cyber and cyber forensic analysts. We have patents pending in a variety of applications from novel network security applications to SCADA (Supervisory Control and Data Acquisition) protection and safe browsing solutions for the dark and deep web. For this report, I have relied on these experts and resources.

3. In November 2018, ASOG analyzed audit logs for the central tabulation server of the ES&S Election Management System (EMS) for the Dallas, Texas, General Election of 2018. Our team was surprised at the enormous number of error messages that should not have been there. They numbered in the thousands, and the operator ignored and overrode all of them. This led to various legal challenges in that election, and we provided evidence and analysis in some of them.

4. As a result, ASOG initiated an 18-month study into the major EMS providers in the United States, among which are Dominion that provides EMS services in Maricopa County and ES&S that provides EMS services in Pima County and elsewhere in Arizona. We did thorough background research of the literature and there is confirmed evidence from both Democrat and Republican stakeholders in the vulnerability of Dominion and ES&S. The State of Texas rejected Dominion's certification for use there due to vulnerabilities and major vote tampering has been verified in Dallas County in the 2020 General Election where ES&S operates the EMS services. Next, we began doing passive penetration testing into the vulnerabilities described in the literature and confirmed for ourselves that in many cases, past vulnerabilities already identified were still left open to exploit in the November 2020 election. We also noticed a striking similarity between the approach to software and EMS systems of ES&S and Dominion. This was logical since they share a common ancestry in the Diebold voting system.

5. Over the past three decades, almost all of the states have shifted from a relatively low-technology format to a high-technology format that relies heavily on a handful of private services companies. These private companies supply the hardware and

software, often handle voter registrations, hold the voter records, partially manage the elections, program counting the votes and report the outcomes. Arizona is one of those states.

6. These systems contain a large number of known vulnerabilities to hacking and tampering, both when voters express their voting intention by marking an electronic ballot using ballot marking devices (BMDs) , and at the back end where the votes are stored, tabulated, and reported by election officials. These vulnerabilities are well known, and experts in the field have written extensively about them.

7. Dominion ("Dominion") and Election Systems and Software ("ES&S") are privately held companies that provide election technologies and services to government jurisdictions. Numerous counties across the state of Arizona use the ES&S Election Management System and Maricopa County uses the Dominion Election Management System. Both systems have options to be an electronic, paperless voting system with no permanent record of the voter's choices, or a paper ballot based system or hybrid of those two.

8. Both ES&S and Dominion Election Management System's central accumulator fail to include a very badly needed protected real-time audit log that maintains the date and time stamps of all significant election events. Key components of the systems utilize unprotected logs. Essentially this allows the internal operator or an external attacker the opportunity to arbitrarily add, modify, or remove log entries, causing the machine to log erroneous election events. The system makes the creation and maintenance of various logs voluntary, so that the user has a choice to "not retain" or "conceal" their actions. Further, when logs are left unprotected and can be altered, they no longer serve the functional purpose of provided a transparent audit log to the public or election officials.

9. My colleagues and I at ASOG have studied the information that is publicly available concerning the November 3, 2020, election results. Based on the significant anomalies and red flags that we have observed, we believe to a reasonable degree of professional certainty that election results have been manipulated within the ES&S and Dominion systems in Arizona. As one example, Dr. Andrew Appel, Princeton Professor of Computer Science and Election Security Expert has observed, with reference to Dominion Voting machines, "I figured out how to make a slightly different computer program that just before the polls were closed it switches some votes around from one candidate to another. I wrote that computer program into a memory chip and now to hack a voting machine you just need 7 minutes alone with it and a screwdriver." We list below other red flags that our team has uncovered.

10. One red flag where Dominion is used has been seen in Antrim County, Michigan. There we have seen reports of 6,000 votes that were electronically switched from Donald Trump to Joe Biden and were only discoverable through a hand counted manual recount. While the first reports have suggested that it was due to a "glitch"

after an update, it was recanted and later attributed to "clerical error." This change is important because if it were not due to clerical error, but due to a "glitch" emanating from an update, the system would be required to be "re-certified" according to Dominion officials. This was not done. We are skeptical of these assurances as we know firsthand this has many other plausible explanations and a full investigation of this event needs to be conducted as there are a reported 47 other counties using essentially the same system in Michigan. It is our belief (based on the information we have acquired to this point) that the problem most likely did occur due to a glitch where an update file didn't properly synchronize the ballot barcode generation and reading portions of the system. If that is indeed the case, there is no reason to assume this would be an isolated error only in Michigan. This "glitch" would either cause the vote to be misread and directed to another candidate on the ballot or cause the entire ballot upload batch to read as zero in the tabulation processor. This in turn hands over the electronic system to an operator at the voting site with full control to allocate votes between candidates for the entire batch of ballots. We have also observed that provisional ballots were accepted properly but in-person ballots were being rejected (zeroed out and/or changed - flipped). Because of the highly vulnerable nature of these systems to error and exploits, it is my professional opinion based on a reasonable degree of certainty that in Maricopa Co. these systems may have experienced the same problem and switched votes from one Presidential candidate to the other.

11. In Dallas County where ES&S is used, the voter records during early voting were captured each day for those voters who cast ballots either in person or by mail-in and catalogued using the hash totals to provide an absolute unique identifier. As required by state law, the Dallas County Elections Department published the Daily Vote Roster for all voters who cast ballots during Absentee and In-Person Early Voting. The Roster contained the VoterID, name, address, type of vote, and various dates associated with every Early-Voting vote cast. Dallas County claims its source of roster data was the In-Person Electronic Poll Books, and the Absentee Ballot scanners. Dallas County has claimed that entry into the Vote Roster can only be done by a registered Dallas County voter who either appeared In-Person or by Absentee Ballot. The computer that generated the roster was apparently hacked between October 7 and October 30. During that period tens of thousands of vote records were purged, added, or edited from the ES&S generated Vote Roster.

Specifically, over this period, 53,485 voter records had their hash identifier changed, meaning the vote was tampered with. In most cases, this tampering took the form of purging the vote, and then re-constituting it in some form or fashion, but with a change in the hash total meaning the vote was somehow changed. This translates into approximately 107,000 hacked votes in Dallas County alone for ES&S. Ten blocks of voters on Westminster Street in Highland Park had their votes purged and then some of them were selectively re-instated at a later date with changes from the vote intended by the voter as originally recorded. People who double voted were catalogued as well as dead people who voted, people with no VUID voted (800 of them), unregistered university students voted, and people living abroad who claim a

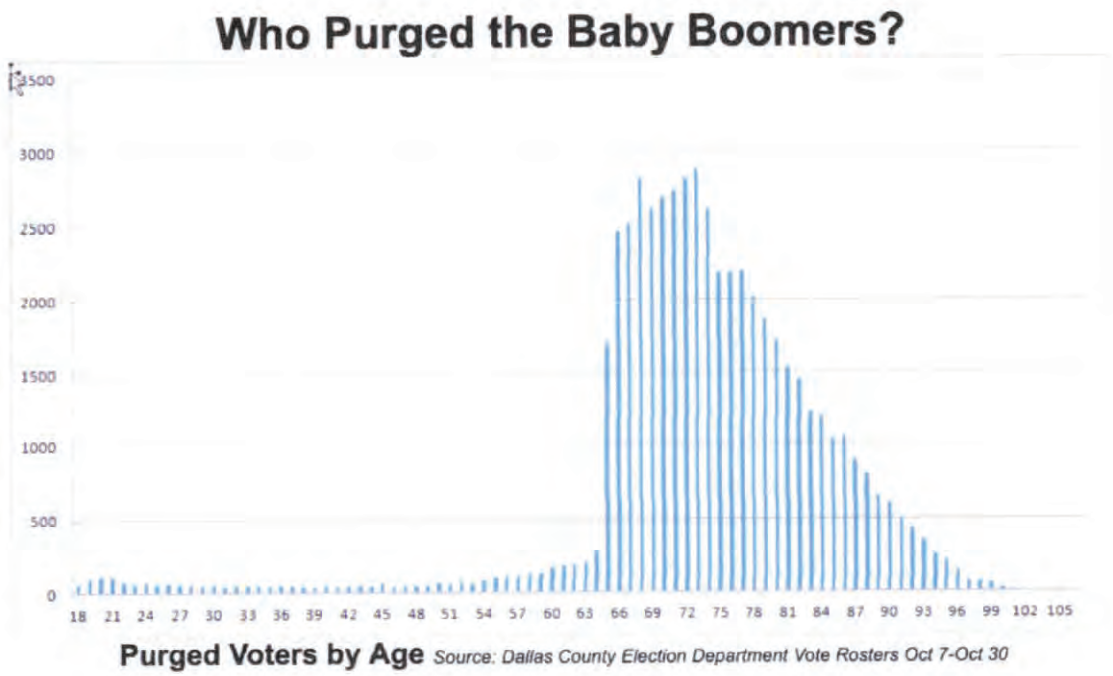
Dallas Residence for voting purposes, but who in a spot check are unknown to the residences they list in the ES&S system. A short list of them includes:

Country	Voters Who Voted
Mexico	118
Guatemala	9
Nicaragua	4
Kenya	18
Canada	154
Ireland	34
China	62
Australia	105
	504

In plain English, at the instant before a voter casts a ballot there is a one-to-one relationship between the voter and their ballot as well as a one-to-one association between the voter and their votes.

At the instant that ballot is cast, the one-to-one relationship between the voter and ballot still exist, but the relationship between the voter and their votes is gone. No one can know how they voted. The key security check on voting integrity is the absolute match between the number of voters in the Vote Roster and the number of ballots counted. If these numbers do not match, either physical ballots were added or removed from the Ballot Counter or "voters" were added or removed from the Vote Roster. In either case, the election has been compromised and the election is nothing more than a lottery. Tens of thousands of Vote Roster entries were undeniably purged and other tens of thousand of entries apparently created out of thin air, using the ES&S EMS system.

12. Equally troubling in Dallas County and the ES&S System is the apparent ease of targeting within the system of certain groups for purging. Over 92% of PURGED In-Person and Absentee voters were over 65. This makes clear the system is easily manipulated by inside or outside actors and this is the system used in much of Arizona, especially in Pima Co.



Purged Voters by Age *Source: Dallas County Election Department Vote Rosters Oct 7-Oct 30*

13. Where ES&S is concerned, a statistical red flag can be observed in Pima County where public data reveals 66 percent of precincts (164 of 248) contain voter turn-out above 80%, according to county records. Further if these public data votes were normalized to 80% turnout (still 2%+/- above any previous turnout), the excess votes are at least 32,374 over the maximum that could be expected. A sample of this is shown in the table below.

2020 Precinct	2020 Voter Turnout
Pima - Precinct 145	95%
Pima - Precinct 205	94%
Pima - Precinct 216	93%
Pima - Precinct 186	93%
Pima - Precinct 200	93%
Pima - Precinct 195	93%
Pima - Precinct 74	93%
Pima - Precinct 127	93%
Pima - Precinct 172	93%
Pima - Precinct 77	92%
Pima - Precinct 169	92%
Pima - Precinct 207	92%
Pima - Precinct 228	92%
Pima - Precinct 187	92%
Pima - Precinct 213	92%
Pima - Precinct 84	92%
Pima - Precinct 194	92%
Pima - Precinct 193	92%
Pima - Precinct 125	92%

Pima - Precinct 220	92%
Pima - Precinct 173	92%
Pima - Precinct 210	92%
Pima - Precinct 141	91%
Pima - Precinct 212	91%
Pima - Precinct 12	91%
Pima - Precinct 131	91%
Pima - Precinct 106	91%
Pima - Precinct 240	91%
Pima - Precinct 61	91%
Pima - Precinct 199	91%
Pima - Precinct 171	91%
Pima - Precinct 56	91%
Pima - Precinct 46	91%
Pima - Precinct 184	91%
Pima - Precinct 241	91%

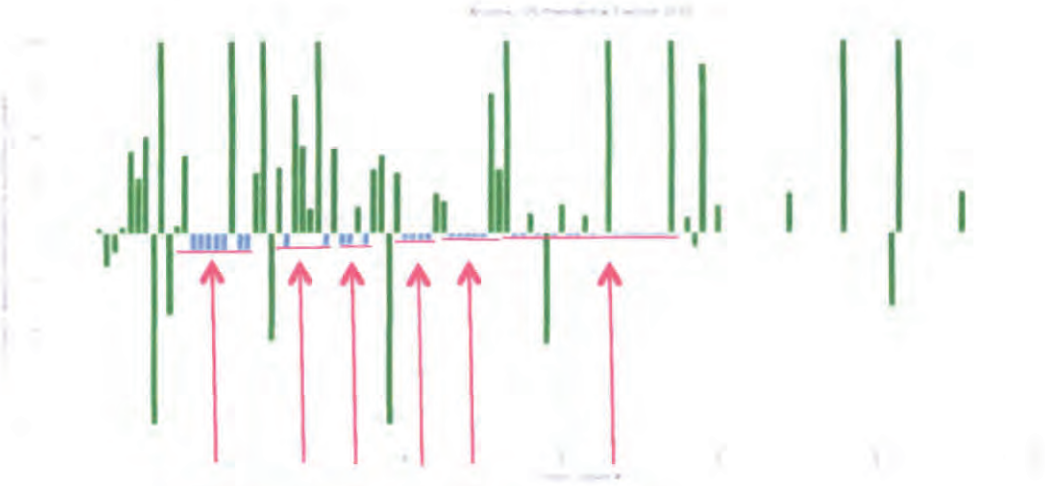
14. A similar outcome can be seen in many precincts in Maricopa County where Dominion is the EMS service provider. Here, public data reveals 54 percent of precincts (300 of 558) contain voter turn-out above 80%, according to county records. Further if these public data votes were normalized to 80% turnout (still 2%+/- above any previous turnout), the excess votes are at least 68,350 over the maximum that could be expected. A sample of this is shown in the table below.

2020 Precinct	2020 Voter Turnout
Maricopa - OVAL	94%
Maricopa - GRAND	94%
Maricopa - RIMROCK	93%
Maricopa - BLACK GOLD	93%
Maricopa - LA SOLANA	93%
Maricopa - PALISADES	93%
Maricopa - SOLCITO	92%
Maricopa - BILTMORE	92%
Maricopa - GRAYHAWK	92%
Maricopa - TERRAVITA	92%
Maricopa - WILDER	92%
Maricopa - SAGUARO	92%
Maricopa - VISTANCIA	92%
Maricopa - AVIANO	92%
Maricopa - FESTIVAL	91%
Maricopa - DEL JOYA	91%
Maricopa - PEAK VIEW	91%
Maricopa - CAREFREE	91%
Maricopa - ALEXANDER	91%
Maricopa - CLIFFVIEW	91%
Maricopa - NORTON	91%
Maricopa - CALAVEROS	91%

Maricopa - CANYON	91%
Maricopa - SKY HAWK	91%
Maricopa - WESTBROOK	91%
Maricopa - EASTMARK	91%
Maricopa - BLUE SKY	91%
Maricopa - RIO VERDE	91%
Maricopa - WOLF RUN	91%
Maricopa - ALPACA	91%

Together, these 2 red flag anomalies account for 100,724 votes that must be regarded with deep suspicion, especially in light of the known and published, demonstrable vulnerabilities of both election systems as shown in other areas.

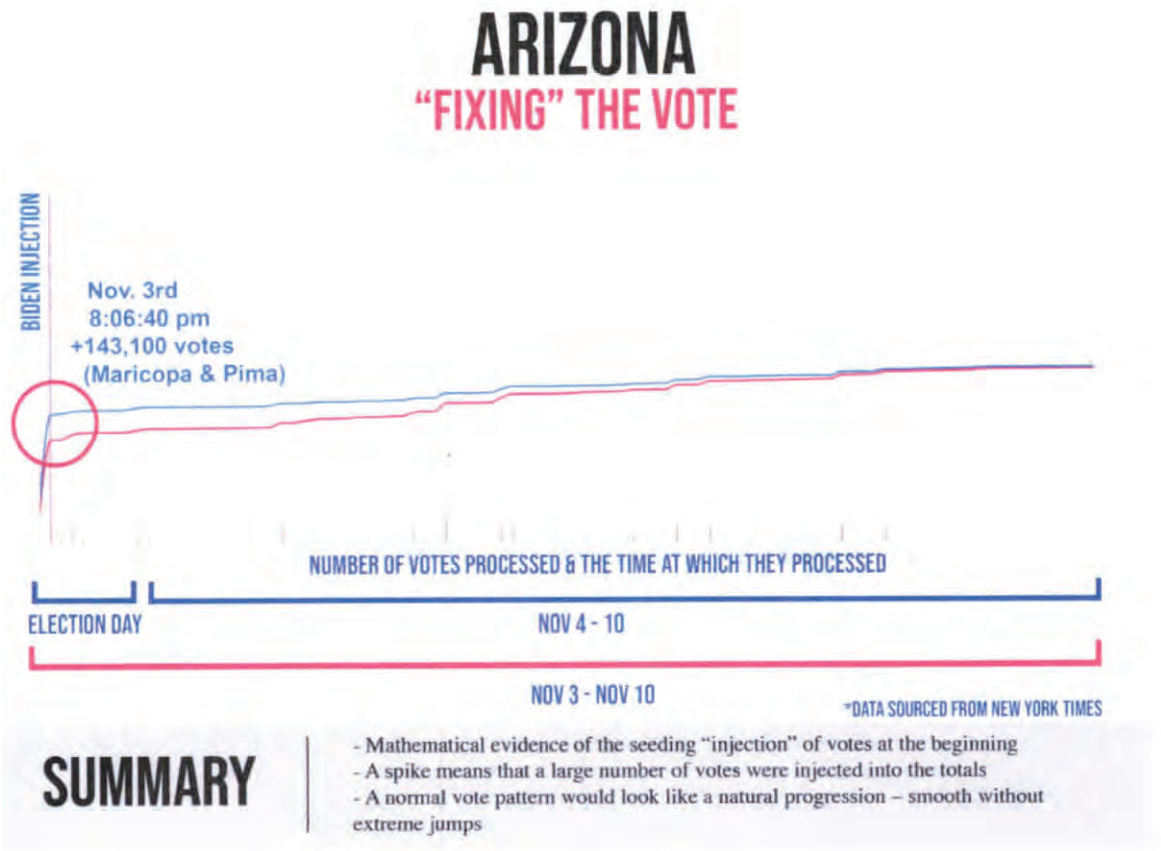
15. The following data strongly suggests that the additive algorithm (a feature enhancement referred to as "ranked choice voting algorithm" or "RCV") was activated in the code as shown in the Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2. It reads in part, **"RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner."** For instance, blank ballots can be entered into the system and treated as "write-ins." Then the operator can enter an allocation of the write-ins among candidates as he or she wishes. The result then awards the winner based on "points" that the algorithm computes, not actual voter votes. The fact that we observed the percentage of the votes submitted in each batch that went towards a candidate remain unchanged for a series of time and for a number of *consecutive* batches is extremely concerning. In the following graph, the Blue votes indicate the percentage of the batch that went for Biden in Arizona according to the Edison data reported to the NYT. The red lines and arrows indicate the impossible consistencies. The statistical impossibility of the consistent percentage reported to Biden approaches zero. This makes clear an algorithm in the election system is allocating votes based on a percentage.



Impossible consistency in percentage of votes counted

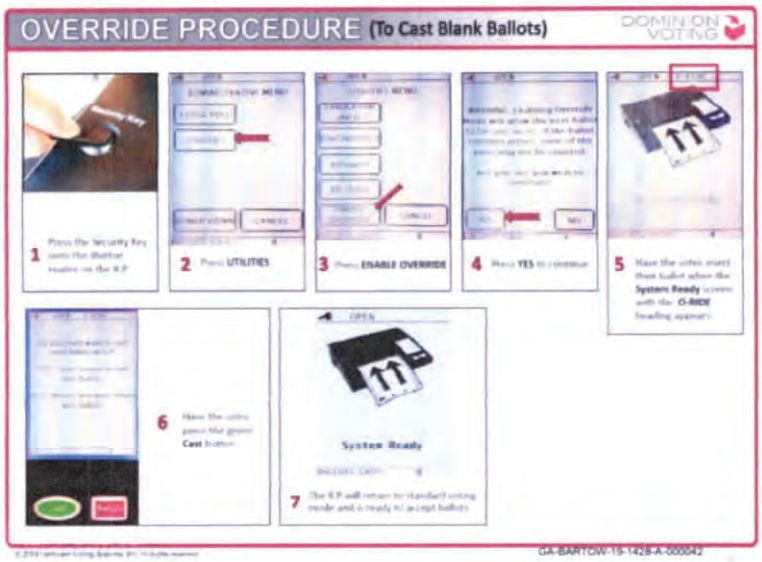
16. Yet another statistical red flag in Arizona starts with an improbable, and possibly impossible spike in processed votes. A time series and location specific

analysis would determine whether the equipment on hand at any location would have even been capable of processing this many ballots in the time represented. In Michigan, we have already observed this phenomenon, even though it was physically impossible.



This spike, cast almost exclusively for Biden, could easily be explained by the Dominion EMS control system by pre-loading batches of blank ballots in files such as Write-Ins or other adjudication-type files then casting them almost all for Biden using the Override Procedure (to cast Write-In, Blank, or Error ballots) that is available to the operator of the system. A few batches of blank ballots electronically pre-loaded into the adjudication files could easily produce a processed ballot stream this extreme so that actual paper ballots would not be needed until later to create "corroboration" for the electronic count. In this case, the first step would be to forensically test samples of paper ballots to determine if the ballots were real or fraudulently manufactured.

Dominion also has a "Blank Ballot Override" function. Essentially a save for later bucket that can be manually populated later.



14. Based on the foregoing, it is my opinion these statistical anomalies and impossibilities compels the conclusion to a reasonable degree of professional certainty that the vote count in Arizona, in particular Maricopa and Pima counties for candidates for President contain at least 100,724 illegal votes that must be disregarded.

I declare, under the penalty of perjury, that the foregoing is correct.

Russell James Ramsland, Jr.

12/1/2020
Date

EXHIBIT 18

JOINT CYBERSECURITY ADVISORY

TLP:WHITE

Product ID: AA20-304A

October 30, 2020

Iranian Advanced Persistent Threat Actor Identified Obtaining Voter Registration Data

SUMMARY

This advisory uses the MITRE Adversarial Tactics, Techniques, and Common Knowledge (ATT&CK®) framework. See the ATT&CK for Enterprise framework for all referenced threat actor techniques.

This joint cybersecurity advisory was coauthored by the Cybersecurity and Infrastructure Security Agency (CISA) and the Federal Bureau of Investigation (FBI). CISA and the FBI are aware of an Iranian advanced persistent threat (APT) actor targeting U.S. state websites—to include election websites. CISA and the FBI assess this actor is responsible for the mass dissemination of voter intimidation emails to U.S. citizens and the dissemination of U.S. election-related disinformation in mid-October 2020.[1] (Reference FBI FLASH message ME-000138-TT, disseminated October 29, 2020). Further evaluation by CISA and the FBI has identified the targeting of U.S. state election websites was an intentional effort to influence and interfere with the 2020 U.S. presidential election.

TECHNICAL DETAILS

Analysis by CISA and the FBI indicates this actor scanned state websites, to include state election websites, between September 20 and September 28, 2020, with the Acunetix vulnerability scanner (*Active Scanning: Vulnerability Scanning* [T1595.002]). Acunetix is a widely used and legitimate web scanner, which has been used by threat actors for nefarious purposes. Organizations that do not regularly use Acunetix should monitor their logs for any activity from the program that originates from IP addresses provided in this advisory and consider it malicious reconnaissance behavior.

Additionally, CISA and the FBI observed this actor attempting to exploit websites to obtain copies of voter registration data between September 29 and October 17, 2020 (*Exploit Public-Facing*

[1] See FBI FLASH, ME-000138-TT, disseminated 10/29/20, https://www.ic3.gov/Media/News/2020/201030.pdf. This disinformation (hereinafter, "the propaganda video") was in the form of a video purporting to misattribute the activity to a U.S. domestic actor and implies that individuals could cast fraudulent ballots, even from overseas. https://www.odni.gov/index.php/newsroom/press-releases/item/2162-dni-john-ratcliffe-s-remarks-at-press-conference-on-election-security.

To report suspicious or criminal activity related to information found in this Joint Cybersecurity Advisory, contact your local FBI field office at www.fbi.gov/contact-us/field, or the FBI's 24/7 Cyber Watch (CyWatch) at (855) 292-3937 or by e-mail at CyWatch@fbi.gov. When available, please include the following information regarding the incident: date, time, and location of the incident; type of activity; number of people affected; type of equipment used for the activity; the name of the submitting company or organization; and a designated point of contact. To request incident response resources or technical assistance related to these threats, contact CISA at Central@cisa.dhs.gov.

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Application [T1190]). This includes attempted exploitation of known vulnerabilities, directory traversal, Structured Query Language (SQL) injection, web shell uploads, and leveraging unique flaws in websites.

CISA and the FBI can confirm that the actor successfully obtained voter registration data in at least one state. The access of voter registration data appeared to involve the abuse of website misconfigurations and a scripted process using the cURL tool to iterate through voter records. A review of the records that were copied and obtained reveals the information was used in the propaganda video.

CISA and FBI analysis of identified activity against state websites, including state election websites, referenced in this product cannot all be fully attributed to this Iranian APT actor. FBI analysis of the Iranian APT actor's activity has identified targeting of U.S. elections' infrastructure (*Compromise Infrastructure* [T1584]) within a similar timeframe, use of IP addresses and IP ranges – including numerous virtual private network (VPN) service exit nodes – which correlate to this Iran APT actor (*Gather Victim Host Information* [T1592)]), and other investigative information.

Reconnaissance

The FBI has information indicating this Iran-based actor attempted to access PDF documents from state voter sites using advanced open-source queries (*Search Open Websites and Domains* [T1539]). The actor demonstrated interest in PDFs hosted on URLs with the words "vote" or "voter" and "registration." The FBI identified queries of URLs for election-related sites.

The FBI also has information indicating the actor researched the following information in a suspected attempt to further their efforts to survey and exploit state election websites.

- YOURLS exploit
- Bypassing ModSecurity Web Application Firewall
- Detecting Web Application Firewalls
- SQLmap tool

Acunetix Scanning

CISA's analysis identified the scanning of multiple entities by the Acunetix Web Vulnerability scanning platform between September 20 and September 28, 2020 (*Active Scanning: Vulnerability Scanning* [T1595.002]).

The actor used the scanner to attempt SQL injection into various fields in `/registration/registration/details` with status codes 404 or 500:

```
/registration/registration/details?addresscity=-1 or 3*2<(0+5+513-513) --
&addressstreet1=xxxxx&btnbeginregistration=begin voter
registration&btnnextelectionworkerinfo=next&btnnextpersonalinfo=next&btnnextresde
tails=next&btnnextvoterinformation=next&btnsubmit=submit&chkageverno=on&chkagever
yes=on&chkcitizenno=on&chkcitizenyes=on&chkdisabledvoter=on&chkelectionworker=on&
chkresprivate=1&chkstatecancel=on&dlnumber=1&dob=xxxx/x/x&email=sample@email.tst&
```

```
firstname=xxxxx&gender=radio&hdnaddresscity=&hdngender=&last4ssn=xxxxx&lastname=x
xxxxinjjeuee&mailaddresscountry=sample@xxx.xxx&mailaddressline1=sample@email.tst&
mailaddressline2=sample@xxx.xxx&mailaddressline3=sample@xxx.xxx&mailaddressstate=
aa&mailaddresszip=sample@xxxx.xxx&mailaddresszipex=sample@xxx.xxx&middlename=xxxx
x&overseas=1&partycode=a&phoneno1=xxx-xxx-xxxx&phoneno2=xxx-xxx-
xxxx&radio=consent&statecancelcity=xxxxxxx&statecancelcountry=usa&statecancelstat
e=XXaa&statecancelzip=xxxxx&statecancelzipext=xxxxx&suffixname=esq&txtmailaddress
city=sample@xxx.xxx
```

Requests

The actor used the following requests associated with this scanning activity.

```
2020-09-26 13:12:56 x.x.x.x GET /x/x v[$acunetix]=1 443 - x.x.x.x
Mozilla/5.0+(Windows+NT+6.1;+WOW64)+AppleWebKit/537.21+(KHTML,+like+Gecko)+Chrome/41.
0.2228.0+Safari/537.21 - 200 0 0 0
```

```
2020-09-26 13:13:19 X.X.x.x GET /x/x voterid[$acunetix]=1 443 - x.x.x.x
Mozilla/5.0+(Windows+NT+6.1;+WOW64)+AppleWebKit/537.21+(KHTML,+like+Gecko)+Chrome/41.
0.2228.0+Safari/537.21 - 200 0 0 1375
```

```
2020-09-26 13:13:18 .X.x.x GET /x/x voterid=;print(md5(acunetix_wvs_security_test));
443 - X.X.x.x
```

User Agents Observed

CISA and FBI have observed the following user agents associated with this scanning activity.

```
Mozilla/5.0+(Windows+NT+6.1;+WOW64)+AppleWebKit/537.21+(KHTML,+like+Gecko)+Chrome
/41.0.2228.0+Safari/537.21 - 500 0 0 0
```

```
Mozilla/5.0+(X11;+U;+Linux+x86_64;+en-
US;+rv:1.9b4)+Gecko/2008031318+Firefox/3.0b4
```

```
Mozilla/5.0+(X11;+U;+Linux+i686;+en-
US;+rv:1.8.1.17)+Gecko/20080922+Ubuntu/7.10+(gutsy)+Firefox/2.0.0.17
```

Exfiltration

Obtaining Voter Registration Data

Following the review of web server access logs, CISA analysts, in coordination with the FBI, found instances of the cURL and FDM User Agents sending GET requests to a web resource associated with voter registration data. The activity occurred between September 29 and October 17, 2020. Suspected scripted activity submitted several hundred thousand queries iterating through voter

identification values, and retrieving results with varying levels of success [*Gather Victim Identity Information* (T1589)]. A sample of the records identified by the FBI reveals they match information in the aforementioned propaganda video.

Requests

The actor used the following requests.

```
2020-10-17 13:07:51 x.x.x.x GET /x/x voterid=XXXX1 443 - x.x.x.x curl/7.55.1 -
200 0 0 1406
```

```
2020-10-17 13:07:55 x.x.x.x GET /x/x voterid=XXXX2 443 - x.x.x.x curl/7.55.1 - 200 0
0 1390
```

```
2020-10-17 13:07:58 x.x.x.x GET /x/x voterid=XXXX3 443 - x.x.x.x curl/7.55.1 - 200 0
0 1625
```

```
2020-10-17 13:08:00 x.x.x.x GET /x/x voterid=XXXX4 443 - x.x.x.x curl/7.55.1 - 200 0
0 1390
```

Note: incrementing `voterid` values in `cs_uri_query field`

User Agents

CISA and FBI have observed the following user agents.

```
FDM+3.x
```

```
curl/7.55.1
```

```
Mozilla/5.0+(Windows+NT+6.1;+WOW64)+AppleWebKit/537.21+(KHTML,+like+Gecko)+Chrome
/41.0.2228.0+Safari/537.21 - 500 0 0 0
Mozilla/5.0+(X11;+U;+Linux+x86_64;+en-US;+rv:1.9b4)+Gecko/2008031318+Firefox/3.0b4
```

See figure 1 below for a timeline of the actor's malicious activity.

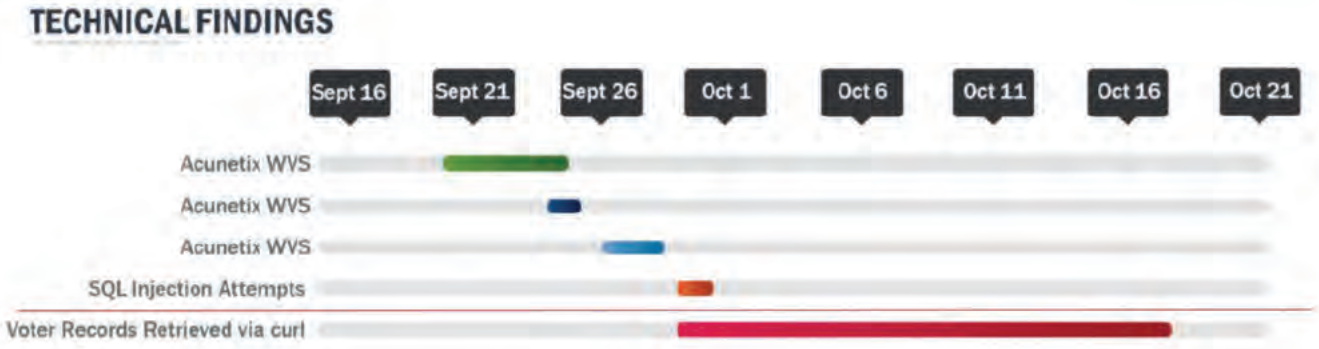

Figure 1: Overview of malicious activity

MITIGATIONS

Detection

Acunetix Scanning

Organizations can identify Acunetix scanning activity by using the following keywords while performing log analysis.

- `$acunetix`
- `acunetix_wvs_security_test`

Indicators of Compromise

For a downloadable copy of IOCs, see AA20-304A.stix.

Disclaimer: *Many of the IP addresses included below likely correspond to publicly available VPN services, which can be used by individuals all over the world. Although this creates the potential for false positives, any activity listed should warrant further investigation. The actor likely uses various IP addresses and VPN services.*

The following IPs have been associated with this activity.

- 102.129.239[.]185 (Acunetix Scanning)
- 143.244.38[.]60 (Acunetix Scanning and cURL requests)
- 45.139.49[.]228 (Acunetix Scanning)
- 156.146.54[.]90 (Acunetix Scanning)
- 109.202.111[.]236 (cURL requests)
- 185.77.248[.]17 (cURL requests)
- 217.138.211[.]249 (cURL requests)
- 217.146.82[.]207 (cURL requests)
- 37.235.103[.]85 (cURL requests)
- 37.235.98[.]64 (cURL requests)
- 70.32.5[.]96 (cURL requests)

- 70.32.6[.]20 (cURL requests)
- 70.32.6[.]8 (cURL requests)
- 70.32.6[.]97 (cURL requests)
- 70.32.6[.]98 (cURL requests)
- 77.243.191[.]21 (cURL requests and FDM+3.x (Free Download Manager v3) enumeration/iteration)
- 92.223.89[.]73 (cURL requests)

CISA and the FBI are aware the following IOCs have been used by this Iran-based actor. These IP addresses facilitated the mass dissemination of voter intimidation email messages on October 20, 2020.

- 195.181.170[.]244 (Observed September 30 and October 20, 2020)
- 102.129.239[.]185 (Observed September 30, 2020)
- 104.206.13[.]27 (Observed September 30, 2020)
- 154.16.93[.]125 (Observed September 30, 2020)
- 185.191.207[.]169 (Observed September 30, 2020)
- 185.191.207[.]52 (Observed September 30, 2020)
- 194.127.172[.]98 (Observed September 30, 2020)
- 194.35.233[.]83 (Observed September 30, 2020)
- 198.147.23[.]147 (Observed September 30, 2020)
- 198.16.66[.]139(Observed September 30, 2020)
- 212.102.45[.]3 (Observed September 30, 2020)
- 212.102.45[.]58 (Observed September 30, 2020)
- 31.168.98[.]73 (Observed September 30, 2020)
- 37.120.204[.]156 (Observed September 30, 2020)
- 5.160.253[.]50 (Observed September 30, 2020)
- 5.253.204[.]74 (Observed September 30, 2020)
- 64.44.81[.]68 (Observed September 30, 2020)
- 84.17.45[.]218 (Observed September 30, 2020)
- 89.187.182[.]106 (Observed September 30, 2020)
- 89.187.182[.]111 (Observed September 30, 2020)
- 89.34.98[.]114 (Observed September 30, 2020)
- 89.44.201[.]211 (Observed September 30, 2020)

Recommendations

The following list provides recommended self-protection mitigation strategies against cyber techniques used by advanced persistent threat actors:

- Validate input as a method of sanitizing untrusted input submitted by web application users. Validating input can significantly reduce the probability of successful exploitation by providing

protection against security flaws in web applications. The types of attacks possibly prevented include SQL injection, Cross Site Scripting (XSS), and command injection.

- Audit your network for systems using Remote Desktop Protocol (RDP) and other internet-facing services. Disable unnecessary services and install available patches for the services in use. Users may need to work with their technology vendors to confirm that patches will not affect system processes.
- Verify all cloud-based virtual machine instances with a public IP, and avoid using open RDP ports, unless there is a valid need. Place any system with an open RDP port behind a firewall and require users to use a VPN to access it through the firewall.
- Enable strong password requirements and account lockout policies to defend against brute-force attacks.
- Apply multi-factor authentication, when possible.
- Maintain a good information back-up strategy by routinely backing up all critical data and system configuration information on a separate device. Store the backups offline, verify their integrity, and verify the restoration process.
- Enable logging and ensure logging mechanisms capture RDP logins. Keep logs for a minimum of 90 days and review them regularly to detect intrusion attempts.
- When creating cloud-based virtual machines, adhere to the cloud provider's best practices for remote access.
- Ensure third parties that require RDP access follow internal remote access policies.
- Minimize network exposure for all control system devices. Where possible, critical devices should not have RDP enabled.
- Regulate and limit external to internal RDP connections. When external access to internal resources is required, use secure methods, such as a VPNs. However, recognize the security of VPNs matches the security of the connected devices.
- Use security features provided by social media platforms; use strong passwords, change passwords frequently, and use a different password for each social media account.
- See CISA's Tip on Best Practices for Securing Election Systems for more information.

General Mitigations

Keep applications and systems updated and patched

Apply all available software updates and patches and automate this process to the greatest extent possible (e.g., by using an update service provided directly from the vendor). Automating updates and patches is critical because of the speed of threat actors to create new exploits following the release of a patch. These "N-day" exploits can be as damaging as zero-day exploits. Ensure the authenticity and integrity of vendor updates by using signed updates delivered over protected links. Without the rapid and thorough application of patches, threat actors can operate inside a defender's patch cycle.[2]

[2] NSA "NSA'S Top Ten Cybersecurity Mitigation Strategies" https://www.nsa.gov/Portals/70/documents/what-we-do/cybersecurity/professional-resources/csi-nsas-top10-cybersecurity-mitigation-strategies.pdf

Additionally, use tools (e.g., the OWASP Dependency-Check Project tool[3]) to identify the publicly known vulnerabilities in third-party libraries depended upon by the application.

Scan web applications for SQL injection and other common web vulnerabilities

Implement a plan to scan public-facing web servers for common web vulnerabilities (e.g., SQL injection, cross-site scripting) by using a commercial web application vulnerability scanner in combination with a source code scanner.[4] Fixing or patching vulnerabilities after they are identified is especially crucial for networks hosting older web applications. As sites get older, more vulnerabilities are discovered and exposed.

Deploy a web application firewall

Deploy a web application firewall (WAF) to prevent invalid input attacks and other attacks destined for the web application. WAFs are intrusion/detection/prevention devices that inspect each web request made to and from the web application to determine if the request is malicious. Some WAFs install on the host system and others are dedicated devices that sit in front of the web application. WAFs also weaken the effectiveness of automated web vulnerability scanning tools.

Deploy techniques to protect against web shells

Patch web application vulnerabilities or fix configuration weaknesses that allow web shell attacks, and follow guidance on detecting and preventing web shell malware.[5] Malicious cyber actors often deploy web shells—software that can enable remote administration—on a victim's web server. Malicious cyber actors can use web shells to execute arbitrary system commands commonly sent over HTTP or HTTPS. Attackers often create web shells by adding or modifying a file in an existing web application. Web shells provide attackers with persistent access to a compromised network using communications channels disguised to blend in with legitimate traffic. Web shell malware is a long-standing, pervasive threat that continues to evade many security tools.

Use multi-factor authentication for administrator accounts

Prioritize protection for accounts with elevated privileges, remote access, or used on high-value assets.[6] Use physical token-based authentication systems to supplement knowledge-based factors such as passwords and personal identification numbers (PINs).[7] Organizations should migrate away from single-factor authentication, such as password-based systems, which are subject to poor user

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[3] https://owasp.org/www-project-dependency-check/
[4] NSA "Defending Against the Exploitation of SQL Vulnerabilities to Compromise a Network" https://apps.nsa.gov/iaarchive/library/ia-guidance/tech-briefs/defending-against-the-exploitation-of-sql-vulnerabilities-to.cfm
[5] NSA & ASD "CyberSecurity Information: Detect and Prevent Web Shell Malware" https://media.defense.gov/2020/Jun/09/2002313081/-1/-1/0/CSI-DETECT-AND-PREVENT-WEB-SHELL-MALWARE-20200422.PDF
[6] https://us-cert.cisa.gov/cdm/event/Identifying-and-Protecting-High-Value-Assets-Closer-Look-Governance-Needs-HVAs
[7] NSA "NSA'S Top Ten Cybersecurity Mitigation Strategies" https://www.nsa.gov/Portals/70/documents/what-we-do/cybersecurity/professional-resources/csi-nsas-top10-cybersecurity-mitigation-strategies.pdf

choices and more susceptible to credential theft, forgery, and password reuse across multiple systems.

Remediate critical web application security risks

First, identify and remediate critical web application security risks. Next, move on to other less critical vulnerabilities. Follow available guidance on securing web applications.[8,9,10]

How do I respond to unauthorized access to election-related systems?

Implement your security incident response and business continuity plan

It may take time for your organization's IT professionals to isolate and remove threats to your systems and restore normal operations. In the meantime, take steps to maintain your organization's essential functions according to your business continuity plan. Organizations should maintain and regularly test backup plans, disaster recovery plans, and business continuity procedures.

Contact CISA or law enforcement immediately

To report an intrusion and to request incident response resources or technical assistance, contact CISA (Central@cisa.gov or 888-282-0870) or the FBI through a local field office or the FBI's Cyber Division (CyWatch@ic.fbi.gov or 855-292-3937).

RESOURCES

- CISA Tip: Best Practices for Securing Election Systems
- CISA Tip: Securing Voter Registration Data
- CISA Tip: Website Security
- CISA Tip: Avoiding Social Engineering and Phishing Attacks
- CISA Tip: Securing Network Infrastructure Devices
- Joint Advisory: Technical Approaches to Uncovering and Remediating Malicious Activity
- CISA Insights: Actions to Counter Email-Based Attacks on Election-related Entities
- FBI and CISA Public Service Announcement (PSA): Spoofed Internet Domains and Email Accounts Pose Cyber and Disinformation Risks to Voters
- FBI and CISA PSA: Foreign Actors Likely to Use Online Journals to Spread Disinformation Regarding 2020 Elections
- FBI and CISA PSA: Distributed Denial of Service Attacks Could Hinder Access to Voting Information, Would Not Prevent Voting
- FBI and CISA PSA: False Claims of Hacked Voter Information Likely Intended to Cast Doubt on Legitimacy of U.S. Elections FBI and CISA PSA: Cyber Threats to Voting Processes Could Slow But Not Prevent Voting

[8] NSA "Building Web Applications – Security for Developers" https://apps.nsa.gov/iaarchive/library/ia-guidance/security-tips/building-web-applications-security-recommendations-for.cfm
[9] https://owasp.org/www-project-top-ten/
[10] https://cwe.mitre.org/top25/archive/2020/2020_cwe_top25.html

- FBI and CISA PSA: Foreign Actors and Cybercriminals Likely to Spread Disinformation Regarding 2020 Election Results

EXHIBIT 19

Declaration of Matthew Bromberg Ph.D

December 1, 2020

Pursuant to 28 U.S.C Section 1746, I, Matthew Bromberg, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.

2. Matthew Bromberg has a Ph.D in Electrical Engineering from the University of California at Davis and a Masters degree in Mathematics from the University of California at Berkeley. I have been employed, for over 28 years, in the signal processing and wireless signal processing domain, with an emphasis on statistical signal processing. I have published numerous journal and conference articles. Additionally, I have held Top Secret and SAP clearances and I am an inventor of nearly 30 patents, one of which has over 1000 citations in the field of MIMO communications (Multiple Input Multiple Output).

3. I reside at 4303 West Eaglerock Pl., Wenatchee WA, 98801.

4. Given the data sources referenced in this document, I assert that in Georgia, Pennsylvania and the city of Milwaukee, a simple statistical model of vote fraud is a better fit to the sudden jump in Biden vote percentages among absentee ballots received later in the counting process of the 2020 presidential election. It is also a better fit when constrained to a single large Metropolitan area such as Milwaukee..

5. Given the same data sources, I also assert that Milwaukee precincts exhibit statistical anomalies that are not normally present in fair elections.. The fraud model hypothesis in Milwaukee has a posterior probability of 100% to machine precision. This model predicts 105,639 fraudulent Biden ballots in Milwaukee.

6. I assert that the data suggests aberrant statistical anomalies in the vote counts in Michigan, when observed as a function of time.

7. I assert that the data implies statististical anomalies supportive of vote switching in Maricopa county Arizona.

Signature:

Supporting evidence for the assertions in (4) and 5 is provided in the following pages.

1 Impact of Fraud on the Election

In the analysis that follows, it is possible to obtain rough estimates on how vote fraud could possibly have effected the election. In Georgia, there is evidence that votes were actually switched from Trump to Biden. As many as 51,110 Biden votes were fraudulent and as many as 51,110 votes could be added to Trump. An audit to determine vote switching will be more difficult, since it is likely the Trump ballots have been destroyed in Georgia, based on reports of ballots being shredded there. If instead we presume that Bidens fraudulent votes were simply added to the totals, then we estimate that 104,107 ballots should be removed from Biden's totals.

In Pennsylvania, from just one batch of absentee ballots, approximately 72668 of them are estimated to be fraudulent Biden votes. Our analysis of Milwaukee shows that 105,639 Biden ballots could be fraudulent. Moreover there is evidence of vote switching here, which might give as many as 42365 additional ballots to Trump, and remove the same from Biden.

Michigan yields an estimate of 237,140 fraudulent Biden votes added to the total, using conservative estimates of the Biden percentage among the new ballots.

2 Statistical Model

The simplest statistical model for computing the probabilities for an election outcome is a binomial distribution, which assigns a probability p for a given person within the population to select a candidate. If we assume that each person chooses their candidate independently, then we obtain the Binomial distribution in the form,

$$P(k|N) \equiv {}_NC_k p^k (1-p)^{N-k}, \tag{1}$$

where $P(k|N)$ is the probability that you observe k votes for a candidate in a population of N voters, and where ${}_NC_k$ is the number of ways to choose k people out of a group of N people.

For larger N, the binomial distribution can be approximated by a Gaussian distribution, which is used in the election fraud analysis in [1]. The chief reason for this is the difficulty of computing $P(k|N)$ for large N and k. However this problem can be overcome by computing the probabilities in the log domain and using the log beta function to compute ${}_NC_k$.

For this analysis it is more useful to compute the probabilities as a function of f the observed fraction of the candidate's votes. In this formulation we have $k = Nf$, and $N - k = N(1-f)$, and therefore we define the fractional probability as,

$$B_N(f) \equiv {}_NC_{Nf}\, p^{Nf} (1-p)^{N(1-f)}. \tag{2}$$

2.1 Fraud Model

To model voting fraud we assume a fixed fraction α of votes are given to the cheater. The pool of available voters who actually voted is now $N(1-\alpha)$. The fraction who actually voted for the cheater is given by $f-\alpha$. The probability that the fraction f voters reported for the cheater, with the fraction α stolen, can therefore be written as,

$$C_{N,\alpha}(f) \equiv B_{N(1-\alpha)}(f-\alpha). \tag{3}$$

This is similar to the fraud model used in the election fraud analysis given in [1]. We use the Binomial distribution directly, rather than the Gaussian distribution, since it should be more accurate for small N, k or f.

2.2 Posterior Probability of Fraud Model

A hypothesis test can now be set up between the standard voting statistics of (2) vs the statistics of the fraud model (3). If we use Bayesian inference we can compute an estimate of the posterior probability of the fraud model. This can be written as,

$$P(F|f) = \frac{C_{N,\alpha}(f) p_F}{C_{N,\alpha}(f) p_F + B_N(f)(1-p_F)},$$

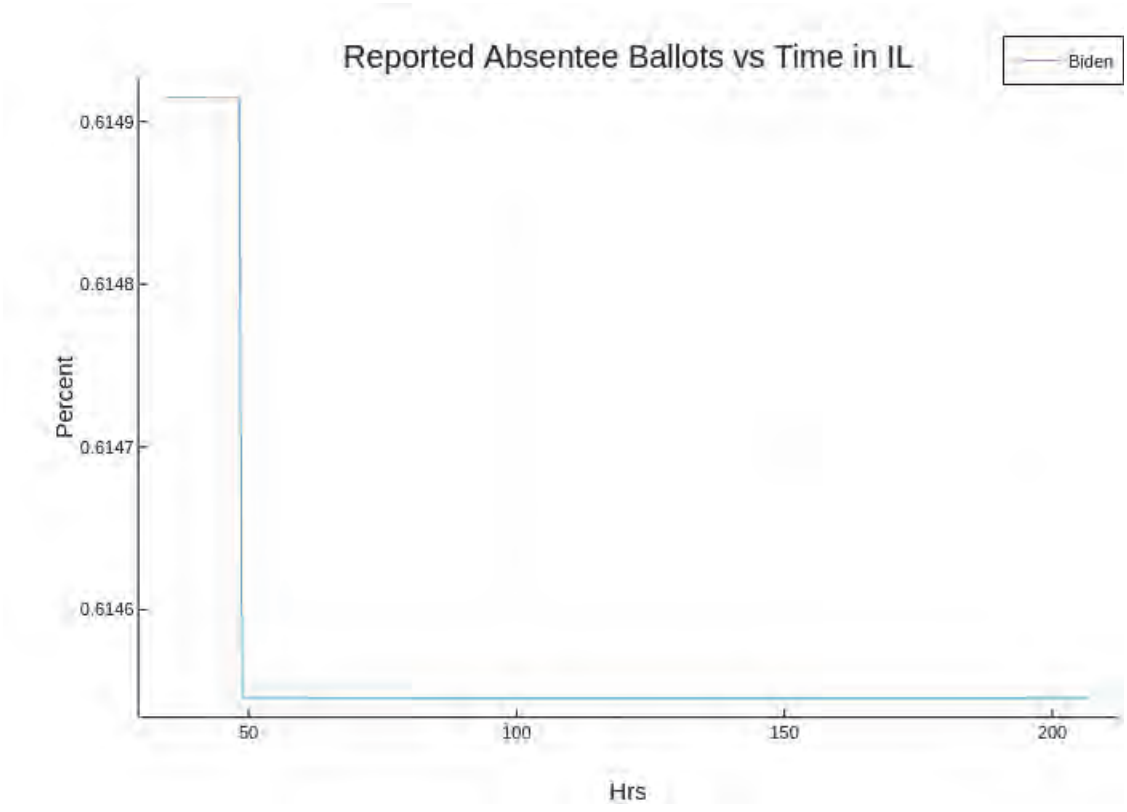


Figure 1: Reported Biden Fraction In Illinois vs Time

where p_F is the prior probability of fraud. In our investigation we assume fraud is unlikely and set $p_F = 0.01$.

3 Analysis of Absentee Ballots in the 2020 Election

For this analysis we extracted data from the all_states_timeseries.csv file, which can be found at the internet url: https://wiki.audittheelection.com/index.php/Datasets. We look at the absentee ballot results near the beginning of the time series and then compare it to the end or the middle of the period, after a sufficient enough ballots were added.

For the models in Section 2 we assign the probability p of a Biden vote using the final data. This assumption is actually more favorable to the cheater. As mentioned earlier we set the prior probability of fraud to $p_F = 0.01$, and the cheating fraction, α, is set to $\alpha = f - p$, where f is the observed Biden fraction in the newly added ballots. This isolates the statistics of the added ballots from the final observed statistics.

We focus on the absentee ballots, because they are dominated by large democratic cities and there is no obvious reason why those statistics should change appreciably over time. Furthermore it should be noted that the start time for this data, mid day Nov. 4., was well after some of the larger absentee ballot dumps occured.

3.1 Control Case Illinois

We choose Illinois as a control case, since it has a significant number of absentee ballots that were counted later and provides a fairly clean baseline. The reported Biden fraction vs time is given in Figure 1.

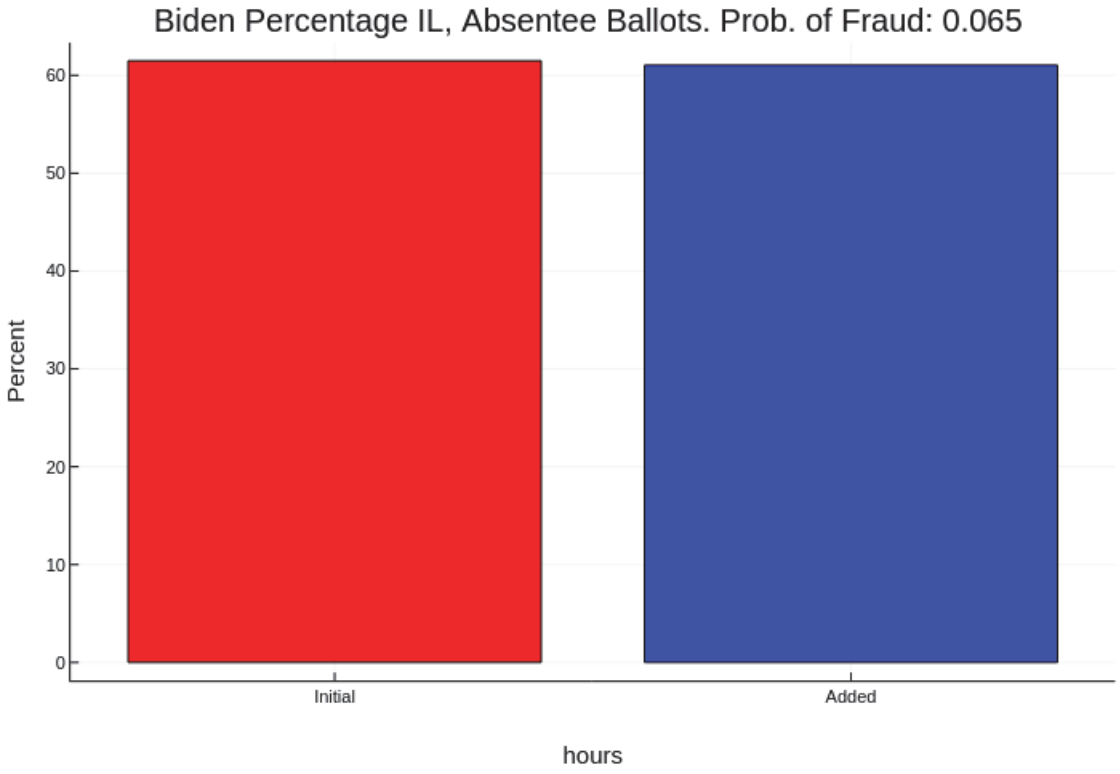


Figure 2: Before and Added Biden Fraction

As we can see there is not much change in the Biden statistics from the initial 601,714 absentee ballots when compared with the 54,117 ballots that were added. This is further shown by the bar chart in Figure 2.

Using our formula for the posterior probability of fraud in (3) we obtain the probability that the fraud model is correct of 6.5%. This lends good support to the idea that the Illinois absentee ballots were counted fairly.

3.2 Analysis of Georgia Absentee Ballots

The Georgia absentee ballot count started at 3,701,005 and 303,988 ballots were added. The Biden fraction among absentee ballots as a function of time is shown in Figure (3). This plot shows a statistical abnormality in that the Biden fraction appears to always be increasing. This is statistically unlikely and is not typically seen in fair elections. Normally you would see a mixture of votes of Biden and his opponents, and would see random deviation around the asymptote.

We investigate this phenomenon more fully in Figure (4). The added ballots have a Biden percentage of around 70%, while the initial statitics were at 50%. This is a very large jump for such a large sample size and seems very unlikely. Indeed the probability that the fraud model is correct is 100%, up to the precision of double floating point arithmetic.

Assuming that the prior absentee ballot distribution is the correct one, we can form a simple prediction for how many of Biden's ballots were fraudulent. Let $N_1 = 303,988$, the number of ballots added, and let $B = 189,497$ be the number of Biden votes in this new batch. If the fraction of Biden votes should actually be $f = 0.509$. Let x be the proposed number of fraudulent Biden votes, then we

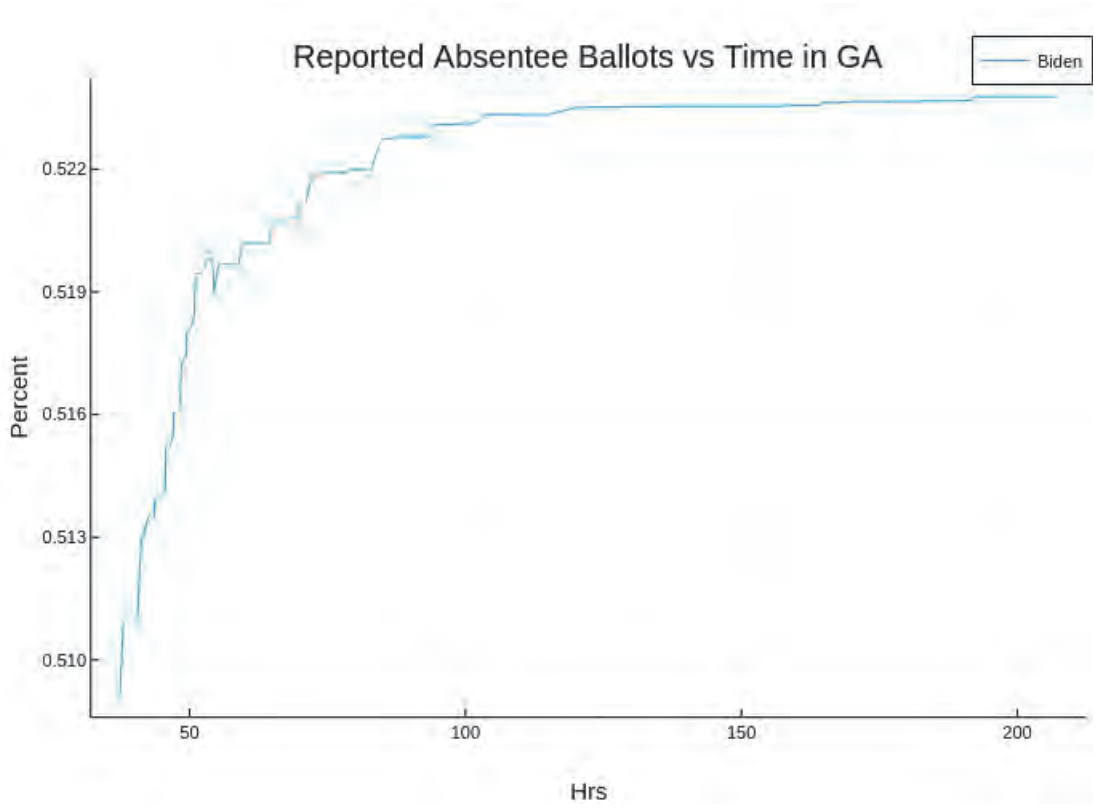


Figure 3: Georgia Absentee Ballots vs Time: (Biden Fraction)

have,

$$\frac{B-x}{N_1-x} = f$$
$$x = \frac{B-N_1 f}{1-f}. \tag{4}$$

In the case that votes were actually switched from Trump to Biden, then the formula becomes,

$$\frac{B-x}{N_1} = f$$
$$x = B - N_1 f$$

This would suggest that 104,107 ballots were fraudulently manufactured for Biden. If we presume that actually those ballots were switched from Trump to Biden then as many as 19% of the new absentee ballots for Biden were fraudulent, which totals around 51,110 ballots that should be removed from Biden's totals and added to Trump. We shall see in Section 6, that there is substantial evidence that some Trump votes were actually switched to Biden votes.

3.3 Analysis of Pennsylvania Absentee Ballots

The Pennsylvania absentee ballot count started at 785,473 and 319,741 ballots were added at 39 hours after the start of the data record. The Biden fraction among absentee ballots as a function of time is shown in Figure (5). This plot shows some oddities in that the Biden fraction fluctuates with large deviations.

In Figure (6) we see the initial Biden percentage compared with the Biden percentage of the added ballots over the first 39 hours. The added ballots have a Biden percentage of around 83%, while the

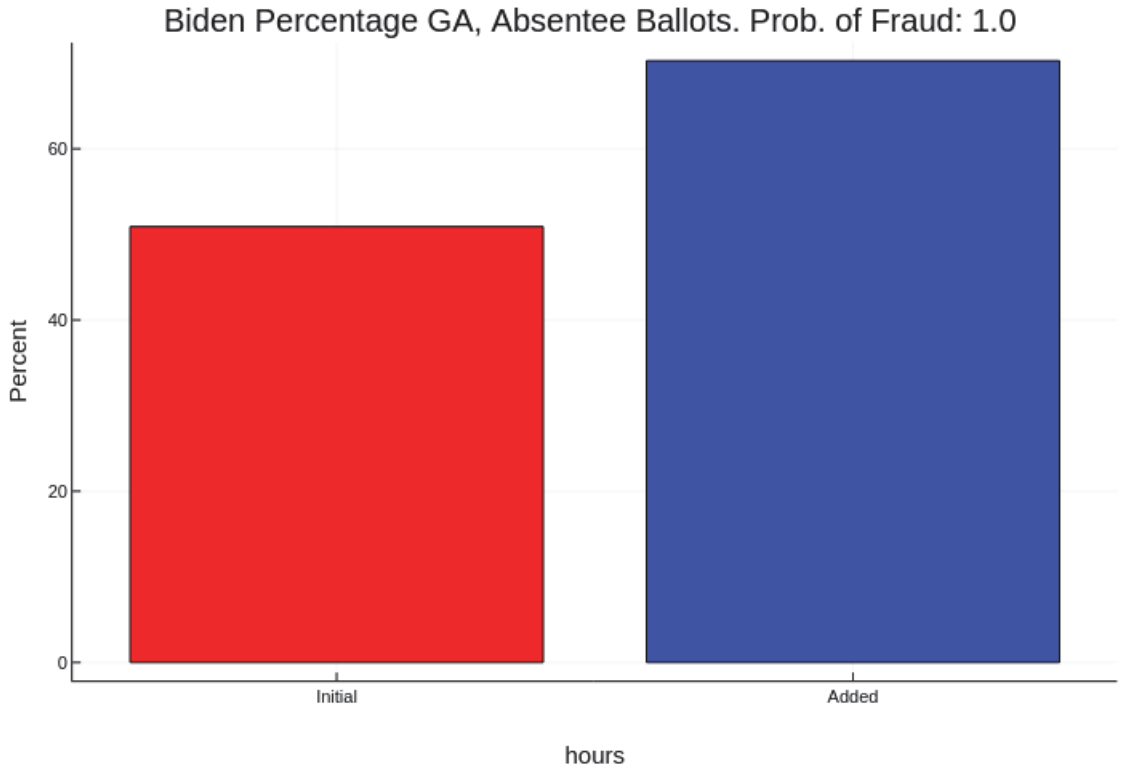


Figure 4: Before and After Biden Fraction in Georgia

initial statistics were at 78%. This is a very large jump for such a large sample size and seems very unlikely. Indeed the probability that the fraud model is correct is 100%, up to the precision of double floating point arithmetic.

If we just examine the initial large batch of votes among the absentee ballots, we see an unexplained jump of 5% for Biden. Although it is likely that most of the fraud, if any, occurred earlier in the vote count, just this batch of ballots suggests that approximately 72668 Biden ballots are fraudulent. If we presume that the votes were stolen from Trumps votes, then 15987 Biden ballots are fraudulent and should be added to Trump's total.

4 Analysis of Milwaukee County in Wisconsin

We now switch our analysis to a data set that contains precinct data for Milwaukee county. The data was obtained from the twitter acount of @shylockh, who derived his sources from the New York Times and in some cases from the unofficial precinct reports from the Wisconsin elections commision website. We examine vote percentages for ballots added between Wednesday morning, 11/04/2020 and Thursday night 11/05/2020.

This data set gives the total vote count by party affiliation. Because the data set is confined to Milwaukee, we can assume that the statistics should not be time varying. The voting pool here is highly partisan in favor of democrats and we don't expect any significant difference in the voting percentage, especially since a large number of absentee ballots were already counted by Wednesday morning.

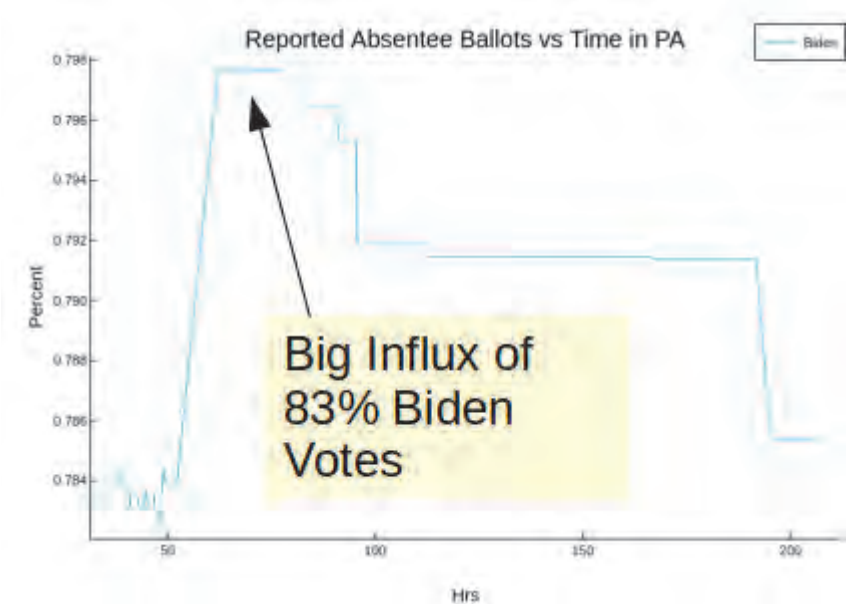


Figure 5: Pennsylvania Absentee Ballots vs Time: (Biden Fraction)

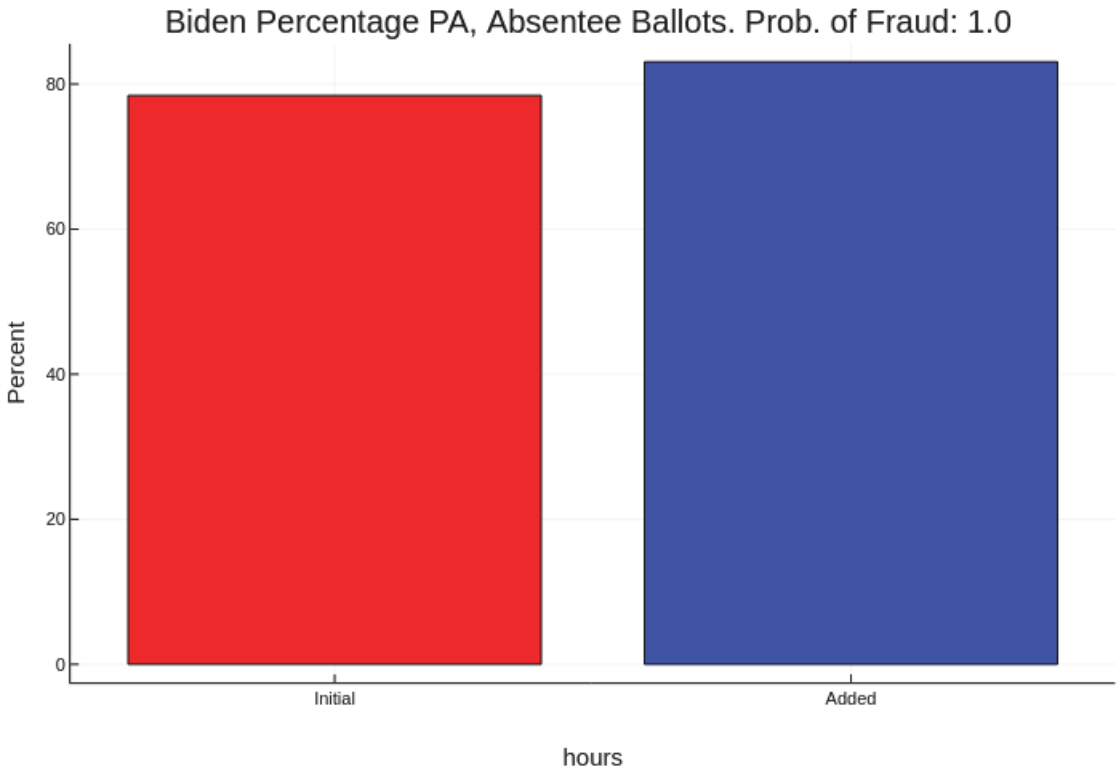


Figure 6: Before and After Biden Fraction in Pennsylvania

4.1 Analysis of Milwaukee County Democrat results

The percentage of democrat voters increases by 15% among the ballots added on Wednesday and Thursday. On Wednesday morning Milwaukee had received 165,776 ballots. By Thursday evening 458,935 ballots were received, adding 293,159 ballots.

In Figure 7 we see the large deviation in democrat percentage between the Wednesday morning and those added by Thursday evening. This too causes the posterior probability of the fraud model to be 100% to machine precision.

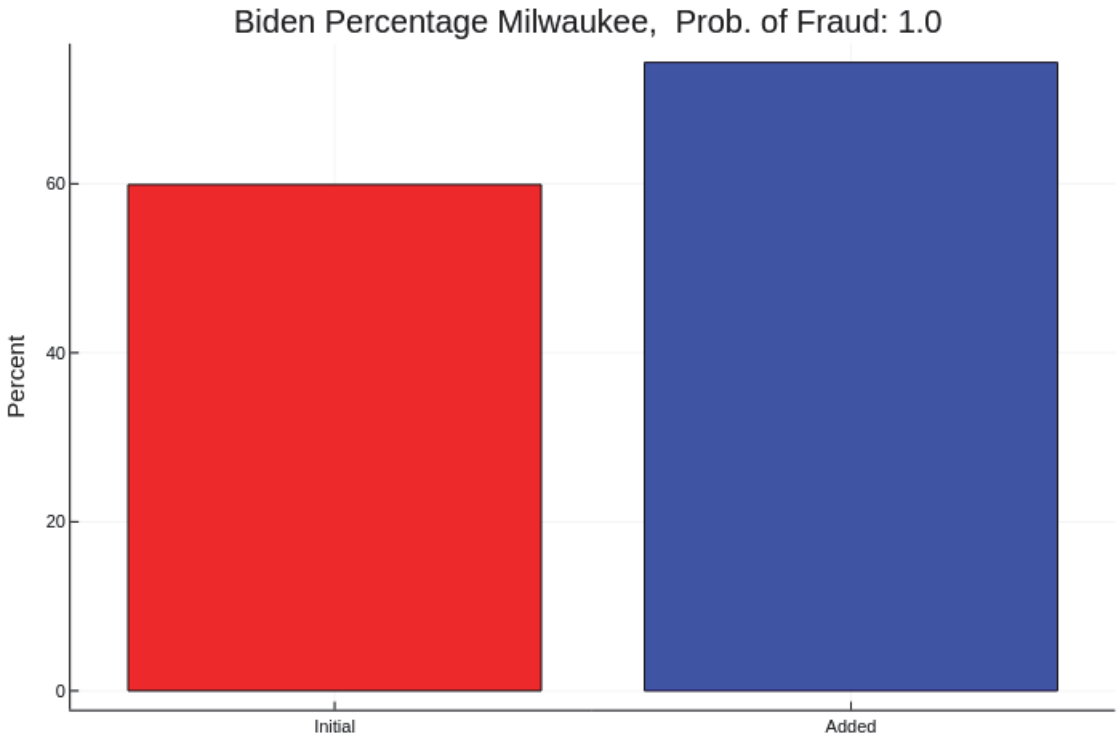


Figure 7: Before and After Democrat Fraction in Milwaukee

Assuming that there was fraud, we estimate that 105,639 fraudulent Biden ballots were added between Wednesday and Thursday of 11/05/2020 in Milwaukee alone. However as we shall see below, many of these votes may well have been switched from Trump to Biden, which would also give Trump an additional 42365 votes and remove 42365 votes from Biden.

4.2 Candidate Percentages Sorted by Ward Size

Another useful tool for evaluating fraud is to look at the cumulative vote percentages sorted by an independent input factor. An easy factor to use is ward or precinct size. This concept was used throughout the report on voter irregularities in [2]. In that report there was an anomalous dependency on precinct size in many of the 2016 primary elections. The larger precincts had introduced the use of voting machines. But one could also theorize the opportunity for cheaters to cheat in small precincts, where there may be less oversight.

Normally we would expect the cumulative vote percentage to converge to an asymptote, and bounce around the mean until convergence. An example of this can be found from the 2000 Florida Democratic presidential primary between Gore and Bradley. This is shown in Figure 8, and is taken from [2].

However when one sorts the Milwaukee, Thursday night data, by precinct size, you will see trend-lines that do not converge to an asymptote, as shown in Figure 9. It appears that smaller precincts

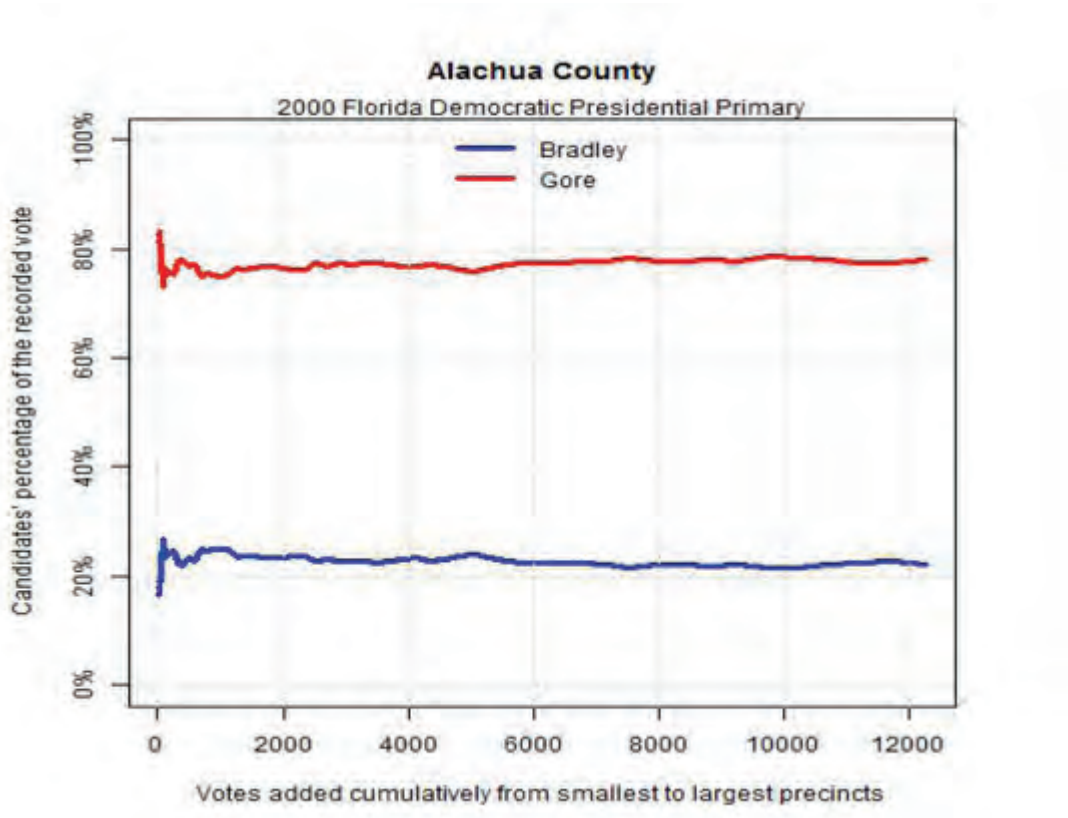


Figure 8: Baseline Cumulative Fractions Sorted by Precinct Size

almost uniformly have higher Democrat percentages. There is no obvious reason for this. It was certainly not seen in the control case in Figure 8. Furthermore the third party percentages quickly converge to their asymptote as would be expected in a fair election. One possible model for this would be vote switching from Trump to Biden, which would show up more strongly in the smaller precincts.

5 Analysis of Third Party Vote Count

Third party voters offer another way to examine a possible fraud mechanism. Votes could either be switched from third party candidates to the cheater, or fraudulent ballots that are added to benefit the cheater, may not include third party choices. For the control example, we look at absentee ballots in the state of Massachusetts. In Massachusetts the initial absentee ballot count was 117,618, and the number of added absentee ballots is 10,281.

The reported 3rd party percentage of absentee ballots vs time in Massachusetts is shown in Figure 10 and the comparison of the inital and added 3rd party ballots in MA is shown in Figure 11. There is only a small change in party preference, relative to the size of the added ballots. Therefore the probability of the fraud model is only 22%.

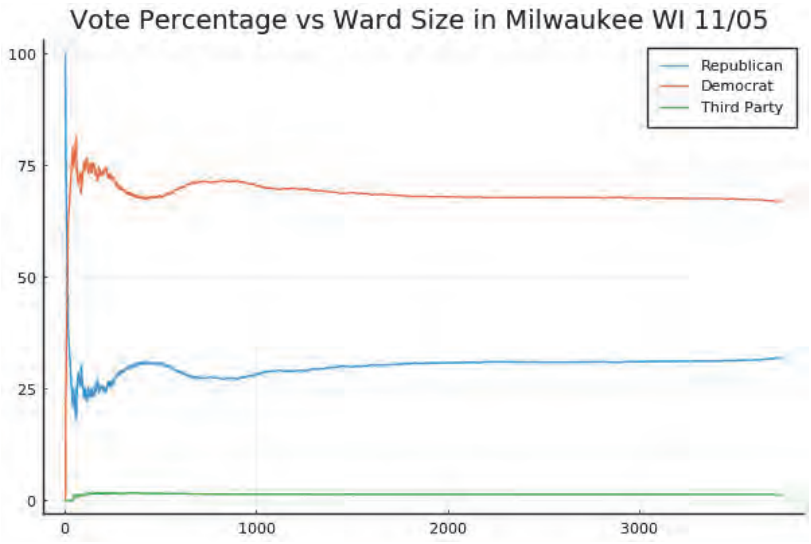


Figure 9: Milwaukee Democrat Ballots Percentage vs Ward Size

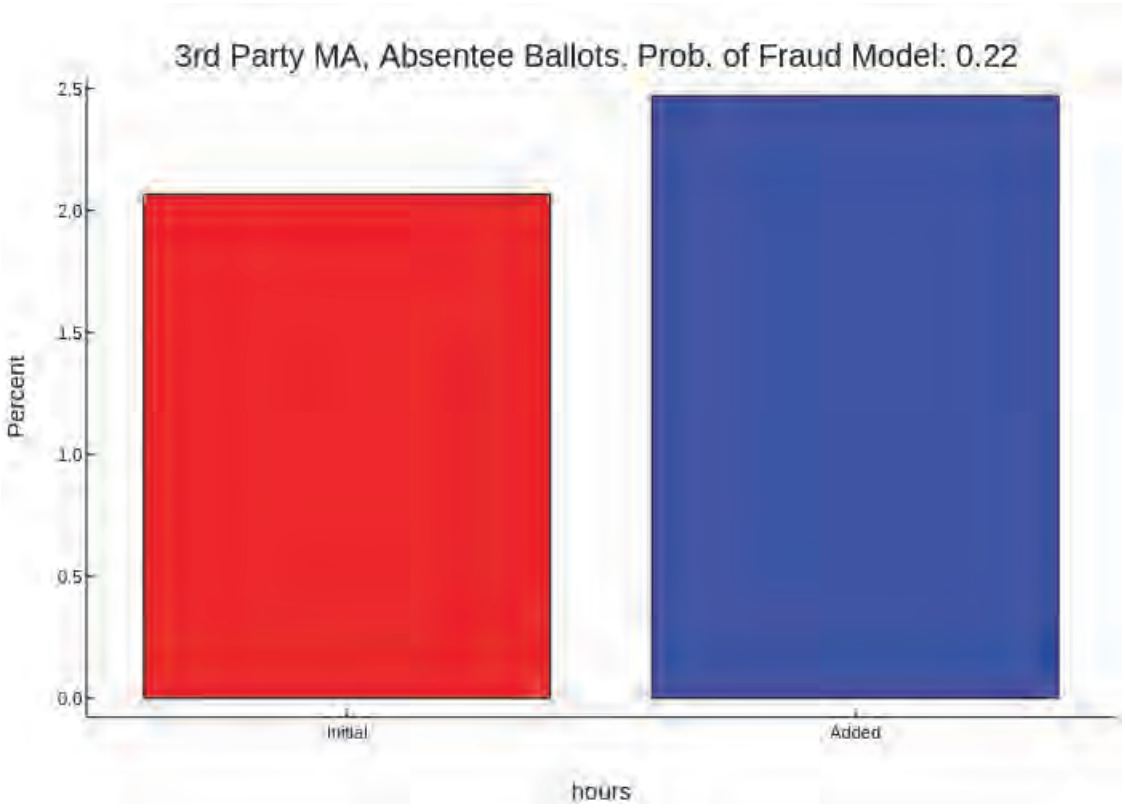


Figure 11: MA 3rd Party Percentage Initial and Added

When we look at the total 3rd party percentages in Milwaukee, between Wednesday morning and Thursday night, we see a significant drop from 1.9 percent to 1.4% for the newly added ballots. But this is among 293,159 added ballots. This is illustrated in Figure 12. Again in this case the fraud model has a posterior probability of 100% to machine precision.

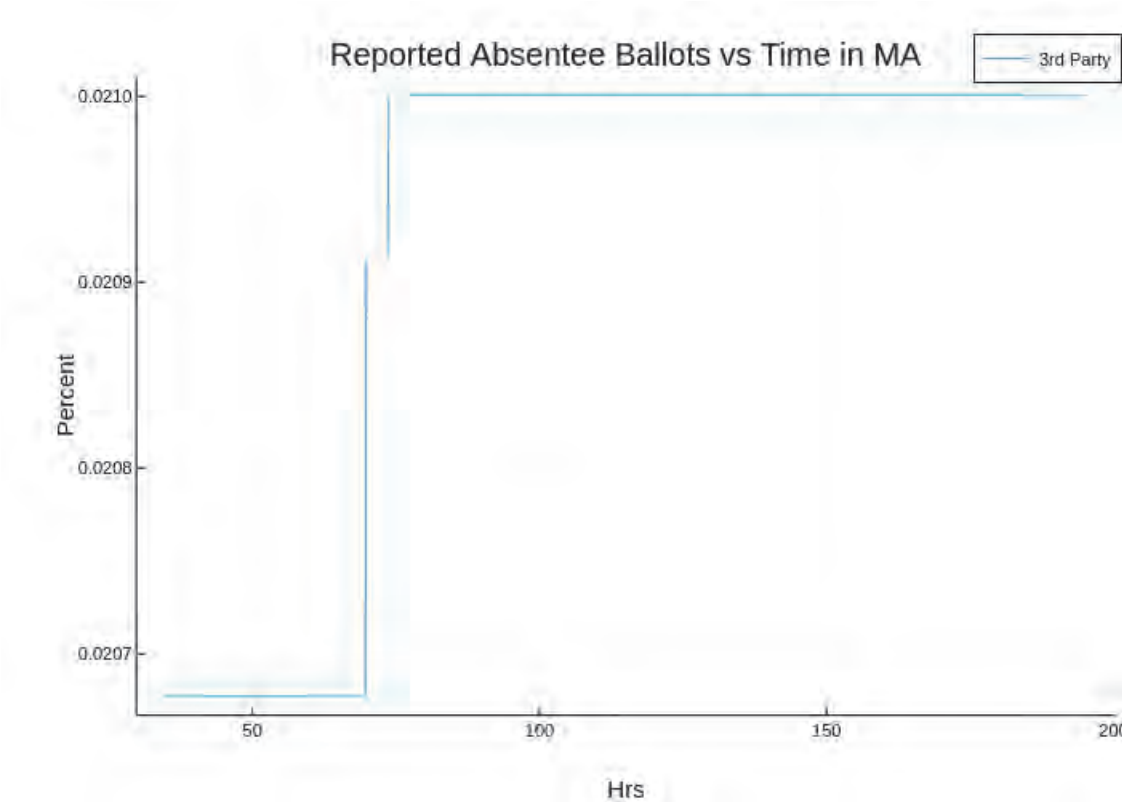


Figure 10: MA 3rd Party Absentee Votes vs Time

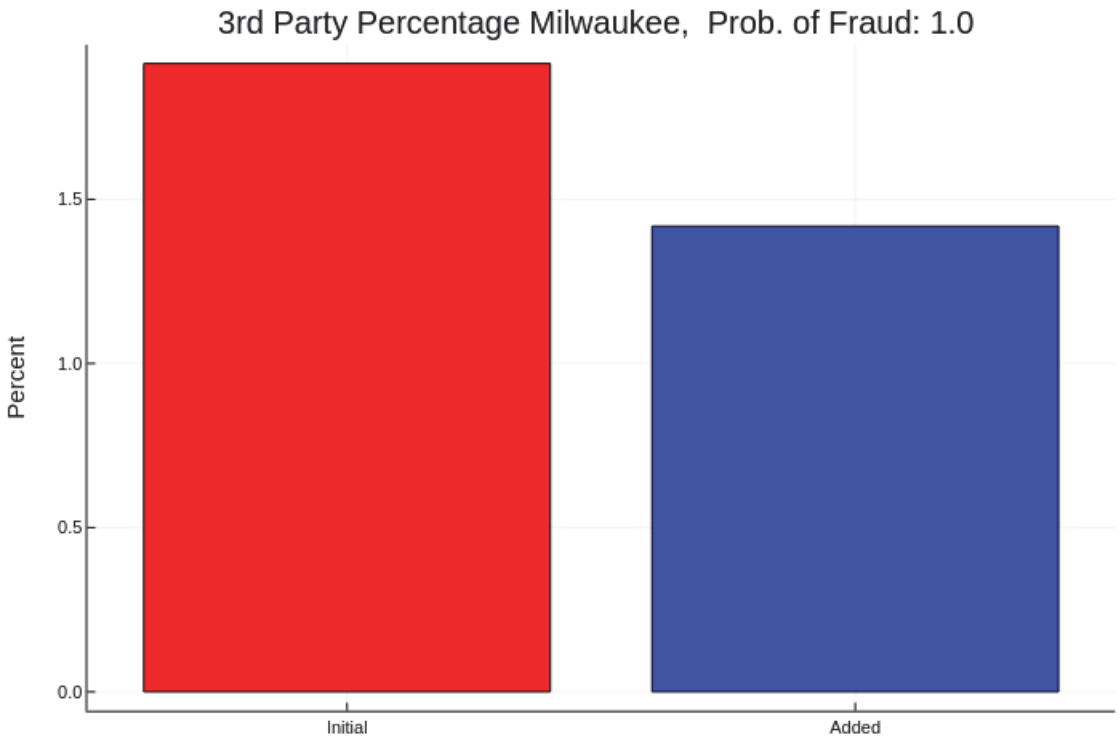


Figure 12: Milwaukee 3rd Party Percentages between Wednesday and Added

6 Analysis of Fulton and DeKalb Counties in Georgia

We perform a precinct level analysis of Fulton and DeKalb counties in Georgia based on an aggregate data set likely culled from the New York Times. The Fulton data was collected on 11/08/2020 and the DeKalb data was collected on 11/09/2020. As in Milwaukee we look at the cumulative vote percentages as a function of precinct size. A plot of this for DeKalb county is shown in Figure 13.

Although there are somewhat concerning trendlines in the beginning, after the size 600 precinct mark, thereafter the overall picture is what one would expect of an election where the voter preferences are not dependent on precinct size. Both DeKalb and Fulton counties are in predominantly urban Atlanta, neighbor one another, and have similar voting preferences across precincts. DeKalb county is still suspect, however, due to the irregularites observed prior to the Ward 600 mark.

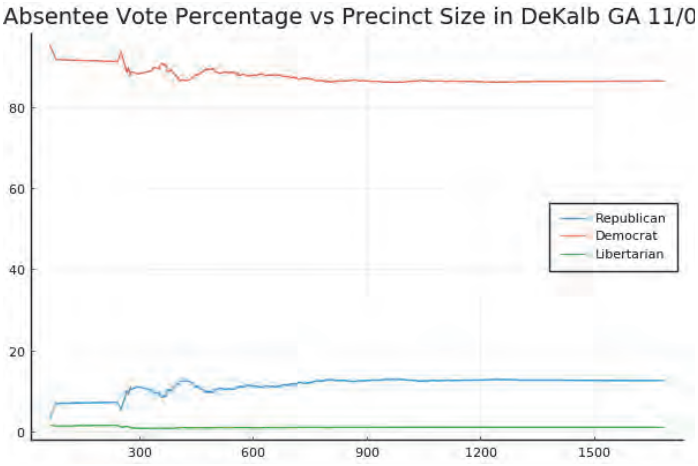


Figure 13: Dekalb County Absentee Ballots: Percentages vs Precinct Size

A different story emerges when we plot the absentee vote percentages for Fulton county as a function of precinct size, as can be seen in Figure 14. Here the trendlines for the Democrat and Republican percentages are quite pronounced, amounting to a difference of 8 percent from the halfway mark.

We divide the Fulton county data into a group of smaller precincts and larger precincts. One group has precincts less than 308 and another larger than 308. The total absentee ballots for the small group is 24,575, and the large group is 120,029. The small group has a Democrat percentage of 85% and the large group has a percentage of 77%, for a change of 8%. The fraud model is preferred in this scenario again with probability of 100% to machine precision.

One might presume that small precincts generally favor Democrats over large precincts, biasing the results. However take a closer look at the Libertarian party results in Fulton county in Figure 15. The percentages are exactly what we would expect if there were no bias in precinct size. The percentages bounce around a mean, not trending in any direction.

So if there were a bias favoring the democrats in small precincts, we would expect that to effect both the Republican and Libertarian totals. However it appears to only effect Republican totals, as if the Republican ballots were switched over to Democrat in a higher percentage in the smaller precincts. Indeed if a fixed number of ballots are switched in each district, it would have a larger effect in the smaller districts and then show up as trend lines in these percentage plots. At a minimum the data suggests a statistical anomaly that is not normally present in a fair election.

7 Michigan Analysis

We now due a time series analysis for Michigan. The data was culled from Edison Research. We first show, Trump, Biden and 3rd party voting percentages vs hours after the start of the election in Figure 16. The third party votes shows the proper convergence to an asymptote that we would expect from

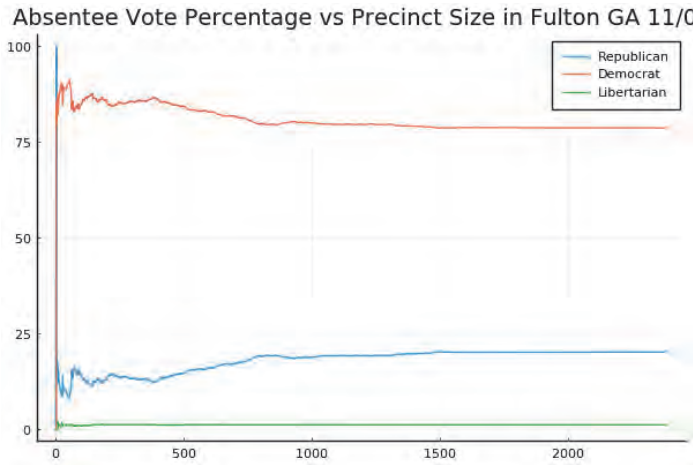


Figure 14: Fulton County Absentee Ballots: Percentages vs Precinct Size

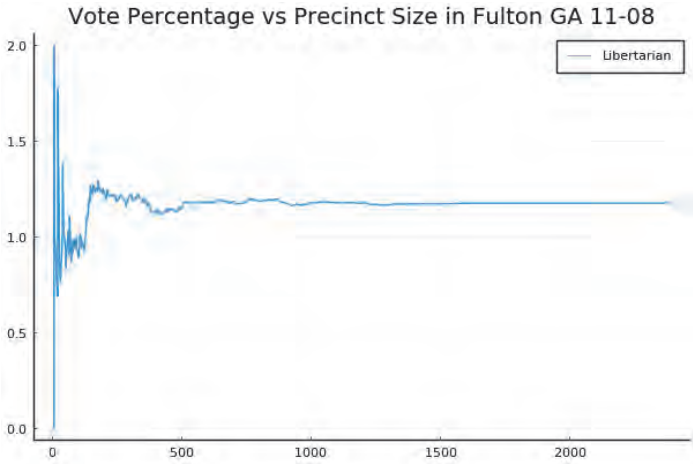


Figure 15: Fulton County Absentee Ballots: Libertarian Percentage vs Precinct Size

the law of large numbers. However the Trump and Biden percentages are vastly different You can see large discrete jumps in the percentages as very large Biden ballot dumps occur over time. You also see that the Biden percentages are mostly always increasing after hour 27, which is statistically unlikely in a fair election.

Note also that almost a million of the ballots are received by hour 27, and we use this as our starting point. At that point we have a total of 970,119 votes cast. At the end of 167 hours we have 5,531,222 votes cast. At our initial point the Biden percentage is 38%, but the new ballots have a Biden percentage totaling 53% as seen in Figure 17. The fraud model has posterior likelihood of 100% to machine precision.

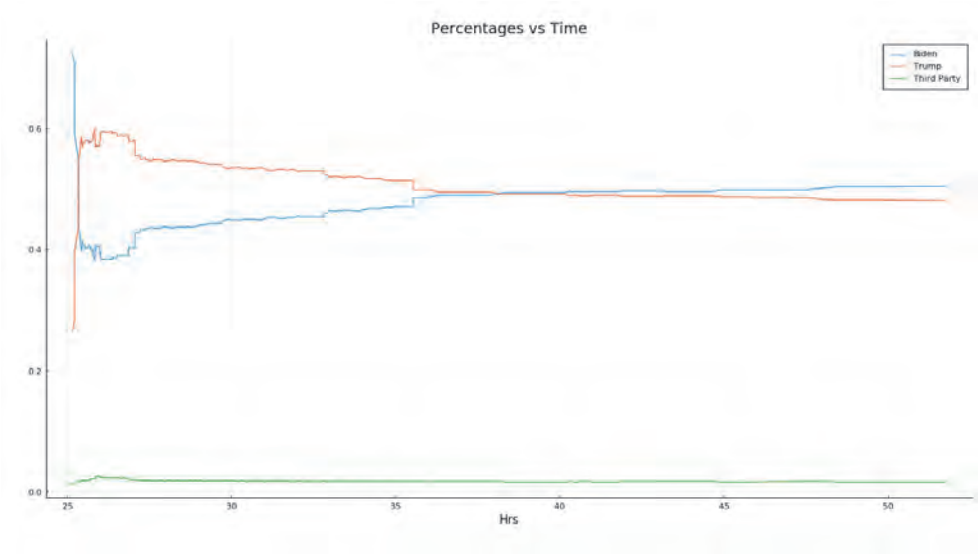


Figure 16: Michigan Vote Percentage vs Time

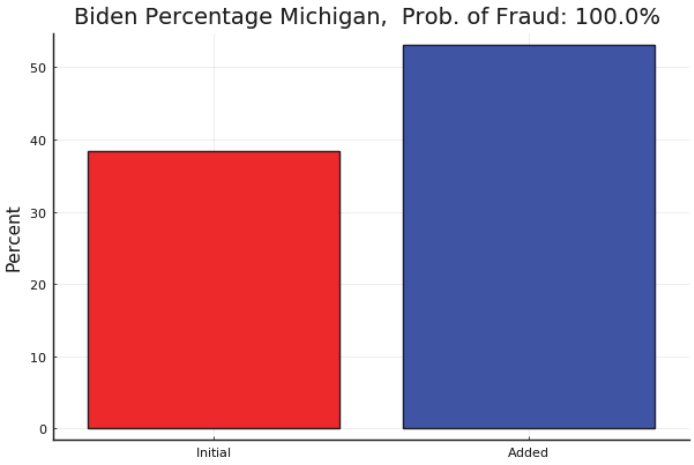


Figure 17: Biden Percentage Before and Added

For Michigan we compute the estimated amount of fraudulent Biden ballots conservatively, assuming that the 50.5 percent seen at the end of the count should have been the correct percentage among the newly added ballots. From this and (4) we obtain an estimate of 237,140 fraudulent votes added for Biden.

8 Maricopa Precinct Analysis

We apply a similiar analysis to Maricopa county in Arizona. The data was obtained from the Maricopa county recorder website at https://recorder.maricopa.gov/media/ArizonaExportByPrecinct_110320.txt. Precincts are sorted by size and the cumulative vote percentages are tallied. It should rapidly approach an asymptote, but again in Figure 18 we see an anomaly. The Biden percentage is higher in the smaller precincts, primarily at the expense of Trump, again suggesting vote switching, since the 3rd party percentages immediately approach it's asymptote.

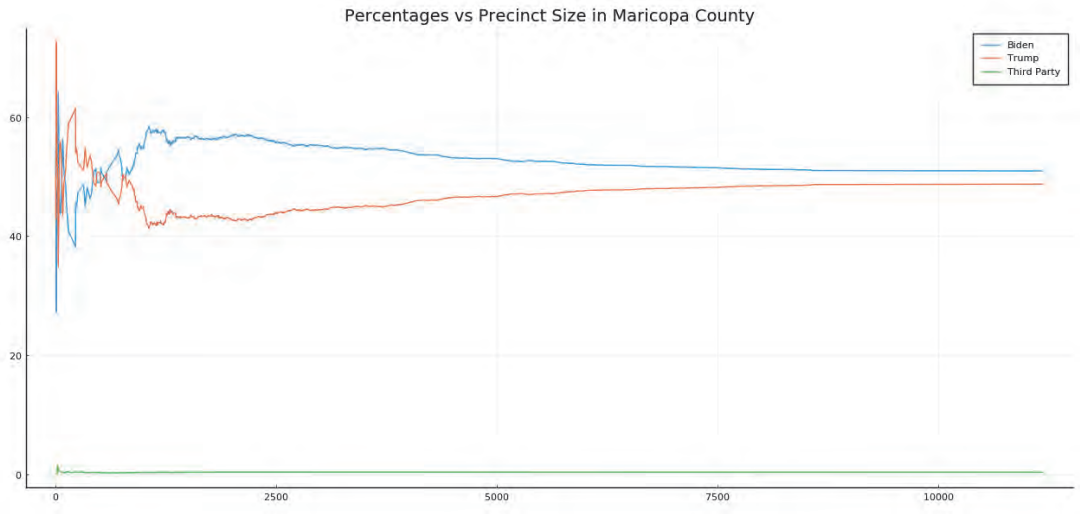


Figure 18: Maricopa County Arizona Percentage vs Precinct Size

In Figure 19 we focus on the third party percentages, which we see are indeed independent of precinct size and converge quickly to it's asymptote. This is about what we would expect if the third party candidates were counted fairly. It is in sharp contrast to the precinct size dependency and slow convergence of the Trump and Biden percentages.

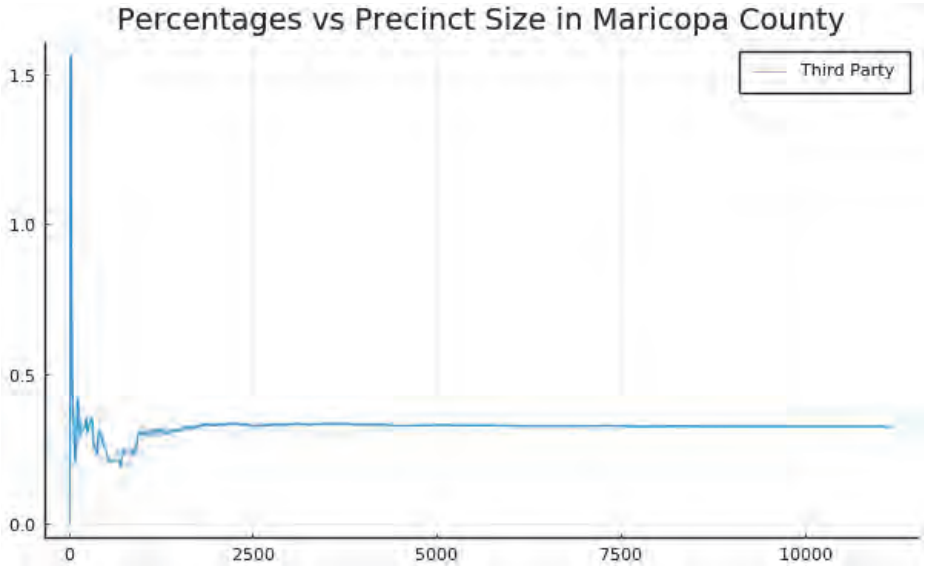


Figure 19: Third Party Percentages vs Size in Maricopa County

References

[1] Peter Klimek, Yuri Yegorov, Rudolf Hanel, and Stefan Thurner. Statistical detection of systematic election irregularities. 2, 2.1

[2] lulu Fries'dat and Anselmo Sampietro. An electoral system in crisis. http://www.electoralsystemincrisis.org/. 4.2

Declaration of Matthew Bromberg Ph.D

December 1, 2020

Pursuant to 28 U.S.C Section 1746, I, Matthew Bromberg, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.

2. Matthew Bromberg has a Ph.D in Electrical Engineering from the University of California at Davis and a Masters degree in Mathematics from the University of California at Berkeley. I have been employed, for over 28 years, in the signal processing and wireless signal processing domain, with an emphasis on statistical signal processing. I have published numerous journal and conference articles. Additionally, I have held Top Secret and SAP clearances and I am an inventor of nearly 30 patents, one of which has over 1000 citations in the field of MIMO communications (Multiple Input Multiple Output).

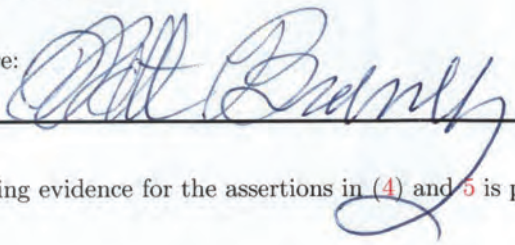
3. I reside at 4303 West Eaglerock Pl., Wenatchee WA, 98801.

4. Given the data sources referenced in this document, I assert that in Georgia, Pennsylvania and the city of Milwaukee, a simple statistical model of vote fraud is a better fit to the sudden jump in Biden vote percentages among absentee ballots received later in the counting process of the 2020 presidential election. It is also a better fit when constrained to a single large Metropolitan area such as Milwaukee..

5. Given the same data sources, I also assert that Milwaukee precincts exhibit statistical anomalies that are not normally present in fair elections.. The fraud model hypothesis in Milwaukee has a posterior probability of 100% to machine precision. This model predicts 105,639 fraudulent Biden ballots in Milwaukee.

6. I assert that the data suggests aberrant statistical anomalies in the vote counts in Michigan, when observed as a function of time.

7. I assert that the data implies statististical anomalies supportive of vote switching in Maricopa county Arizona.

Signature: 

Supporting evidence for the assertions in (4) and 5 is provided in the following pages.

EXHIBIT 20

DECLARATION

I make this Declaration of my own personal knowledge, and I am competent to testify to the matters contained herein.

1. I served as an official legal observer of the 2020 general election. I observed at the following location: 510 S. Third Ave Phoenix AZ 85003 on Sunday(s) 10-25-2020, 11-01-2020 and Thursday 11-05-2020.
2. While serving as an observer, I personally witnessed the following:
3. On Sunday October 25, 2020, I arrived to serve from 7:15 am to 4:30 pm and was provided a complete tour of the facility from opening of mail-in ballots, *elevated* signature verification and the adjudication process. I was not shown the normal signature verification process, if there was one.
4. There was no ballot counting/tabulation on Sunday, October 25, 2020.
5. I was told that approximately 12% of all mail in / early ballots were in need of adjudication, for reasons including but limited to mis-marking *bubbles* and *write-in* candidates, in order to establish *voter intent.*
6. After watching the adjudication process, I was satisfied the "one Republican and one Democrat" process was being accomplished in a very diligent, straightforward and honest manner.
7. I was concerned and did voice my complaint that the two Maricopa County *referees,* who are called upon to settle any unresolved disputes between the adjudicators, were registered "Independent Party" members. I was told that this *set up* was laid out per Arizona Statute.
8. I asked one referee about her bias and how she voted for President and a very wide grin appeared on the upper cheeks and eyes on that referee's

masked face and after 10 seconds or so, she said: "I cannot say" (I regret not having this county employee's name, but can easily identify her from a photo or in person).

9. During my October 25, 2020 tour of duty, I was able to ask questions and received feedback from every county employee I engaged at the tabulation center.

10. I engaged *BRUCE* who was the Dominion "Master of Ceremonies" employee who was in sole charge of operating the Dominion server and software, as a Maricopa County contractor. To my knowledge, *BRUCE* was the sole Dominion representative working in the Maricopa County Recorder Ballot Tabulation Center, while I was observing during 10-25-20 (11-01-20 & 11-05-20). To this moment, I deeply regret not having obtained his last name and have been working to obtain it. *BRUCE* is approximately 5'10 180lbs "Ginger" Red/Blond hair. I can easily identify him from a photo or in person

11. I spoke, one on one, with *BRUCE* twice on Sunday October 25, 2020 about the safety and security of the digital data, that he alone was collecting and storing into the Dominion system. When I told him that I grew up watching the 1966 original Mission Impossible and that I had just watched a Tom Cruise "Mission Impossible" movie, where "Tom" was able to access the ultra-secure space portrayed in the movie via HVAC ductwork, *BRUCE* (with a very amused look on his face the entire time) kept physically pointing to the the heavy duty glass/plexiglass server space and carefully pointed out how every

wire, cable and power supply cord were hung in a "basket" path suspended from the ceiling, to and from the server and to all counting/tabulation equipment. He assured me that nothing in that room was connected to the internet.

12. When I continued to pitch my position that "a savvy 14 year old could somehow hack into the data and change the outcome of the results," *BRUCE* replied; "there must be *trust* in the process" and ended our final exchange on 10-25-20, with a smile, saying that he was a registered Republican.

13. As no ballot counting/tabulation of ballots was to occur that day, at or about 2:30 pm Sunday October 25, 2020 I ended my assigned shift and I departed the Maricopa County Recorder Ballot Tabulation Center.

14. On 11-01-2020, I served from 7:15 am to 4:30 pm at the Maricopa County Recorder Ballot Tabulation Center.

15. While waiting for ballot tabulation activity to commence, Mr. Greg Wodynski, a fellow Republican observer assigned that day, arrived. I was relieved to learn that Greg Wodynski had far more than a general working knowledge of computer programming and had experience in that field for decades.

16. Given my inability to satisfy myself about the security of the data during my 10-25-20 experience, I was hopeful that Greg Wodynski would be able to ask questions that would illuminate in a manner in which I could trust the Dominion data collection and storage system and process.

17. When there was a problem with the operation of one of the older, smaller tabulation devices *BRUCE* was called into action and Greg Wodynski and I sprung to our feet to observe the problem and to watch how it would be resolved.

18. Given my limited knowledge of software and programming, I was truly an observer, seeking to understand what was being done with or to the data.

19. I observed *BRUCE* and his laptop interfacing the broken/stalled tabulation device and handling folders full of data.

20. Greg Wodynski was following closely and understood precisely what it was that *BRUCE* was doing with the data on his laptop, given their exchanges.

21. I came to understand "when a file becomes too full of data, a *subset* folder had to be created." I am unsure if that *subset* folder was a copy of the original file, a brand new separate file thereby deleting the original file or how that data was handled exactly and did not understand fully, how the broken/stalled tabulation device was returned to service. Greg Wodynski will know, exactly what took place.

22. When Greg Wodynski and I asked how the data was stored as a backup, in case the building burned down, Maricopa County Vendor Dominion employee *BRUCE* admitted that he took a complete copy of the voter files, being stored in the Dominion system out of the building with him every night as a form of a "back up" copy (When the Dominion "Master of Ceremonies" takes the entire voter files into his sole possession while

unobserved off county property with him every night, it does not matter that the system, the County bought into, is purposefully not attached to the internet).

23. On Thursday 11-05-2020 I was assigned to stand a post at 2:30 pm at the Maricopa County Recorder Ballot Tabulation Center. On that day and time the only activity in the tabulation room was the processing of Overseas ballots. These Overseas ballots were being electronically generated by a two person team, consisting of differing political party members. The aforementioned "Independent" county referee was teamed up with a republican.

24. There were about 20 teams of two who were inputting votes made by Overseas voters from stacks of printed *.pdf* sheets of paper having hand written serial numbers, in red ink.

25. I voiced my concern to the lead county worker, about the fact that the "Independent" county worker may not be as dutiful as a Republican or Democrat would be to the process of creating electronic ballots that were to be counted by Dominion machines and software. I do not have the name of the "lead county worker, but can identify her from a picture or in person.

26. About 20 minutes later I asked the lead county worker "where the hand written serial numbered printed *.pdf* documents were generated?"

27. At that moment, my phone rang and the lead county worker told me to "take that call outside." I instantly muted the ringer, while continuing to press her for answers about "where the secured portal was, who was

responsible for hand writing serial numbers on each *.pdf* and most importantly, who was observing that process?"

28. I was told "the secure portal was *offsite* and that there was no oversight."
29. At that point the lead county worker turned and walked away with her assistants, who seem to be serving as witnesses.
30. About 10 minutes later, while observing another set of folks who were "adjudicating" damaged *.pdf* ballots, unsupervised, I took my phone out and saw two text messages from AZ State Director of Election Day Operations Gina Swoboda at 3:45 "Hi mark. You have been removed by maricopa elections. Please leave. Thank you." & "I am sending another observer" It was Ms. Swoboda's call I muted as she left me a voicemail stating what she texted when she didn't reach me by voice. I departed the Maricopa County Recorder Ballot Tabulation Center at approximately 4:00 pm Thursday 11-05-2020.

I declare under penalty of perjury under the laws of the State of Arizona that I have read the above Declaration, am familiar with its contents, and know the same to be true and correct of my own personal knowledge.

November 24, 2020.

Signature: _____

Mark Paul Low

EXHIBIT 21

DECLARATION

I make this Declaration of my own personal knowledge, and I am competent to testify to the matters contained herein.

1. I served as an official legal observer of the 2020 general election. I observed at the following location(s): _Oct 17, 2020 and Oct 21, 2020 at the Maricopa County Tabulation and Election Center in Phoenix, AZ. I also observed at the Happy Trails Voting location, Surprise, AZ on October 28, 2020_____.

2. While serving as an observer, I personally witnessed the following: At the MCTEC site I observed in 2 different locations: signature verification and ballot processing. In the signature verification room on October 17 I was told to remain at a card table which was at least 10' – 12' from where all of the computer monitors/screens were turned away from me and I was unable to see any of the signatures during the process. On Oct 21 there were more screeners in the room and I was able to turn my chair to observe 2 screens approximately 6 – 8' from me. In this area of the room there were 3-5 screeners looking at "Low Confidence" signatures for the entire afternoon until there was a power outage for approximately 15 – 20 minutes. The "Low Confidence" signatures were indicated at the bottom of the screen with a bright yellow banner. I asked the woman who we were allowed to speak with (Celia) what happened to these signatures and were these votes counted. She informed me that they were counted and that the "Low Confidence" indicator was a new program that they were testing. Following

the brief power outage a quiet discussion among the 3-5 screeners that I could see were looking at Low Confidence signatures was that at least one of them that I could see was now looking at High Confidence signatures. Since I was able to see the Low Confidence signatures earlier I was disturbed that; 1. there were so many screeners looking at the Low Confidence for an entire afternoon 2. that the signatures were not even close to the signatures that they were "comparing" the ballot signature to and 3. I was told by Celia that these signatures were counted I communicated this with Gina Swoboda, who was my contact for observing. In the ballot processing room there were 75 -90 processing tables with, I was told, one Republican and one Democrat on each side of the table. I was told to remain in a yellow taped area which was at least 15' from any of the tables. I couldn't see anything that they were doing other than removing ballots and comparing the number on the ballot to the number on the envelope and then separating the ballot from the envelope. It appeared that they were only to record information with a red pen and the process seemed appropriate. The room was the size of a gymnasium and I really couldn't observe anything specific, although I tried to observe when individuals had questions and when they were filling out there 'reports.' When the press arrived on October 21 in the morning I found it interesting that the women who had been in a supervisory capacity when I observed on Oct 17 were now at a table "closer" to me and processing ballots for about an hour and a half while several press people with photographers filed in and out.

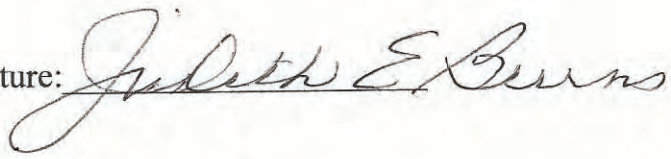
3. October 28 I observed voting at the Happy Trails site in Surprise, AZ. Immediately after voting started it became evident that the glue on the envelope in which people placed their ballots was not going to stick and the envelopes would not remained closed. People did not want to lick the envelopes or take their masks off to do so. The poll workers used masking tape on these ballots. I called the contact person on my ID and reported this to them. There were many, if not most, of the ballots throughout the day that had masking tape used to close the envelope. I was very concerned that these ballots would not be counted. One of the supervisors at the site went to the election depot to get something to assist in sealing the envelopes. He came back with a small container which they put water in and sealing envelopes continued to be a problem throughout the day. The supervisor didn't seemed at all concerned about doing this. I was told to not ask questions or talk to anybody at that point.

4.

5.

I declare under penalty of perjury under the laws of the State of Arizona that I have read the above Declaration, am familiar with its contents, and know the same to be true and correct of my own personal knowledge.

Dated November _16_, 2020.

Signature: 

Printed Name:_Judith E.Burns

EXHIBIT 22

DECLARATION

Monday November 23rd 2020

I make this Declaration of my own personal knowledge, and I am competent to testify to the matters contained herein .

1. I served as an official legally approved GOP observer of the 2020 general election. I observed at the following location: MCTEC (Maricopa County Tabulation Election Center) 510 S. Third Ave Phoenix AZ 85003.
2. On Saturday 10-24-2020 & Sunday 11-01-2020 I observed for approximately 8-9 hour daytime 8-5 shift in the tabulation intake room. My signature is on visitor logs kept by staff.
3. In this tabulation and adjudication work area was the Dominion computer system computer hardware on what I observed to be racked Dell branded computer hardware, 5-6 Canon scanners on work are tables and two larger free standing (presumably Dominion) bulk ballot scanners.
4. I interacted with several supervisors including Celia (a lead person at MTEC who granted me access), Rene a supervisor in tabulation area, and Mary C. Connor another lead person – in and outside the tabulation room.
5. I spoke to Bruce who identified himself as Dominion employee on contract to Maricopa County for this election and observed another Dominion employee named John. Bruce and John appeared to have shared Dominion **system administration roles and demonstrated and acknowledged systems administration access to the voting computer systems.** Other recorder's office employees and supervisors worked with Bruce and John closely.
6. All the mentioned scanners were optically reading the mail-in ballots, converting the paper ballots into electronic images and discerning voter tabulation data into electronic format (data "votes tabulated" and scanned ballots in an image format – think jpeg format for example) and all stored in the computer systems files on hard drives.
7. On Thursday Nov 5th. I spent time in a signature verification room. I interacted with several supervisors including Celia (a lead authority person at MTEC) and Mary C. Connor a supervisor who escorted me to the signature working area room.

8. On Sunday Nov 1st in the adjudication and tabulation scanning room area, and in witness with another GOP Observer named Mark, I spoke to Bruce from Dominion and asked questions on the computer system contained in that room and connected to the ballot scanners. All mail in ballots were in theory feeding the data into this Dominion computer system.

9. Staff supervisors and Dominion employees stated that about 12% of mail in ballots were being rejected in the ballot readers and needed human intervention in the adjudication process. This amounted to tens of thousands of ballots that required intervention on the two shifts and days I observed adjudication and ballot tabulation.

10. On Sunday 11-01-2020 I asked Bruce how the tabulation data and scanned images were being stored and backed up. It is common IT practice to do regular data (disk drive) backup in the event of some system failure. Bruce stated that he would perform a manual daily system backup to an external hard drive attached to and in the secured computer bay "glass cage" within the larger adjudication/tabulation room. The hard drive was in a rubberized orange case and was easily visible, he pointed and identified it. I asked what software program he was using to perform automated backup ups. He stated he was not using an automated backup, and inferred he was doing a simple manual data copy to that "orange disk". Bruce stated that he took a second copy of the daily backup the orange external backup up target hard drive. Bruce reached for a new boxed hard drive on a nearby desk where he administered the systems at then pointed to a shelf with a box filled with spare and new empty hard drives.

11. **Bruce stated he made a daily second disk backup to a new spare hard drives daily. I asked him where the second daily disk drive backup data copy was being stored. Bruce stated the daily external disk copies were being physically moved off site to another location outside the MTEC building. I asked Bruce to what facility and by whom the disks were being relocated and he provided a vague answer that the were being carried to another building somewhere uptown. I then inquired if there was chain of custody of this daily data hard drive copy being moved outside the MTEC building and outside**

the tabulation room. He stated there was NO CHAIN OF CUSTODY on data backup up hard drives leaving the MTEC facility on a daily basis for an undisclosed location.

12. Sunday 11-01-2020 I observed Bruce discussing (and then explaining to me when I inquired) on specifics of a process where he was manually manipulating stored scanner tabulation data files. The purpose of this manual manipulation was due to what he described as a processing issue at the numerous adjudication computer workstations.

13. Bruce described having to take the scanned mail in ballot tabulation data files from a ever-growing large data file in the Dominion system storage devices and creating smaller subsets (data directories) containing scanned ballot files; presumably so that adjudication work stations staff could more effectively access and perform adjudication operations. This manual file operation performed by Dominion employee Bruce entailed taking ballot files from one large file directory and placing into many smaller file directories. Then performing a human driven and manual file quantity count - post the worker driving adjudication processing. This post count was to determine that the total number of files adjudicated in smaller batches equaled the total files (ballots) needing adjudication in the original source files. **This manual administrator operation at the file and directory level on the tabulation system storage was of concern to me. It was a human intervention process and therefore creating a potential for intention or non-intentional errors or lost ballot files.**

I declare under penalty of perjury that I have read the above Declaration, am familiar with its contents, and know the same to be true and correct of my own personal knowledge.

Dated November 23, 2020

Signature: Gregory Wodynski

Printed Name: Gregory Wodynski

EXHIBIT 23

DECLARATION

DECEMBER 1, 2020

My name is Linda Brickman. Thank you for allowing me to come forward and speak with all of you.

Effective November 12, 2020, as the 1st Vice-Chair of the Maricopa County Republican Committee (MCRC), by operation of law upon the resignation of the Chairman, I took over the performance of all the Chairman's duties.

I was notified by Rey Valenzuela, Director of Elections, that the Logic & Accuracy (L&A) Certification of the Dominion voting systems would take place on November 23rd. With limited notice, I was later notified the date was moved to November 18, 2020 at 10:00 AM.

There will be around eleven (11) issues that I need to share with you. Starting with a little background first please.

I arrived at the Maricopa County Tabulations and Election Center (MCTEC) prior to 10:00 AM, for what was supposed to be a morning turn around inspection of the Dominion Software and equipment; however, it took some eight (8) hours before the two formal L&A Certifications were completed, with mixed results.

We began in the BCC or Tabulation room, where the Dominion Software/machines were set up ready for actual testing.

There were about eight or 9 regular (vs high speed) machines set to tabulate all the numbers from test ballots (pictures already sent to you) selected by staff from the Secretary of State's (SOS) Elections office as part of the SOS L&A Certification, and one main frame

computer behind glass-like walls plugged into the wall, and a computer technicians work station with a desktop computer to transfer results from the individual tabulators and into the server. This main frame machine that I observed was to calculate all the test ballots and add up the "0's" to give a grand total of all 8 or 9 machine total ballots counted, equaling "0."

Problems occurred almost from the start with the SOS certification. For example, a number of the ballots could not be read by the tabulator machines; at least one or more of the tabulators broke down and portions had to be replaced; incorrect information had been inputted into each tabulator earlier that morning; the "wrong files" were loaded up into the main frame by the computer technician; and neither SOS staff nor the computer technician were able to quickly resolve the problems. Instead, we were alerted it might take an hour or more to work things out, so we adjourned until 2:00 PM, after lunch.

At approximately 2:00 PM I asked if the problem was resolved, and what had happened. Instead, I was informed that the machines were not calculating correctly, and all the machines were shut down during the break and reset; and they were going to start a brand, new test.

About an hour plus later, the ballots were run into the tabulators and printouts of the results in the form of a "cashier's tape" were reviewed by me and others. Then, the memory sticks from each tabulator were removed and handed to the computer technician for loading into the server along with other relevant files we were told.

Printouts were generated by the Dominion server, and County Chairs from the 3 County Political Parties, as well as other observers, began comparing the individual voting totals tabulated for accuracy. Once completed, the County Chairs were asked to fill out

and sign the "Certification" for the SOS L&A. And per Rey Valenzuela, Director of Elections, other observers could sign if they insisted, but only in an "Observer Capacity" and not in an official party capacity.

Then came time to sign the Certification.

Based on the issues described above with the SOS L&A test, and my familiarity with reports from other State Secretary of States (for example, Texas), the December 2019 Democratic US Senators written investigation into Dominion including irregularities in earlier elections, as well as reports from forensic experts including local Arizona ones, I denied certification, writing on the form: "CERTIFICATION DENIED – LINDA BRICKMAN – MC [Maricopa County] CHAIRMAN."

We then began the 2nd L&A test, but this one was conducted by Maricopa County Elections Staff and on separate Dominion voting tabulator machines. This was a similar process with results going to the server and reports printed out. But whatever problems or irregularities surfaced during the first SOS test, they did not manifest this time.

And for the same reasons noted above, I denied certification, writing on the Maricopa County form: "CERTIFICATION DENIED – LINDA BRICKMAN – MC [Maricopa County] CHAIRMAN."

I also have copies of each of those ballots counted, with copies available upon request. Again, my reasons as noted above were my first-hand observations of the flaws and irregularities in the SOS L&A tabulating and calculating of the Dominion software, the unexplained turning off the computer system and doing a reset versus a correction, and the over 5 hours for the SOS test and results review, plus my lack of faith in the 2nd L&A

test – we could see the machines, but could not see or observe the software behind the machine to confirm what had gone on.

As a veteran County Elections Worker who actually worked the election both during the August Primary, and the General from 10/19/20 to 11/11/20 working in the Signature Verifications room, Duplication room, Adjudication room, ABC Room, and Hand Count Audit, let me share just about 6 irregularities I PERSONALLY OBSERVED:

(1) Signature verification standards were constantly being lowered by Supervisors in order to more quickly process that higher amount of early and mail-in ballots (from approx. 15 points of similarities, to a minimum of 3, lowered to 1, and ultimately to none – "Just pass each signature verification through") "There are too many rejection of ballots each day, so push them through.".

(2) Challenged signatures on envelopes where the signature was a completely different person than the name of the listed voter, was let through and approved by supervisors.

(3) Challenged runs or batches of envelopes for signature verification observed by me to be the exact same handwriting on the affidavit envelopes on numerous envelopes. When I asked if the County Attorney would be alerted for possible ballot fraud, I was told no, but supervisors would take care of it (I can supply one of the batches with book numbers that I texted in case I needed it).

(4) In the Duplication room, I observed with my Democratic partner the preparation of a new ballot since the original may have been soiled, damaged, or ripped, and wouldn't go through the tabulator. I read her a Trump/Republican ballot and as soon as she entered it into the system the ballot defaulted on the screen to a

Biden/Democratic ballot. We reported this to supervisors, and others in the room commented that they had witnessed the same manipulation. We were never told what, if any, corrective action was taken.

(5) Election Office Observers – when it became apparent that more and more early and mail-in ballots would need to be processed, I mentioned that the current rule of the number of observers per party was not adequate (1 per party, unless all parties agreed to more). And since the Governor refused to call the Legislature into session for any reason, and little incentive for the Democrats to agree to a higher adequate number, there was no way 1 observer per Party, forced to the back of a room, or behind a see-through wall, had a legitimate opportunity to see what elections workers were seeing in real time and doing, especially where up to 20 or more workers processing tasks, sometimes in 10 seconds or less! And I personally observed most observers acting "clueless", and do not believe any of them even realized the challenges I made and referenced above.

(6) And lastly, one of the most egregious incidents in both the Duplication and Adjudication rooms which I worked, I observed the problem of Trump votes with voters checking the bubble for a vote for Trump, but ALSO, writing in the name "Donald Trump" and checking the bubble next to his hand written name again, as a duplicated vote, counting as an "OVERVOTE," which means – no vote was counted at all, despite the policy having been changed to allow these overvotes. Supervisors contradicted their own policies where the intent was clear. Ray Valenzuela, Director of Elections, told me openly at the morning of the Dominion Certification (November 18, 2020), that this was incorrect, the Supervisors were terribly mistaken

and as an Adjudicator, I was instructed incorrectly, and these many votes SHOULD HAVE BEEN COUNTED AND NOT TURNED AWAY AS AN OVERVOTE.

The next day, I was called outside the room where I was working and reprimanded for causing trouble over the weekend and was told to stop saying that there were wrong doings going on in other rooms, so I was suppressed from speaking the truth for fear of retaliation or pressure of being let go. So, the supervisor kept me working ALONE in my corner of the room, not to circulate with others.

Chairman Finchem, Legislators, and Mayor, I am here today not as an expert in the Dominion software, but as a voter in Maricopa County, who wants to hear the truth and speak the truth and not feel suppressed to speak before you now.

There should be integrity in our voting electorate. Voting is not a right; voting is not a privilege; voting is not an option. Voting is an obligation of every legal American Citizen.

Thank you.

God Bless America – and God Bless Donald Trump!

Linda Brickman

Maricopa County Republican Committee Chairman (MCRC)

Signed: Linda S Brickman

Dated: **December 1, 2020**

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD Plaintiffs, v. DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State Defendants.	Case No. **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

[1] District of Arizona admission scheduled for 12/9/2020.

COMES NOW Plaintiffs, Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward, by and through their undersigned counsel, and move that this Court grant them a temporary restraining order, with notice, pending adjudication of their request for preliminary injunctive relief.

FACTS

The facts relevant to this motion are set forth in the Complaint and its accompanying exhibits, all of which are respectfully incorporated herein by reference. We present only a summary.

After a general election and recount, Joe Biden has been declared the winner of Arizona's General Election for President by a difference of 10,457 votes. But the vote count certified by defendants on November 30, 2020 fails to recognize the votes are steeped in fraud. Hundreds of thousands of votes counted toward Mr. Biden's final tally were the product of fraudulent, illegal, ineligible and outright fictitious ballots. Plaintiffs support this claim through the evidence laid out in the Complaint which includes the following conclusions.

Section I presented the testimony of numerous fact witnesses attesting to conduct by Maricopa County election workers and Dominion employees that violated Arizona election laws. *See* Compl., Section I.

A Dominion employee admitted to two Affiants that he was manually "backing up" all voter data on a removable storage device, and removing the data every night to an undisclosed off-site location without any supervision by election officials, where such data could have been altered, and further expressly admitted to alteration of ballot adjudication files. *See* Compl., Section I.B.3.

Even more damning is the testimony of an Affiant who is a member of the Maricopa County Republican Committee and who oversaw Secretary of State's post-election certification of Dominion voting machines at the MCETC on November 18, 2020. This

Affiant attested to several Arizona election law violations and practices that discriminated against voters for President Trump and other Republican candidates that she observed there, including (1) arbitrarily low signature verification standards, that had the effect of ignoring this requirement altogether; (2) accepting signatures on absentee ballot voter envelopes that did not match the voter's name; (3) entire batches of absentee ballot envelopes to have the exact same handwriting; (4) Trump/Republican votes entered into the system and being switched to Biden/Democratic votes; and (5) election workers violating Maricopa County Election Department stated policy that it would permit "overvotes" where voters filled in the bubble vote for President Trump and also filled in his name as a write-in candidate. *See* Compl., Section I.B.4.

In Section II and III of the Complaint, Plaintiffs demonstrate through statistical analysis of voting results and technical analysis of voting machines and software that each of several distinct categories of voting fraud or batches of fraudulent ballots were larger than Biden's 10,457 margin.

Russell James Ramsland, Jr. is a member of the cybersecurity firm Allied Security Operations Group, LLC. His firm's study of the the publicly available data concerning Arizona's 2020 general elections results led him to conclude as follows: "**we believe to a reasonable degree of professional certainty that election results have been manipulated within the ES&S and Dominion systems in Arizona.**" (*See* Ex. 103) ¶9. Mr. Ramsland further attests that "**it is my professional opinion based on a reasonable degree of certainty that in Maricopa Co. these systems may have switched votes from one Presidential candidate to the other.**" *Id.*¶10.

The Declaration of Russell James Ramsland, Jr. also examines a number of "red flags" in the voting data, in particular, the historically unprecedented turnout levels. (*See* Ex. 103). Using publicly available data, Mr. Ramsland determined that 66 percent of Pima County precincts (164 of 248) had turn out above 80%, and at least 36 had turnout above 90%, and that 54 percent of Maricopa County precincts (300 of 558) had turnout of 80% or more, and at least 30 over 90%. *Id.* ¶14. The report concludes that these extraordinary,

and likely fraudulent, turnout levels "**compels the conclusion to a reasonable degree of professional certainty that the vote count in Arizona, in particular for Maricopa and Pima counties for candidates for President contain at least 100,724 illegal votes that must be disregarded.**" *Id.*¶14.

The Complaint provides testimony from several other experts who provided the summary opinions for illegal votes that should be discarded due to other categories of voting fraud:

- The report of William M. Briggs, Ph.D. estimating that absentee voters who were recorded as receiving ballots without requesting them to be 219,135 (*See id.*, Ex 101 at 1).
- Dr. Briggs also estimate the number of absentee voters who returned ballots that were recorded as unreturned was 86,845. (*See id.*).
- Matt Braynard used the National Change of Address database to identify votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election, and found a total of 5,790 ineligible votes. (*See id.*, Ex. 102).
- And Plaintiffs can show Mr. Biden received a statistically significant Advantage from the use of Dominion Machines in a nationwide Study, which conservatively estimates Biden's advantage at 62,282 votes.

Thus Mr. Ramsland, Dr. Briggs and statistician Brian Teasley identify distinct types of errors resulting in illegal or fictitious votes that are several times larger than Biden's margin of 10,457 (with the exception of Mr. Braynard's out-of-state or double voters that are still more than half of Biden's margin). If any of these categories of illegal voters were thrown out, it would change the result of the election, and give President Trump the second term that he actually won on Election Day.

Section III of the Complaint also provides testimony from experts regarding the security flaws in Arizona voting machines, in particular, Dominion Voting Systems ("Dominion") that allow Dominion, as well domestic and foreign actors, to alter, destroy, manipulate or exfiltrate ballot and other voting data, and potentially to do so without a trace due to an algorithm that configures the data, cleanses it to determine which votes are invalid

and which are valid before shuffling that results in a feed showing data with decimal points and reflecting that the algorithm changes together with Dominion's voluntary and unprotected logs preventing a genuine audit possibility. For example, the Complaint includes analyses of the Dominion software system, including one by a former US Military Intelligence expert concludes that the system and software have been accessible and were certainly compromised by rogue actors, such as Iran and China. (*See* Compl., Ex.105).

By using servers and employees connected with rogue actors and hostile foreign influences combined with numerous easily discoverable leaked credentials, Dominion allowed foreign adversaries to access data and intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020. This constitutes a separate and independent ground to grant the declaratory and injunctive relief requested in the Complaint and this Motion.

DISCUSSION

Plaintiffs Have Standing

Each Plaintiff has standing to bring the actions described in the Complaint, both as voters, and in the case of the following Plaintiffs as a nominee of the Republican Party to be a Presidential Elector on behalf of the State of Arizona: Tyler Bowyer, Nancy Cottle, Jake Hoffman, Anthony Kern, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Kelli Ward, and Michael Ward.

As a candidate for elective office, each Plaintiff "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." *Carson v. Simon*, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); *see also McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam).

Plaintiffs are Entitled to Injunctive Relief.

"To obtain a temporary restraining order or preliminary injunction, a plaintiff must show that '(1) [it] is likely to succeed on the merits, (2) [it] is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in [its] favor, and (4) an injunction is in the public interest.'" *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008)). Alternatively, "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two *Winter* factors are satisfied," *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)), *i.e.*, if the injunctive relief is in the public interest and failure to grant would result in irreparable harm to the plaintiff.

All elements are met here, under either standard.

"When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). The evidence shows not only that Defendants failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Georgia legislature, but that Defendants committed a scheme and artifice to fraudulently and illegally manipulate the vote count to make certain the election of Joe Biden as President of the United States. This conduct violated Plaintiffs' constitutional rights under the Electors and Elections Clauses, the Equal Protection and Due Process Clauses of the Fourteenth Amendment, as well as their rights as well their rights under Arizona law.

Plaintiffs have a substantial likelihood of success.

The Plaintiff does not need to demonstrate a likelihood of absolute success on the merits. "Instead, [it] must only show that [its] chances to succeed on his claims are 'better than negligible.' *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034,

1046 (7th Cir. 2017). (quoting *Cooper v. Salazar*, 196 F.3d 809, 813 (7th Cir. 1999)). Alternatively, Plaintiffs may show that there is "a serious question going to the merits." *Cottrell*, 632 F.3d at 1135. Under either formulation, Plaintiffs have easily passed this bar.

Through detailed fact and expert testimony including documentary evidence contained in the Complaint and its exhibits, Plaintiffs have made a compelling showing that Defendants' intentional actions jeopardized the rights of Arizona citizens to select their leaders under the process set out by the Arizona Legislature through the commission of election frauds that violated state laws and the Equal Protection Clause in the United States Constitution. And pursuant to 42 U.S.C. § 1983, plaintiffs must demonstrate by a preponderance of the evidence that their constitutional rights to equal protection or due process were violated. *See, e.g., Jones v. Williams*, 791 F.3d 1023, 1037 (9th Cir. 2015).

The tally of ballots certified by Defendants giving Mr. Biden the lead with 10,457 votes cannot possibly stand in light of the thousands of illegal mail-in ballots that were improperly counted and the vote manipulation caused by the Dominion software.

Plaintiffs' equal protection claim is straightforward. The right of qualified citizens to vote in a state election involving federal candidates is recognized as a fundamental right under the Fourteenth Amendment of the United States Constitution. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966). *See also Reynolds v. Sims,* 377 U.S. 533, 554 (1964) (The Fourteenth Amendment protects the "the right of all qualified citizens to vote, in state as well as in federal elections."). Indeed, ever since the *Slaughter-House Cases*, 83 U.S. 36 (1873), the United States Supreme Court has held that the Privileges or Immunities Clause of the Fourteenth Amendment protects certain rights of federal citizenship from state interference, including the right of citizens to directly elect members of Congress. *See Twining v. New Jersey*, 211 U.S. 78, 97 (1908) (citing *Ex parte Yarbrough*, 110 U.S. 651, 663-64 (1884)). *See also Oregon v. Mitchell*, 400 U.S. 112, 148-49 (1970) (Douglas, J., concurring) (collecting cases).

The fundamental right to vote protected by the Fourteenth Amendment is cherished in our nation because it "is preservative of other basic civil and political rights." *Reynolds*,

377 U.S. at 562; *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463,476 (6th Cir. 2008) ("The right to vote is a fundamental right, preservative of all rights."). Voters have a "right to cast a ballot in an election free from the taint of intimidation and fraud," *Burson v. Freeman*, 504 U.S. 191, 211 (1992), and "[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam).

"Obviously included within the right to [vote], secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted" if they are validly cast. *United States v. Classic*, 313 U.S. 299, 315 (1941). "[T]he right to have the vote counted" means counted "at full value without dilution or discount." *Reynolds*, 377 U.S. at 555, n.29 (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

"Every voter in a federal . . . election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted, without its being distorted by fraudulently cast votes." *Anderson v. United States,* 417 U.S. 211, 227 (1974); *see also Baker v. Carr,* 369 U.S. 186, 208 (1962). Invalid or fraudulent votes "debase[]" and "dilute" the weight of each validly cast vote. *See Anderson*, 417 U.S. at 227.

The right to an honest [count] is a right possessed by each voting elector, and to the extent that the importance of his vote is nullified, wholly or in part, he has been injured in the free exercise of a right or privilege secured to him by the laws and Constitution of the United States." *Anderson*, 417 U.S. at 226 (*quoting Prichard v. United States*, 181 F.2d 326, 331 (6th Cir.), *aff'd due to absence of quorum*, 339 U.S. 974 (1950)).

Practices that promote the casting of illegal or unreliable ballots or fail to contain basic minimum guarantees against such conduct, can violate the Fourteenth Amendment by leading to the dilution of validly cast ballots. *See Reynolds*, 377 U.S. at 555 ("[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."). States may

not, by arbitrary action or other unreasonable impairment, burden a citizen's right to vote. *See Baker v. Carr*, 369 U.S. 186, 208 (1962) ("citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution"). "Having once granted the right to vote on equal terms, the state may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *Bush*, 531 U.S. at 104-05. Among other things, this requires "specific rules designed to ensure uniform treatment" in order to prevent "arbitrary and disparate treatment of voters." *Id*. at 106-07; *see also Dunn v. Bloomstein*, 405 U.S. 330, 336 (1972) (providing that each citizen "has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction"). Similarly, equal protection needs to be recognized in this case where many Arizona's citizens' lawful votes remained uncounted, and many were diluted by unlawful votes in violation of the Equal Protection clause.

The Plaintiffs will suffer Irreparable Harm

"It is well established that the deprivation of constitutional rights," such as violations of the Fourteenth Amendment rights to Equal Protection and Due Process, "'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (where plaintiff had proven a probability of success on the merits, the threatened loss of First Amendment freedoms "unquestionably constitutes irreparable injury"); *see also Preston v. Thompson*, 589 F.2d 300, 303 n.4 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm.").

Moreover, courts have specifically held that infringement on the fundamental right to vote constitutes irreparable injury. *See Ariz. Democratic Party v. Ariz. Republican Party*, 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016) (citing *Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) ("A restriction on the fundamental right to vote ... constitutes irreparable injury."); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon")."

The Balance of Equities & Public Interest

The remaining two factors – the balance of the equities and the public interest – are frequently analyzed together, *see, e.g., Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016), and both factors tip in favor Plaintiffs. Granting Plaintiffs' primary request for injunctive relief, enjoining certification of the 2020 General Election results, or requiring Defendants to de-certify the results, would not only not impose a burden on Defendants, but would instead relieve Defendants of the obligation to take any further affirmative action. The result would be to place the decision regarding certification and the selection of Presidential Electors back into the hands of the Arizona State Legislature, which is the ultimate decision maker under the Elections and Electors Clause of the U.S. Constitution.

Conversely, permitting Defendants' certification of an election so tainted by fraud and illegality that it would impose a certain and irreparable injury not only on Plaintiff, but would also irreparably harm the public interest insofar as it would undermine "[c]onfidence in the integrity of our electoral processes," which "is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 127 S.Ct. 5, 7 (2006) (per curiam).

In this regard, Plaintiffs would highlight a recent Eleventh Circuit decision addressed a claim in 2018 related to Georgia's voting system and Dominion Voting Systems that bears on the likelihood of Plaintiffs' success on the merits and the balance of harms in the absence of injunctive relief:

> In summary, while further evidence will be necessary in the future, the Court finds that the combination of the statistical evidence and witness declarations in the record here (and the expert witness evidence in the related *Curling* case which the Court takes notice of) persuasively demonstrates the likelihood of Plaintiff succeeding on its claims. Plaintiff has shown a substantial likelihood of proving that the Secretary's failure to properly maintain a reliable and secure voter registration system has and will continue to result in the infringement of the rights of the voters to cast their **vote** and have their **votes** counted.

Common Cause Georgia v. Kemp, 347 F. Supp. 3d 1270, 1294-1295, (11th Cir. 2018).

Therefore, Plaintiffs ask that this court immediately enjoin Governor Ducey from transmitting the currently certified election results to the Electoral College pending trial on the merits. Plaintiffs also request that the Court immediately order that all servers, software, voting machines, tabulators, printers, portable media, logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election sized and impounded for forensic audit and inspection by the Plaintiffs and that the Court award such other relief as is set forth in the attached proposed form of Order.

Respectfully submitted, this 1st day of December 2020.

/s Sidney Powell*

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CERTIFICATION REGARDING NOTICE

I Certify that a copy of Plaintiffs' Complaint and this motion have been electronically transmitted to:

Jennifer Wright
Elections Integrity Unit
Office of the Arizona Attorney General
Jennifer.Wright@azag.gov

Attempts will be made to hand deliver copies of the same to the offices of Defendants.

s/Alexander Kolodin

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD; Plaintiffs, v. DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State; Defendants.	Case No. **PROPOSED ORDER GRANTING EMERGENCY INJUNCTION RELIEF**

THE COURT has before it Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction filed December 2, 2020, seeking:

1. An order directing Governor Ducey and Secretary Hobbs to de-certify the election results;

2. An order enjoining Governor Ducey from transmitting the currently certified election results the Electoral College;

3. An immediate emergency order to seize and impound all servers, software, voting machines, tabulators, printers, portable media, logs,

ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election for forensic audit and inspection by the Plaintiffs;

4. An order that no votes received or tabulated by machines that were not certified as required by federal and state law be counted;

5. A declaratory judgment declaring that Arizona's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

6. A declaratory judgment declaring that currently certified election results violate the Due Process Clause, U.S. CONST. Amend. XIV;

7. A declaratory judgment declaring absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under state law;

8. A permanent injunction prohibiting the Governor and Secretary of State from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering;

9. Immediate production of 48 hours of security camera recording of all rooms used in Maricopa County for November 3, 2020 and November 4, 2020.

10. Plaintiffs further request the Court grant such other relief as is just and proper, including but not limited to, the costs of this action and their reasonable attorney fees and expenses pursuant to 42 U.S.C. 1988.

The Court has reviewed the terms and conditions of this Emergency Injunctive Relief Order, and for good cause shown IT IS HEREBY ORDERED THAT:

1. A Temporary Restraining Order is immediately in effect to preserve the voting machines in the State of Arizona, and to prevent any wiping or alteration of data or other records or materials, until such time as a full computer audit is completed.

2. Governor Ducey and Secretary Hobbs are to de-certify the election results.

3. Governor Ducey is hereby enjoined from transmitting the currently certified election results to the Electoral College.

4. Governor Ducey is required to transmit certified election results that state that President Donald Trump is the winner of the election.

5. It is hereby Ordered that no votes received or tabulated by machines that were not certified as required by federal and state law be counted.

6. It is hereby declared and Ordered that Arizona's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement.

7. It is hereby declared and ordered that the currently certified election results violate the Due Process Clause, U.S. CONST. Amend. XIV.

8. It is hereby declared that absentee ballot fraud occurred in violation of Constitutional rights, Election laws and under Arizona state law.

9. It is hereby declared and Ordered that Governor Ducey and Secretary Hobbs are enjoined from transmitting the currently certified results to the Electoral College based on the overwhelming evidence of election tampering.

10. It is hereby ordered that 48 hours of security camera recording of all rooms used in the voting process in Maricopa County be immediately produced.

DATED this _____ day of _____, 2020.

Honorable _____

United States District Judge

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Tyler Bowyer, et al.

Plaintiff(s)

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs in her capacity as the Arizona Secretary of State

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Katie Hobbs

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Tyler Bowyer, et al. *Plaintiff(s)* v. Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs in her capacity as the Arizona Secretary of State *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Doug Ducey

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____

Signature of Clerk or Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Stafsten, Salvatore Luke Scarmardo, Keli Ward, and Michael Ward

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

Case No. 2:20-cv-02321-JAT

NOTICE OF ERRATA

[1] District of Arizona admission scheduled for 12/9/2020.

5:7-12 of Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction should not have appeared in the final version of that document. We regret the error.

Respectfully submitted, this 2nd day of December 2020.

/s Alexander Kolodin

Sidney Powell PC
Texas Bar No. 16209700

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice forthcoming

Kolodin Law Group PLLC
AZ Bar No. 030826

3443 N. Central Ave Ste 1009
Phoenix, AZ 85012

Of Counsel:
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CERTIFICATE OF SERVICE

I hereby certify that on December, 2nd , 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: /s/ Sean Atkinson

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Tyler Bowyer, et al.

Plaintiff(s)

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs in her capacity as the Arizona Secretary of State

Defendant(s)

Civil Action No. 2:20-at-99912

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Doug Ducey

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Alexander Kolodin 3443 N. Central Ave. Ste. 1009 Phoenix, AZ 85012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona

Tyler Bowyer, et al.

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If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____

Signature of

ISSUED ON 3:30 pm, Dec 02, 2020

s/ Debra D. Lucas, Clerk

2:20-CV-02321-DJH

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, ET., AL.,

Petitioner/Plaintiff,

and

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and **KATIE HOBBS** in her capacity as the Arizona Secretary of State,

Respondent/Defendant.

Case Action No. 2:20-at-99912

DECLARATION OF SERVICE

SERVED ON: **Anni Foster-General Counsel, accepted service for the Arizona Governor Doug Ducey**

ADDRESS: ☒ 1700 W. Washington St., 8th Floor, Phoenix, AZ 85007

THE UNDERSIGNED CERTIFIES UNDER PENALTY: THAT I JOHNNY MOORE BEING FULLY QUALIFIED THROUGH THE ARIZONA CODE OF JUDICIAL ADMINSTRATION UNDER ARCP 4(d),4(c), AND 45(d); ARFLP 40(C), TO SERVE PROCESS IN THIS ACTION WITHIN THE STATE IN WHICH IT WAS SERVED, HAVING BEEN SO APPOINTED BY THE COURT.

TYPE OF DOCUMENT(S)

1. Complaint for Declaration, Emergency, and Permanent Injunctive Relief (Election Matter) (TRO Requested);
2. Motion for Temporary Restraining Order and Preliminary Injunction;
3. Proposed Order.

THE CLIENT IS RESPONSIBLE FOR ALL AGREED UPON COSTS AND FEES RELATED TO THE ABOVE SERVICE OF PROCESS, AS AUTHORIZED BY A.R.S. §12-3301(C).

STATEMENT OF COST: PROCESS OF SERVICE $ 55.00

SERVED ON: 12/02/2020 TIME: 11:45am

Johnny Moore (Process Server) #6007
Maricopa County

OFFICER OF THE COURT
CERTIFIED PROCESS SERVER
#6007
MARICOPA COUNTY

ANNI FOSTER
GENERAL COUNSEL

GOVERNOR DOUG DUCEY
EXECUTIVE OFFICE
1700 WEST WASHINGTON STREET
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2:20-CV-02321-DJH

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, ET., AL.,

Petitioner/Plaintiff,

and

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and **KATIE HOBBS** in her capacity as the Arizona Secretary of State,

Respondent/Defendant.

Case Action No. 2:20-at-99912

DECLARATION OF SERVICE

SERVED ON: **Ariel Morin-Human Resources Manager/Secretary of State, accepted service for Katie Hobbs**

ADDRESS: ☒ 1700 W. Washington St., 7th Floor, Phoenix, AZ 85007

THE UNDERSIGNED CERTIFIES UNDER PENALTY: THAT I JOHNNY MOORE BEING FULLY QUALIFIED THROUGH THE ARIZONA CODE OF JUDICIAL ADMINSTRATION UNDER ARCP 4(d),4(c), AND 45(d); ARFLP 40(C), TO SERVE PROCESS IN THIS ACTION WITHIN THE STATE IN WHICH IT WAS SERVED, HAVING BEEN SO APPOINTED BY THE COURT.

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THE CLIENT IS RESPONSIBLE FOR ALL AGREED UPON COSTS AND FEES RELATED TO THE ABOVE SERVICE OF PROCESS, AS AUTHORIZED BY A.R.S. §12-3301(C).

STATEMENT OF COST: PROCESS OF SERVICE $ 55.00

SERVED ON: 12/02/2020 TIME: 11:33am

Johnny Moore (Process Server) #6007
Maricopa County

OFFICER OF THE COURT
CERTIFIED PROCESS SERVER
#6007
MARICOPA COUNTY

ARIEL MORIN
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SECRETARY OF STATE KATIE HOBBS
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Preserving Arizona PROVIDING ACCESS
www.azsos.gov

Case 2:20-cv-02321-DJH

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, ET., AL.,

Petitioner/Plaintiff,

and

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and **KATIE HOBBS** in her capacity as the Arizona Secretary of State,

Respondent/Defendant.

Case Action No. 2:20-at-99912

DECLARATION OF SERVICE

SERVED ON: **Anni Foster-General Counsel, accepted service for the Arizona Governor Doug Ducey**

ADDRESS: ☒ 1700 W. Washington St., 8TH Floor Phoenix, AZ 85007

THE UNDERSIGNED CERTIFIES UNDER PENALTY: THAT I YESENIA FELICIANO BEING FULLY QUALIFIED THROUGH THE ARIZONA CODE OF JUDICIAL ADMINISTRATION UNDER ARCP 4(d), 4(e), AND 45(d); ARFLP 40(C), TO SERVE PROCESS IN THIS ACTION WITHIN THE STATE IN WHICH IT WAS SERVED, HAVING BEEN SO APPOINTED BY THE COURT.

DOCUMENT(S) SERVED

1. SUMMONS;
2. ORDER/EMAIL (BOWYER ET AL V. DUCEY ET AL ORDER), DATED 12/02/2020.

THE CLIENT IS RESPONSIBLE FOR ALL AGREED UPON COSTS AND FEES RELATED TO THE ABOVE SERVICE OF PROCESS, AS AUTHORIZED BY A.R.S. §12-3301(C).

SERVED ON: 12/02/2020

TIME: 4:13pm

FEE: $ 75.00

Yesenia Feliciano
Certified Process Server
Maricopa County, Lic. No. 8773

ANNI FOSTER
GENERAL COUNSEL

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Case 2:20-cv-02321-DJH

IN THE UNITED STATES DISTRICT COURT,
FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, ET., AL.,

Petitioner/Plaintiff,

and

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and **KATIE HOBBS** in her capacity as the Arizona Secretary of State,

Respondent/Defendant.

Case Action No. 2:20-at-99912

DECLARATION OF SERVICE

SERVED ON: **Maryn Herberg-Administrative Services Officer/ Secretary of State, accepted service for Katie Hobbs.**

ADDRESS: ☒ 1700 W. Washington St., 7TH Floor Phoenix, AZ 85007

THE UNDERSIGNED CERTIFIES UNDER PENALTY: THAT I YESENIA FELICIANO BEING FULLY QUALIFIED THROUGH THE ARIZONA CODE OF JUDICIAL ADMINISTRATION UNDER ARCP 4(d), 4(e), AND 45(d); ARFLP 40(C), TO SERVE PROCESS IN THIS ACTION WITHIN THE STATE IN WHICH IT WAS SERVED, HAVING BEEN SO APPOINTED BY THE COURT.

DOCUMENT(S) SERVED

1. SUMMONS;
2. ORDER/EMAIL (BOWYER ET AL V. DUCEY ET AL ORDER), DATED 12/02/2020.

THE CLIENT IS RESPONSIBLE FOR ALL AGREED UPON COSTS AND FEES RELATED TO THE ABOVE SERVICE OF PROCESS, AS AUTHORIZED BY A.R.S. §12-3301(C).

SERVED ON: 12/02/2020

TIME: 4:29pm

FEE: $ 75.00

Yesenia Feliciano
Certified Process Server
Maricopa County, Lic. No. 8773

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**Pro hac application to be filed*

Attorneys for Proposed-Intervenor Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor

No. 2:20-cv-02321-DJH

ARIZONA DEMOCRATIC PARTY'S MOTION TO INTERVENE

Expedited Election Matter

Hon. Diane J. Humetewa

of the State of Arizona, Katie Hobbs, in her official capacity as the Arizona Secretary of State,

Defendant.

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendant, Arizona Democratic Party ("ADP"), moves to intervene as a defendant in the above-titled action.

On November 30, 2020, Governor Doug Ducey and Secretary of State Katie Hobbs signed a Certificate of Ascertainment awarding Arizona's 11 electoral votes to President-Elect Joe Biden and Vice President-elect Kamala Harris. Now, *nearly a month after the election and two days after the signing of the Certificate of Ascertainment*, Plaintiffs Tyler Bower, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward (collectively "Plaintiffs") have brought a fact-free Complaint seeking truly extraordinary relief. Plaintiffs ask for nothing less than an order from this Court (1) overturning the results of that election as decided by the people of Arizona; (2) compelling the Governor and Secretary to retroactively de-certify the election results; and (3) forbidding them from transmitting the certified results members of the Electoral College. Compl. ¶ 145. The Complaint cites no precedent for any of this relief and for good reason: there is none.

As the Third Circuit recently emphasized in affirming the denial of a similarly meritless attempt to use the federal judiciary to reverse the results of Pennsylvania's presidential election, in the United States, "[v]oters, not lawyers, choose the President. Ballots, not briefs, decide elections." *Donald J. Trump for President, Inc. v. Sec'y of Commonwealth*, No. 20-3371, 2020 WL 7012522, at *9 (3d Cir. Nov. 27, 2020). "Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof.

We have neither here." *Id*. at *1 (3d Cir. Nov. 27, 2020). Instead, in support of their unprecedented and fundamentally undemocratic request, Plaintiffs offer a fantastical conspiracy theory more appropriate for the fact-free reaches of the Internet than a federal court pleading. Their unfounded allegations include debunked conspiracy theories, wild speculation, and unsupported allegations of procedural improprieties recycled from other unsuccessful lawsuits. These are woefully insufficient to support the mass disenfranchisement they propose and fail to meet basic federal pleading standards.

Proposed Intervenor ADP meets the requirements for intervention under Rule 24 of the Federal Rules of Civil Procedure. ADP is the official state party committee of the Democratic Party in Arizona and is dedicated to electing Democratic candidates to office and to protecting the right to vote, including the rights of the over 1.6 million Arizona voters who cast their ballot for the Democratic ticket for President and Vice President in the general election. If Plaintiffs are successful, all of those votes will be nullified and the Democratic candidates denied their rights resulting from that election. As such, ADP has a keen interest in the outcome of this litigation, both on its own behalf and on behalf of its candidates and members. The current Defendants do not adequately represent ADP's interests in this litigation; ADP's interests may diverge from the interests of the government defendants who are representatives of the States' interests in election administration rather than active participants in the election contests on the ballot. ADP should be permitted to intervene as of right, or, in the alternative should be granted permissive intervention.

Given the expedited nature of these proceedings and ADP's plainly apparent interest in this action, ADP has filed this motion to intervene without a pleading pursuant to Rule 24(c). *See Westchester Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009) ("Courts, including this one, have approved intervention motions without a pleading where the court was otherwise apprised of the grounds for the motion.") (quoting *Beckman Indus., Inc. v. International Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992)). The grounds to dismiss this Complaint are plainly apparent and numerous, and they should be considered before any consideration of a request for emergency relief. Accordingly, should its intervention be

granted, ADP intends to file a motion to dismiss tomorrow or on any schedule set by the Court.

Counsel for ADP has conferred with the parties to this action. Defendants do not take a position regarding ADP's intervention. Plaintiffs object to ADP's intervention.

PROCEDURAL BACKGROUND

Plaintiffs initiated this action on December 2, 2020, by filing their Complaint for Declaratory, Emergency, and Permanent Injunctive Relief. (Doc. 1.) That same day they filed a Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 2.). Plaintiffs subsequently filed a Notice of Errata, withdrawing certain portions of their Motion for Temporary Restraining Order and Preliminary Injunction (Doc. 8).

STANDARD OF LAW

"Rule 24 traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *Arizonans for Fair Elections v. Hobbs*, 335 F.R.D. 269, 273 (D. Ariz. 2020) (quoting *Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011)) ("[A] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts.").

"Courts in the Ninth Circuit employ a four-part test when analyzing intervention of right:"

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Arizonans for Fair Elections, 335 F.R.D. at 273 (quoting *Wilderness Soc.*, 630 F.3d at 1177). Courts are "required to accept as true the non-conclusory allegations made in support of an intervention motion." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001) (citation and quotation marks omitted).

Alternatively, a court may grant permissive intervention to a party under Rule 24(b) "where the applicant for intervention shows '(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.'" *Arizonans for Fair Elections*, 335 F.R.D. at 276 (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002)).

ARGUMENT

I. Intervention is appropriate under Rule 24(a)(2).

ADP readily satisfies each of the four requirements of Rule 24(a)(2), and thus is entitled to intervene as of right.

First, this motion is timely. Plaintiffs filed their Complaint just yesterday; this motion follows as soon as possible thereafter, before any significant action in the case and before any answer has been filed. There has been no delay, and there is no risk of prejudice to the other parties. *See League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997); *see also Arizonans for Fair Elections*, 335 F.R.D. at 273 (quoting *United States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004)) ("Timeliness is a flexible concept; its determination is left to the district court's discretion.").

Second and ***third***, ADP clearly has important rights at stake that would be impaired if the Court were to grant Plaintiffs' requested relief. "[A] prospective intervenor 'has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.'" *Wilderness Soc.*, 630 F.3d at 1179 (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)). Further, "[i]t is generally enough that the interest is protectable under some law, and that there is a relationship between the legally protected interest and the claims at issue." *Wilderness Soc.*, 630 F.3d at 1179 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). In assessing whether such an interest is sufficiently "impair[ed] or impede[d]," Fed. R. Civ. P. 24(a)(2), courts "look[] to the 'practical consequences' of denying intervention." *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 909 (D.C. Cir. 1977) (quoting *Nuesse v. Camp*, 385

F.2d 694, 702 (D.C. Cir. 1967)).

Here, ADP has legally protectible interests sufficient to support intervention. Plaintiffs' requested relief threatens to strip certification of the election from ADP's presidential and vice presidential candidates and disenfranchise millions of ADP's members. These provide two independent interests sufficient for ADP's intervention. First, as ADP's candidates are the certified winners of the presidential and vice-presidential election in Arizona, ADP has an interest in ensuring that the results of the election are not decertified. *See, e.g.*, *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006) ("[A]fter the primary election, a candidate steps into the shoes of his party, and their interests are identical."). Second, Plaintiffs' requested relief has the prospect of disenfranchising millions of ADP's members by nullifying their votes for President and Vice President. "The right to vote includes the right to have the ballot counted," *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964), and courts have repeatedly held that where proposed relief carries with it the prospect of disenfranchising a political party's members, the party has a legally cognizable interest at stake. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with unanimous view of Seventh Circuit that Indiana Democratic Party had standing to challenge a voter identification law that risked disenfranchising its members); *Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580 (6th Cir. 2012) (Ohio Democratic Party allowed to intervene in case where challenged practice would lead to disenfranchisement of its voters); *Stoddard v. Winfrey*, No. 20-014604-cz (Mich. Cir. Ct. Nov. 6, 2020) (granting intervention to Democratic National Committee in a lawsuit seeking to stop counting ballots in Detroit); Order, *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-cv-2078 (M.D. Pa. Nov. 12, 2020), ECF No. 72 (granting intervention to Democratic National Committee in lawsuit seeking to invalidate ballots in Pennsylvania); Order, *Constantino v. City of Detroit*, No. 20-014789-AW (Mich. Cir. Ct. Nov. 13, 2020) (granting Michigan Democratic Party's motion to intervene).

Fourth, ADP's interests are not adequately represented by any existing party to this case. Courts consider "three factors in determining the adequacy of representation":

(1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect. *Arakaki*, 324 F.3d at 1086. "The 'most important factor' in assessing the adequacy of representation is 'how the interest compares with the interests of existing parties.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 898 (9th Cir. 2011) (quoting *Arakaki*, 324 F.3d at 1086). This fourth intervention element "requires a 'minimal' showing and is satisfied if existing parties' representation of its interest 'may be' inadequate." *Arizonans for Fair Elections*, 335 F.R.D. at 275 (quoting *Citizens*, 647 F.3d at 898).

While Defendants have an interest in defending the actions of state officials, ADP has different objectives: ensuring that the valid ballot of every Democratic voter in Arizona is counted and safeguarding the election of the Democratic presidential and vice presidential candidates. Courts have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). Indeed, the Ninth Circuit has stated that "[t]he government's representation of the public interest may not be 'identical to the individual parochial interest' of a particular group just because 'both entities occupy the same posture in the litigation.'" *Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 899 (9th Cir. 2011) (quoting *WildEarth Guardians v. U.S. Forest Serv.*, 573 F.3d 992, 996 (10th Cir. 2009))). That is the case here. ADP has specific interests and concerns—from their candidates' electoral prospects to the counting of the votes of their members—that neither Defendants nor any other party in this lawsuit share. *See Paher v. Cegavske*, No. 3:20-CV-00243-MMD-WGC, 2020 WL 2042365, at *3 (D. Nev. April 28, 2020) (concluding that "Proposed Intervenors . . . have demonstrated entitlement to intervene as a matter of right" where they "may present arguments about the need to safeguard [the] right to vote that are distinct from [state defendants'] arguments").

II. Alternatively, ADP satisfies Rule 24(b)'s requirements for permissive intervention.

ADP also satisfies the requirements for permissive intervention under Rule 24(b). "Permissive intervention lies within the sound discretion of the Court." *Gila River Indian Cmty. v. United States*, No. CV10-1993 PHX-DGC, 2010 WL 4811831, at *1 (D. Ariz. Nov. 19, 2010). A court may grant permissive intervention to a party under Rule 24(b) "where the applicant for intervention shows '(1) independent grounds for jurisdiction; (2) the motion is timely; and (3) the applicant's claim or defense, and the main action, have a question of law or a question of fact in common.'" *Arizonans for Fair Elections*, 335 F.R.D. at 276 (quoting *City of Los Angeles*, 288 F.3d at 403). "In exercising its discretion to grant or deny permissive intervention, a court must consider whether the intervention will 'unduly delay or prejudice the adjudication of the'" original parties' rights. *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting Fed. R. Civ. P. 24(b)(3)).

ADP meets all three requirements. First, there is an independent ground for jurisdiction here, as Plaintiffs' requested relief would violate the right to vote of ADP's members under the First and Fourteenth Amendments. Second, for the reasons discussed *supra*, ADP's motion is timely, filed one day after Plaintiffs' Complaint was filed and before Defendants have filed an answer. Third, ADP's defenses share common questions of law and fact with those of the named defendants.

Lastly, intervention will result in neither prejudice nor undue delay. ADP has an undeniable interest in a swift resolution of this action so that it can avoid the cloud Plaintiffs attempt to cast over the 2020 election, which ADP's candidates for President and Vice President won. ADP is prepared to meet any scheduled the Court establishes for this case.

CONCLUSION

For the reasons stated above, ADP respectfully requests that the Court grant its motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit it to intervene under Rule 24(b).

Dated: December 3, 2020

/s Alexis E. Danneman

Alexis E. Danneman (Bar No. 030478)
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ArellanoD@ballardspahr.com

Attorneys for ADP

** Seeking Pro Hac Vice Admission*

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2020, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Indy Fitzgerald

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, Katie Hobbs, in her official capacity as the Arizona Secretary of State,

Defendant.

No. 2:20-cv-02321-DJH

[PROPOSED] ORDER GRANTING ARIZONA DEMOCRATIC PARTY'S MOTION TO INTERVENE

Proposed-Intervenor Arizona Democratic Party ("ADP") has moved to intervene in the above captioned matter. Having considered the parties' motions, the Court finds that ADP has demonstrated a right to intervene under Federal Rule of Civil Procedure 24(a)(2). Good cause thus appearing, the Court hereby **GRANTS** the motion and orders the following:

1. It is **HEREBY ORDERED** that the Arizona Democratic Party's Motion to Intervene is **GRANTED**;

IT IS SO ORDERED.

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MARICOPA COUNTY ATTORNEY

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

NO. CV20-02321-PHX-DJH

MOTION TO INTERVENE

Pursuant to Federal Rule of Civil Procedure 24(a) and 24(b), the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes ("Proposed Maricopa County Intervenors") respectfully request that this Court grant the Proposed Maricopa County Intervenors' motion to intervene[1] to defend the integrity of Proposed Maricopa County Intervenors' administration of the November 3, 2020, General Election and their important interest in bringing closure to this election. The following Memorandum of Points and Authorities supports this Motion.

Memorandum of Points and Authorities

Background

On December 2, 2020—nearly one month after the 2020 General Election held on November 3, 2020—Plaintiffs filed this lawsuit against Arizona's Secretary of State and Arizona's Governor, making baseless allegations about the Proposed Maricopa County Intervenors' administration of that election. (*See, e.g.*, Doc. 1, ¶¶ 2, 5, 49–53, 59–66, 71, 83, 139). Plaintiffs' wide-ranging—and frankly absurd—requests for relief include numerous provisions that directly bear on property in the Proposed Maricopa County Intervenors' possession and implicate their interest in the finality of the election. (*See, e.g.*, Doc. 1, ¶¶ 145.3 (requesting "An immediate emergency order to seize and impound all servers, software, voting machines, tabulators, printers, portable media, logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election for forensic audit and inspection by the Plaintiffs[.]"), 145.10 ("Immediate production of 48 hours of security

[1] Having just learned about this recent lawsuit—and while litigating the claims of these same Plaintiffs in state court—the Proposed Maricopa County Intervenors cannot comply with Rule 24(c)'s pleading requirement to answer a 52-page, 145-paragraph complaint at the time of filing this Motion. But the Ninth Circuit has been emphatic that "failure to comply with the Rule 24(c) requirement for a pleading is a purely technical defect which does not result in the disregard of any substantial right." *Westchester Fire Ins. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009) (quotations omitted). "Courts . . . have approved intervention motions without a pleading where the court was otherwise apprised of the grounds for the motion." *Beckman Indus. Inc., v. Int'l Ins. Co.*, 966 F.2d 470, 474 (9th Cir. 1992).

camera recording of all rooms used in Maricopa County for November 3, 2020 and November 4, 2020."); Doc. 2 at 11 ("Plaintiffs also request that the Court immediately order that all servers, software, voting machines, tabulators, printers, portable media, logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election sized and impounded for forensic audit and inspection by the Plaintiffs[.]"); *see also* Doc.1, ¶ 145.7 (requesting a "Full Manual Recount or a statistically valid sampling")).

Given these important interests, Proposed Maricopa County Intervenors seek intervention.

Argument

I. Intervention as of right under Federal Rule of Civil Procedure 24(a)(2).

Under Federal Rule of Civil Procedure 24(a)(2), a party may intervene as of right if:

> (1) it has a significant protectable interest relating to the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent its interest.

Day v. Apoliona, 505 F.3d 963 (9th Cir. 2007) (citation, internal quotation marks, and alterations omitted); *see also* Fed. R. Civ. P. 24(a)(2).

Although the putative intervenor bears the burden of establishing these elements, "the requirements for intervention are [to be] broadly interpreted in favor of intervention." *United States v. Alisal Water Corp.*, 370 F.3d 915, 919 (9th Cir. 2004); *see also Wilderness Soc. v. U.S. Forest Serv.*, 630 F.3d 1173, 1179 (9th Cir. 2011) (en banc) (noting that "[a] liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts") (quoting *United States v. City of Los Angeles*, 288 F.3d 391, 397–98 (9th Cir. 2002) (alteration in original)).

A. Significant protectable interest

"Whether an applicant for intervention as of right demonstrates sufficient interest in an action is a 'practical, threshold inquiry,' and '[n]o specific legal or equitable interest

need be established.' " *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir. 1996) (quoting *Greene v. United States*, 996 F.2d 973, 976 (9th Cir. 1993), *aff'd,* 64 F.3d 1266 (9th Cir. 1995)). An applicant for intervention as of right must show a "significantly protectable interest" in the lawsuit to merit intervention. *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1493 (9th Cir. 1995). "To demonstrate this interest, a prospective intervenor must establish that (1) 'the interest [asserted] is protectable under some law," and (2) there is a 'relationship between the legally protected interest and the claims at issue.' " *Nw. Forest Res. Council*, 82 F.3d at 836 (quoting *Forest Conservation Council*, 66 F.3d at 1493).

Here, there should be no doubt, based on Arizona's elections laws obligating counties and county recorders to conduct elections and count ballots, that the Proposed Maricopa County Intervenors have a significant interest in the outcome of these proceedings and an interest in the finality of the 2020 General Election that occurred one month ago. *See, e.g.*, A.R.S. § 16-411, § 16-621, § 16-642. Indeed, the allegations in the Complaint are littered with references to the Proposed Maricopa County Intervenors' administration of the 2020 General Election. (*See, e.g.*, Doc. 1, ¶¶ 2, 5, 49–53, 59–66, 71, 83, 139). Further, the requested relief has a direct bearing on the rights and responsibilities of the Proposed Maricopa County Intervenors because it seeks property in their possession. (*See, e.g.*, Doc. 1, ¶¶ 145.3, 145.10; Doc. 2 at 11; *see also* Doc.1, ¶ 145.7).

B. Practical Impairment

"[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." *City of Emeryville v. Robinson*, 621 F.3d 1251, 1259 (9th Cir. 2010) (quoting *California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006)); *see also Alisal*, 370 F.3d at 919. "Although the intervenor cannot rely on an interest that is wholly remote and speculative, the intervention may be based on an interest that is contingent upon the outcome of the litigation." *City of Emeryville*, 621 F.3d at 1259 (quoting *United States v. Union Electric*, 64 F.3d 1152, 1157–58, 1162 (8th Cir. 1995)). And putative intervenors' interests "might

not be *impaired* if they have 'other means' to protect them," even if the lawsuit would affect those interests. *Lockyer*, 450 F.3d at 442 (quoting *Alisal*, 370 F.3d at 921) (emphasis in original).

Here, the Proposed Maricopa County Intervenors will suffer practical impairment of their interest in the finality of the 2020 General Election and the disposition of property in their control as a result of the pending litigation. In particular, any injunctive relief ordered by this Court will necessarily require implementation by the Proposed Maricopa County Intervenors. Providing the Proposed Maricopa County Intervernors a seat at the table ensures their interests—and the interests of the general voting public—are not impaired. Further, there is no alternative means for the Proposed Maricopa County Intervenors to ensure that their interests are protected.

C. Timeliness

Timeliness of a putative intervenor's motion is determined by "the totality of the circumstances," focusing on "three primary factors": (a) "the stage of the proceeding at which an applicant seeks to intervene"; (b) "the prejudice to other parties"; and (c) "the reason for and length of the delay." *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (quoting *Alisal Water*, 370 F.3d at 921).

Here, the Proposed Maricopa County Intervenors seek to participate in this lawsuit at its earliest stage, one day after it was filed. There is no prejudice based on timing to the Parties.

D. Adequate representation of interests

The Proposed Maricopa County Intervenors' interest is not adequately represented by the Secretary of State or Governor. *Cf. Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972) (noting the fourth element of Rule 24(a) intervention requires only a "minimal" showing that existing parties' representation "may be" inadequate). "[I]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (citations and internal quotation marks omitted).

Three factors govern the adequacy of representation: (1) "whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments"; (2) "whether the present party is capable and willing to make such arguments"; and (3) "whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Id.* (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986)).

The Ninth Circuit has stated that "[t]he most important factor in determining the adequacy of representation is how the interest compares with the interests of existing parties. . . . When an applicant for intervention and an existing party have the same ultimate objective, a presumption of adequacy of representation arises." *Arakaki*, 324 F.3d at 1086. But even "[i]f the applicant's interest is identical to that of one of the present parties," the putative intervenor may demonstrate "a compelling showing" of inadequate representation. *Id.*

Here, the requested relief directly bears on property in the Proposed Maricopa County Intervenors' possession. The Secretary of State and Governor cannot adequately protect that interest. Further, to the extent the Court determines that the Proposed Maricopa County Intervenors and the Secretary of State and Governor have the "same ultimate objective," the Proposed Maricopa County Intervenors have "a compelling showing" of inadequate representation: unlike the Secretary of State and Governor, the Proposed Maricopa County Intervenors will be required to implement any on-the-ground remedies regarding the counting of ballots and the disposition of property in the Proposed Maricopa County Intervenors' possession, and it will need to implement those remedies in short order.

II. Permissive intervention under Federal Rule of Civil Procedure 24(b)(1)(B).

Under Federal Rule of Civil Procedure 24(b)(1)(B), "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Where a putative intervenor timely moves for intervention, courts consider several factors in deciding whether to permit intervention,

including:

> the nature and extent of the intervenors' interest, their standing to raise relevant legal issues, the legal position they seek to advance, and its probable relation to the merits of the case[,] whether changes have occurred in the litigation so that intervention that was once denied should be reexamined, whether the intervenors' interests are adequately represented by other parties, whether intervention will prolong or unduly delay the litigation, and whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.

Spangler v. Pasadena Bd. of Educ., 552 F.2d 1326, 1329 (9th Cir.1977) (footnotes omitted).

Here, the same interests under Rule 24(a) for intervention as of right animate the Proposed Maricopa County Intervenors' interest in permissively intervening under Rule 24(b). The Complaint's baseless allegations center on the Proposed Maricopa County Intervenors' administration of the 2020 General Election, and their requests for relief directly implicate the Proposed Maricopa County Intervenors.

Conclusion

For these reasons, this Court should grant the Proposed Maricopa County Intervenors' Motion to Intervene as of right under Federal Rule of Civil Procedure 24(a) or alternatively with permission under Federal Rule of Civil Procedure 24(b).

RESPECTFULLY submitted this 3rd day of December, 2020.

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MARICOPA COUNTY ATTORNEY

BY: */s/Thomas P. Liddy*
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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2020, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward; Plaintiffs; v. Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona; Defendants.	**Case No**.: 2:20-cv-02321-DJH **PLAINTIFFS' OPPOSITION TO ARIZONA DEMOCRATIC PARTY'S MOTION TO INTERVENE**

[1] District of Arizona admission scheduled for 12/9/2020.

Plaintiffs hereby respond to and oppose the Arizona Democratic Party's ("ADP") Motion to Intervene ("Motion"), filed on Thursday, December 3, 2020.

INTRODUCTION

In the ADP's Motion, it makes bold claims without providing any facts or explanations for them. To start, ADP claims that Plaintiffs "have brought a fact-free Complaint seeking extraordinary relief." Arizona Democratic Party's Mot. to Intervene 2:16, ECF No. 26. Ironically, ADP presents absolutely no facts or evidence to back up this claim. As a matter of fact, it makes one question if ADP is aware of what Plaintiffs have brought forward in this case. All the Court must do is combine every exhibit Plaintiffs have presented to see that Plaintiffs have brought forward 324 pages of exhibits to back the claims asserted. Among these exhibits are 16 declarations and affidavits, some of which are from experts in their respective fields. How the ADP can review this mountain of factual evidence and then say with a straight face that it is "fact-free" makes one wonder if any of it was reviewed at all prior to the preparation and filing of ADP's Motion.

Sadly, the sensationalism in ADP's Motion does not stop there. ADP then goes on to claim that "Plaintiffs offer a fantastical conspiracy theory more appropriate for the fact-free reaches of the Internet than a federal court pleading." Arizona Democratic Party's Mot. to Intervene 3:2-4, ECF No. 26. This has been a tactic from day one in most pieces of litigation related to the 2020 General Election. Instead of presenting their own evidence, or even a proposed pleading, as required by FRCP 24(c), where they would be required to respond to specific claims and defenses, the ADP has tried to discredit Plaintiffs and their counsel by claiming their case is simply a "conspiracy theory" not worthy of the Court's time. Plaintiffs are the Arizona Republican Party's nominees for presidential electors. They include members of the legislature, the Chairwoman of the Arizona Republican Party and three county party chairs. Their concerns mirror those of many of our fellow Arizonans and should be given a fair hearing, not cavalierly dismissed and belittled.

In what appears to be a very thinly veiled attempt to threaten lawyers to stop them from representing Republicans with an implicit threat of sanctions, ADP then goes on to

claim that Plaintiffs "fail to meet basic federal pleading standards." Arizona Democratic Party's Mot. to Intervene 3:7, ECF No. 26. This is an interesting claim to make when ADP's own Motion does not point to any facts or evidence to support these wild and baseless claims, which itself fails to meet the basic rules of federal pleading standards. Instead of trying to argue facts, ADP appears to simply want to join in this lawsuit to throw baseless allegations, make thinly veiled threats of sanctions, and try to paint the lawsuit as a "conspiracy." Furthermore, why would ADP try vigorously to intervene in a lawsuit which they claim is "fact-free"? If this lawsuit was truly "fact-free", a Court would not need a proposed Intervener to help it discover that.

ARGUMENT

An intervenor must satisfy four criteria under Federal Rule of Civil Procedure 24(a)(2):

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Arizonians for Fair Elections v. Hobbs, 335 F.R.D. 269, 273 (D. Ariz. 2020) (quoting *Wilderness Soc. V. U.S. Forest Serv.*, 630 F.3d 1173, 1177 (9th Cir. 2011)). However, "[f]ailure to satisfy any one of the requirements is fatal to the application, and we need not reach the remaining elements if one of the elements is not satisfied. *Perry v. Proposition 8 Official Proponents*, 587 F.3d 947, 950 (9th Cir. 2009).

I. Intervention as of right under Rule 24(a) is not warranted.

As outlined above, ADP must meet the four-part test laid out by the Ninth Circuit to meet the standards of Rule 24(a).

ADP does not meet part 4 of the four-part test:

While ADP claims its interests are not adequately represented by any existing party to this case, that is simply not the case. There are currently 12 lawyers representing the 2

Defendants in this case, including some with notable Democratic Party ties:

- Justin A. Nelson, the 2018 Democratic Nominee for Texas Attorney General.
- Roopali Desai, Legal Counsel to Democratic Senator Kyrsten Sinema and her United States Campaign Committee. Ms. Desai was also Legal Counsel to Democratic Congressman Tom O'Halleran and his United States Congressional Campaign Committee.
- David Andrew Gaona, known as Andy Gaona per his Coppersmith Brockelman PLC Bio and Twitter, has numerous Twitter posts that undermine any claim he will not adequately represent Democrats and Joe Biden. *See* **Exhibit 1**.

ADP cites federal case law that states that Courts have "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736 (D.C. Cir. 2003). In this case, it is very clear that the interests of Democratic Secretary of State Katie Hobbs and her outside counsel of prominent Democratic attorneys are perfectly aligned with ADP. To recap, members of Hobbs' legal team include a lawyer that was the Democratic nominee for Texas Attorney General in 2018, a lawyer who has represented two other prominent Democratic politicians during their respective campaigns, and another lawyer who could easily win a contest for Joe Biden's biggest cheerleader. Defendant Hobbs has clearly made a point of hiring fellow partisans to help her in this case and ADP does not need an additional 8 attorneys to join this case when it is clear that ADP's interests will be well represented by Democrat Hobbs and her team of high profile Democratic lawyers. It appears the intervention is merely a way to dogpile Plaintiffs and Plaintiffs' counsel. It should also be noted that ADP made a point of citing case law holding that "after the primary election, a candidate steps into the shoes of his party, and their interests are identical." *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 588 (5th Cir. 2006). Plaintiffs wholeheartedly agree and are surprised that ADP feels that these interests somehow diverge once a candidate is in office like Defendant Hobbs.

For the reasons stated above, ADP clearly does not meet the fourth part of the test as its "interests are identical" to Democrat Hobbs and her team of lawyers. *Id*.

II. ADP does not satisfy Rule 24(b)'s requirements for permissive intervention as there would be clear prejudice Plaintiffs.

ADP points out that when a Court exercises "its discretion to grant or deny permissive intervention, a court must consider whether the intervention will 'unduly delay or prejudice the adjudication of the'" original parties' rights. *Venegas v. Skaggs*, 867 F.2d 527, 530 (9th Cir. 1989) (quoting Fed. R. Civ. P. 24(b)(3)). However, ADP somehow neglects to see how adding an additional party, 8 additional lawyers, and additional briefing will not prejudice Plaintiffs. Plaintiffs already have the burden of tackling 12 lawyers and two different sets of briefs, how ADP does not feel that adding an additional 8 lawyers and an additional brief (not including proposed intervenors County Defendants which would add 5 additional lawyers and another brief) would not prejudice Plaintiffs is baffling to say the least. This is especially true given the short timelines that all parties agree we are dealing with in this matter.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully requests that the Court deny ADP's motion to intervene both as a matter of right under Rule 24(a)(2) as it's interests are already adequately represented, and under Rule 24(b), as ADP's intervention would cause clear prejudice to Plaintiffs.

Respectfully submitted this 3rd day of December, 2020

/s Alexander Kolodin

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CERTIFICATE OF SERVICE

I hereby certify that on December 2nd, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

Exhibit 1

Andy Gaona Retweeted

ABC News @ABC · Nov 7

BREAKING: President-elect Joe Biden takes the stage in Wilmington, Delaware, to address the nation. abcn.ws/38kX0Jt



388 1.5K 10.3K Tip



Johnny Verhovek @JTHVerhovek · Oct 20

Biden campaign just debuted this new ad "Go From There," during Game 1 of the World Series, narrated by Sam Elliott



1.9K 30.9K 74.3K Tip



Joe Biden @JoeBiden · Nov 7

America, I'm honored that you have chosen me to lead our great country.

The work ahead of us will be hard, but I promise you this: I will be a President for all Americans — whether you voted for me or not.

I will keep the faith that you have placed in me.



238.4K 775.7K 3.3M Tip

Andy Gaona Retweeted



Michael M. Grynbaum @grynbaum · Nov 7

.@BretBaier: "The Fox News decision desk can now project that former Vice President Joe Biden will win Pennsylvania and Nevada, putting him over the 270 electoral votes he needs to become the 46th president of the United States."

2 53 219 Tip

Andy Caena Retweeted

CNN @CNN · Nov 4

CNN PROJECTION: Joe Biden wins Michigan, reclaiming another "blue wall" state President Trump won in 2016 and narrowing Trump's path to 270 electoral votes cnn.it/3oW87yn #CNNElection



1.1K 17K 66.1K Tip

Andy Gaona Retweeted

FOX 10 Phoenix @FOX10Phoenix · Nov 3

.@FoxNews projecting Joe Biden wins Arizona. #ElectionNight



58 768 1.2K Tip

Show this thread

Andy Gaona Retweeted

Rick Hasen @rickhasen · Nov 1

Going to start a list of the ways that Republican lawmakers and election officials have needlessly made it harder to vote during COVID. Feel free to add on here.

1. Ohio SOS Frank LaRose opposing drop boxes while claiming his hands were tied.
2. TX Gov. Abbott reversing on boxes.

258 4.4K 7K Tip

Show this thread

Andy Gaona Retweeted

Barack Obama @BarackObama · Oct 31

Shoot your shot. iwillvote.com



20.4K 216.4K 1M Tip



Steve Vladeck @steve_vladeck · Oct 18

We're going to be hearing a lot from Republicans who've spent the last 3.5 years enabling all of Trump's worst behavior now claiming that they "broke from him," that they "quietly stood up to him," or that they didn't *really* support him in private.

All I can say is, bollocks.

550 4.7K 24.5K Tip



Matt Fuller @MEPFuller · Oct 22

Honestly, a defining image of Trump 2020:



22 34 204 Tip

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, Katie Hobbs, in her official capacity as the Arizona Secretary of State,

Defendant.

No. 2:20-cv-02321-DJH

REPLY TO PLAINTIFFS' OPPOSITION TO THE ARIZONA DEMOCRATIC PARTY'S MOTION TO INTERVENE

Expedited Election Matter

Hon. Diane J. Humetewa

Plaintiffs' Opposition to the Arizona Democratic Party's ("ADP") Motion to Intervene is short on substance and entirely wrong on the law. As a matter of intervention as of right, Plaintiffs do not dispute that ADP meets three out of the four requirements. Plaintiffs' only argument is that ADP's interests are "adequately represented" by the named defendants because some of their lawyers either ran for office as a Democratic candidate a few years ago or have represented Democratic politicians in the past. Of course, each of the lawyers are presently representing elected officials of Arizona in their official capacity. There is no authority that would countenance Plaintiffs' extraordinary position, which presumes that counsel will effectively "represent" the interests of a political party in a lawsuit where they are not in fact serving as that party's counsel, simply because they have some affiliation with that party as a professional or individual (or, as Plaintiffs bizarrely urge, because they have previously tweeted about Democratic politics). The only thing that Plaintiffs get right is that "[c]ourts have often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." Pls.' Opp. to Mot. to Intervene at 4 (Dkt. 29). For the reasons discussed in the Motion to Intervene at 6–7, that requirement—like each of the others—is satisfied here.

Plaintiffs' argument as to why the Court should deny permissive intervention is equally meritless. Again, Plaintiffs ignore what the rule and case law actually establish, including the criteria that courts apply in deciding such a motion, in favor of counting the heads of the lawyers who have appeared in the case for the Defendants and whose names appear on the papers of the Intervenors. This is a strange exercise, and not surprisingly Plaintiffs fail to identify any authority that would justify denying intervention on this basis. Plaintiffs have brought this case at the thirteenth hour and seek extraordinary relief that would disenfranchise millions of Arizona voters and turn the democratic process in this state on its head. Intervenors have a clear right to protect their interests. They do not intend for each of their lawyers to file their separate briefs, or for each to seek to have an opportunity to address this Court. The appearance of more than one lawyer on their papers helps ensure that this matter is adjudicated more *quickly*, because it ensures that someone

can be available on the Intervenors' behalf whenever proceedings are scheduled in this matter and that the individual circumstances of counsel will not threaten to conflict with "the short timelines that all parties agree we are dealing with in this matter." Pls.' Opp. to Mot. to Intervene at 5.

For each of these reasons, as well as those set forth in its Motion to Intervene, ADP respectfully requests that the Court order that it be permitted to intervene as a Defendant in this matter as of right or, in the alternative, grant permissive intervention.

Dated: December 4, 2020

/s Alexis E. Danneman

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** Seeking Pro Hac Vice Admission*

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Indy Fitzgerald

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANTS', DEFENDANT INTERVENOR'S, AND PROPOSED DEFENDANT INTERVENOR'S REQUEST FOR PRE-HEARING ORDER

Counsel for Defendant Governor Doug Ducey, counsel for Defendant Secretary of State Katie Hobbs, counsel for Intervenor Maricopa County, and counsel for Proposed Intervenor Arizona Democratic Party met and conferred ("Participating Parties") respectfully request that the Court enter a pre-hearing order to facilitate the parties' preparation for, and the efficient presentation of, evidence at the expedited TRO hearing that has been scheduled for December 8, 2020.

On December 4, 2020, Participating Parties met and conferred about a proposed pre-hearing order. Counsel for Plaintiffs was invited to attend, but after originally indicating their availability for a morning call, refused to participate in the meet and confer. *See* Ex. 1. Although Plaintiffs did not participate, the participating parties have shown the substance of this motion to Plaintiffs' and they have indicated they object.

The Participating Parties request that the Court include the following items in a pre-hearing order.

1. Pretrial Disclosures

This Court allotted one hour per named party to present their case. The participating parties' understanding is that this allotment includes time for both direct and cross-examination. In order to efficiently use this time and to provide proper notice to all other parties, Participating Parties believe that all parties should disclose the identity of their witnesses, a short description of testimony for each fact witness, and for each expert witness, a summary of all opinions the expert may offer at the hearing, copies of all data and supporting documents, and the proposed expert's CV and qualifications. The Participating Parties propose the following schedule:

- **Plaintiffs' disclosure due by Saturday, December 5 at 12:00 P.M.**
- **Defendants' and Intervenor Disclosures by Sunday, December 5 at 12:00 P.M.**

The Participating Parties also request that this disclosure include the names of each witness the party actually intends to call as well the order in which they intend to call each witnesses.

2. Deadline to Disclose and Produce Exhibits

In order to understand the evidence that the party intends to rely on and to provide other parties the opportunity to object prior to the hearing, the Participating Parties suggest that the Court set a deadline of **December 7 at 9:30 A.M.** to disclose and produce exhibits.

3. Logistics of the Hearing

The Participating Parties request that the proceeding be held virtually. This request is made in light of the logistical challenges of having only two counsel per party in the courtroom while other counsel and/or witnesses appear telephonically and the public health challenges that raise the risk of any travel or public gathering. In addition, although Plaintiffs did not participate, Plaintiffs' counsel themselves have brought similar suits in other States—some of which have deadlines next week as well. A virtual hearing would allow all parties to participate to the fullest extent possible.

Respectfully submitted this 4th day of December, 2020.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' OPPOSITION TO REQUEST FOR PRE-HEARING ORDER

[1] District of Arizona admission scheduled for 12/9/2020.

Plaintiffs oppose the proposed order submitted by Defendants. The Court ordered the parties to meet and confer "**as to whether agreement can be reached as to admissibility of witness affidavits and/or declaration**." Plaintiffs offered to meet and confer with Defendants' counsel on Sunday after it has had a chance to review Defendants' submissions and its fact and expert witnesses. Apparently sensing some advantage, Defendants held a meet and confer by themselves this morning, on the entirely separate issue of a scheduling order, despite repeated protest from Plaintiffs' counsel. This absurd, "I'm the boss, you toe the line," mentality is offensive not only to the undersigned, but to the judicial process as well.

Plaintiffs are not in a position to provide any further documentation or discovery or description of witnesses or anything else asked for by the Defendants until it has had a reasonable time to evaluate the Defendants' submission and meet with their experts and witnesses. Plaintiffs have submitted extensive documentation to support their claim, Defendants have to date produced no documents to support their defenses.

Accordingly, Plaintiffs believe that no scheduling order should be entered as the Court did not order one. We are prepared to meet and confer regarding the items about which the Court ordered a meet and confer, Sunday morning at 10:00 a.m., after briefs have been filed by both sides.

Respectfully submitted this 4th day of December, 2020

/s Alexander Kolodin

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CERTIFICATE OF SERVICE

I hereby certify that on December 2nd, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, et al., Plaintiffs, v. Doug Ducey, et al., Defendants.	No. CV-20-02321-PHX-DJH **ORDER**

This matter is set for a hearing on Plaintiffs' Application for Temporary Restraining Order (Doc. 2) on Tuesday, December 8, 2020.

Accordingly,

IT IS HEREBY ORDERED that the Court issues the following Order setting deadlines related to the proceedings:

I. Witness List

Each party shall separately list the names of witnesses, whether they are fact or expert witnesses, a description of the proposed testimony of each witness (except witnesses who may be called for impeachment), and the basis for such testimony. For expert witnesses, the parties shall include a summary of all opinions the expert may offer at the hearing, copies of all data and supporting documents, and the proposed expert's CV and qualifications. This disclosure will include the names of each witness the party actually intends to call plus the order in which they intend to call the witnesses. Plaintiffs shall provide full and complete witness disclosures by **Saturday, December 5, 2020, at 12:00**

P.M. Defendants and Intervenors shall provide full and complete witness disclosures by **Sunday, December 6, 2020, at 12:00 P.M.** Witness admissibility issues should be resolved by stipulation. To the extent that they cannot all be resolved, each party shall provide a numbered chart of exhibits with a short description of the objection (i.e. "Objection: Rules 401 and 403").

II. Exhibit List

Each party shall submit a list of numbered exhibits with a concise description of each exhibit. In order to understand the evidence that the party intends to rely on and to provide other parties the opportunity to object prior to the hearing, all parties must disclose and exchange exhibits by **Sunday, December 6, 2020 at 3:00 P.M.** The parties shall ensure that copies of all exhibits must be produced to the Court by **Monday, December 7, 2020 at 12:00 P.M.** Document admissibility issues should be resolved by stipulation. To the extent that they cannot all be resolved, each party shall provide a numbered chart of exhibits with a short description of the objection (i.e. "Objection: Rules 401 and 403").

IT IS FURTHER ORDERED that the parties' objections to witnesses and exhibits shall be filed with the Court, as described herein, by **Monday, December 7, 2020 at 12:00 P.M.**

IT IS FINALLY ORDERED that any witness or exhibit not disclosed to the other party or to the Court will not be admitted at the hearing.

Dated this 4th day of December, 2020.

Honorable Diane J. Humetewa
United States District Judge

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

NO. CV20-02321-PHX-DJH

MARICOPA COUNTY INTERVENORS' MOTION TO DISMISS

AND

RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 9(b), the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes ("Maricopa County Intervenors") respectfully request that this Court dismiss Plaintiffs' Complaint with prejudice because it utterly fails to "state with particularity the circumstances constituting fraud." Because Plaintiffs will not succeed on the merits and fail to raise "serious questions" with their woefully deficient fraud Complaint, this Court should deny the request for a temporary restraining order that would cause irreparable harm to the Maricopa County Intervenors. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (discussing elements for preliminary equitable relief); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The following Memorandum of Points and Authorities supports this Motion.

Memorandum of Points and Authorities

Introduction

Plaintiffs' Complaint is a textbook example of why Federal Rule of Civil Procedure 9(b) exists. Nearly one month after the November 3, 2020 General Election, this is the best that Plaintiffs could put together: (1) declarations from partisan elections observers that do not allege fraud and are demonstrably confused about Arizona's voting laws and Maricopa County's practices, (2) "statistical" reports from "experts" who based their analyses on their subjective expectations of voter behavior, and (3) conspiracy-theory laden, unsigned, redacted declarations making wild accusations about Maricopa County's elections equipment vendor.

"When an entire complaint, or an entire claim within a complaint, is grounded in fraud and its allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may dismiss the complaint or claim." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003). This Court should dismiss the Complaint under Rule 9(b) to avoid "squander[ing] enormous judicial resources resolving complex (and arguably novel) questions where nothing in Plaintiff[s'] submissions give the Court any assurances that this is not a 'fishing expedition for the discovery of unknown wrongs' of the precise

sort that Rule 9(b) is designed to smoke out." *California ex rel. Heryford v. Citigroup Inc.*, No. 216CV00469TLNEFB, 2018 WL 3197905, at *2 (E.D. Cal. June 26, 2018) (quoting *Verizon Delaware, Inc. v. Covad Commc'ns Co.*, 377 F.3d 1081, 1092 (9th Cir. 2004).

Argument

I. The Court should dismiss this Complaint under Rule 9(b).

"A motion to dismiss a complaint or claim 'grounded in fraud' under Rule 9(b) for failure to plead with particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim." *Vess*, 317 F.3d at 1107. Thus, as in the Rule 12(b)(6) context, this Court should assume the truth of well-pleaded factual allegations in the Rule 9(b) context. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). That assumption does not apply to "legal conclusions" or "conclusory statements." *Id.* Even under Rule 8(a)'s less-demanding standard, "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679. And "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.' " *Id.* (quoting Fed. Rule Civ. Proc. 8(a)(2)).

"But Rule 9(b) clearly imposes an *additional* obligation on plaintiffs: the statement of the claim must *also* aver with particularity the circumstances constituting the fraud." *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547 (9th Cir. 1994). "Rule 9(b) requires particularized allegations of the circumstances *constituting* fraud." *Id*. "To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how of the misconduct charged[.]" *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011); *see also Donohue v. Bd. of Elec. of State of N.Y.*, 435 F. Supp. 957, 966 (1976) ("It is necessary, first of all, to plead and prove specific acts of misconduct, including the time, place and circumstances of the alleged deprivation of the right to vote." (Citing Fed. R. Civ. P. 9(b)).

> Rule 9(b) serves not only to give notice to defendants of the specific fraudulent conduct against which they must defend, but also 'to deter the filing of complaints as a pretext for the discovery of unknown wrongs, to

> protect [defendants] from the harm that comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis.'

Bly-Magee v. California, 236 F.3d 1014, 1018 (9th Cir. 2001).

To start, Plaintiffs' Complaint asserts alleged "violations" of Arizona elections law. (Doc. 1, ¶¶ 48–53). Notably, none of Plaintiffs' declarants allege fraud. (*See id.*; *see also* Doc. 1-10 at 18–40 (Exhs. 20–23)). They are the only declarants offered by Plaintiffs with any first-hand observation of Maricopa County's election administration. The allegation that "[t]he [voting] machines make determinations on what ballots to invalidate or validate based on an algorithm that operates offshore before tallying the votes locally," does not find support in the declaration. (*Compare* Doc. 1, ¶ 49 *with* Doc. 1-10 at 18–24). At most, these declarants offer perceived irregularities with election administration. (Doc. 1-10 at 18–40).

Plaintiffs next offer allegations based on "expert witness testimony." (Doc. 1, ¶¶ 54–62). These allegations do not plead with particularity the circumstances constituting the alleged fraud. For example, the Briggs Report comes to the conclusion that over 300,000 Arizona ballots are "troublesome" based on an unexplained methodology applied to a multi-state phone survey—the "Braynard survey" with its own methodology that no declarant explains and for which the Briggs Report does not vouch. (*See* Doc. 1-2 at 14–17 ("I assume survey respondents are representative and the data is accurate."); *see also* Doc. 1-2 at 52 (providing tweets from Braynard instead of a signed declaration that does not address the "survey," but appears to address the alleged out-of-state voters)). Further, the allegations in this section are filled with qualifiers—"indicative of voter fraud," "predictive model"—and **fail to identify *any* defendant** that commited the alleged fraud. The allegations merely assert that certain ballots "*could have* been filled out by anyone and then submitted in the name of another voter," "*could be* filled in by third parties to shift the election to Joe Biden," "were either lost or destroyed (consistent with allegations

of Trump ballot destruction)[1] and/or were replaced with blank ballots filled out by election workers, Dominion or other third parties." (Doc. 1, ¶¶ 54–58 (emphasis added); *see also* Doc. 1-4 at 1–17 (analysis of "momentum" based on alleged voter registration trends)).

Similarly, the allegations based on the Ramsland Report produce qualifiers instead of particularity: "*likely* fraudulent"; "*could* have been manufactured," and—the best of the bunch—"*possibly* impossible." (*See* Doc. 1, ¶¶ 59–60 (emphasis added)). And Ramsland's analysis is based on his subjective expectation of voter behavior at the precinct level, not first-hand evidence of voter fraud.

Taken together, the Briggs Report, Ramsland Report, and Braynard tweetstorm conjur a number of "illegal votes" out of thin air. These fantastic allegations have no connection whatsoever to anyallegation made by the Arizona-based declarants. These reports cannot satisfy Rule 9(b).

Finally, the bulk of Plaintiffs' allegations attack the integrity of Dominion Voting Systems, one of Maricopa County's voting equipment vendors. (*See* Doc. 1, ¶¶ 63–102; *see also id.* at ¶¶ 5–13)). These attacks are largely based on conspiracy theories in unsigned,[2] redacted declarations. (*See, e.g.*, Doc. 1-2 at 5–12; Doc. 1-3 at 2–6; Doc. 1-5 at 1–56). They also draw on observations about Dominion voting equipment in other states without any allegation that Maricopa County uses the same equipment or that the County's elections officials committed fraud in this or any other election. (*See, e.g.*, Doc. 1-4 at 48–50; Doc. 1-3 at 23–69). Plaintiffs brazenly attempt to justify their flouting of Rule 9's

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[1] Note: the Complaint does not appear to substantiate this conclusory allegation about ballot destruction at any point with a citation to any of the more than 300 pages of exhibits.

[2] Courts routinely reject the sufficiency of unsigned declarations. *See, e.g.*, *West v. Higgins*, 346 F. App'x 423, 426 (11th Cir. 2009) ("Federal law does provide an alternative to making a sworn statement, but requires that the statement include a handwritten averment, signed and dated, that the statement is true under the penalties of perjury."); *Alleva v. New York City Dep't of Investigation*, 696 F. Supp. 2d 273, 278 (E.D.N.Y. 2010) ("[T]he lack of a signature renders [the declarations] invalid under 28 U.S.C. § 1746, which requires the signature of the declarant.").

requirements by telling this Court that the system is set up to make fraud undetectable. (*See, e.g.*, Doc. 1, ¶ 8.) But that is not how Rule 9 works.

All told, Plaintiffs' Complaint does not "state with particularity the circumstances constituting fraud." *See* Fed. R. Civ. P. 9(b). At most—and it is surely a stretch—the Arizona-based declarants have alleged "garden variety election irregularities." *Griffin v. Burns*, 570 F.2d 1065, 1076 (1st Cir. 1978).

> The federal court is not equipped nor empowered to supervise the administration of a local election. If every election irregularity or contested vote involved a federal violation, the court would be thrust into the details of virtually every election, tinkering with the state's election machinery, reviewing petitions, registration cards, vote tallies, and certificates of election for all manner of error and insufficiency under state and federal law."

Id. at 1077.

Here, Plaintiffs request the extraordinary relief of decertifying Arizona's election by claiming "fraud" but fail to offer *any* evidence to support their claims. Because "the pleading could not possibly be cured by the allegation of other facts," *Bly–Magee*, 236 F.3d at 1019, this Court should dismiss with prejudice.

II. The Court should deny the request for preliminary equitable relief.

A movant can obtain preliminary equitable relief as a temporary restraining order or preliminary injunction by showing that (1) it is "likely to succeed on the merits," (2) it is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [its] favor," and (4) "an injunction is in the public interest." *Winter*, 555 U.S. at 20. A preliminary injunction may also be appropriate if a movant raises "serious questions going to the merits" and the "balance of hardships . . . tips sharply towards" it, provided that the movant satisfies the second and third *Winter* factors. *See All. for the Wild Rockies*, 632 F.3d at 1134–35.

Here, as explained above, Plaintiffs' woefully deficient Complaint ensures that it cannot succeed on the merits and does not raise "serious questions going to the merits." Further, given the purposes that animate Rule 9(a)—"to deter the filing of complaints as

a pretext for the discovery of unknown wrongs, to protect [defendants] from the harm that comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis," *Bly-Magee*, 236 F.3d at 1018—the balance of hardships under these circumstances tips sharply in favor of the Maricopa County Intervenors, not Plaintiffs. The Maricopa County Intervenors will suffer irreparable harm if the Court grants Plaintiffs' preliminary equitable relief and orders "all servers, software, voting machines, tabulators, printers, portable media, logs, ballot applications, ballot return envelopes, ballot images, paper ballots, and all election materials related to the November 3, 2020 Arizona election s[e]ized and impounded for forensic audit and inspection by the Plaintiffs." (Doc. 2 at 11).

First, the County will not be able to perform important post-election tasks, including service and maintenance of the voting equipment and performing accounting and inventory duties. Second, the Maricopa County Intervenors have an upcoming election to administer in March, and the proposed fishing expedition threatens their preparations. All of this together threatens the right of citizens of Maricopa County to exercise their constitutional right to vote. In addition, members of the legislature, including the chairman of the committee with jurisdiction over election procedures, have requested the County to perform an "election day demonstration" of the County's voting equipment in early to mid-December in order to determine what changes to Arizona election law, if any, should be considered when the time comes to file bills in early January. The order the Plaintiffs request would frustrate the legislators' important objective to continue to improve elections and voting in Arizona.

Moreover, Plaintiffs' request for access to the software is incongruent with their absurd allegation about "the software's ability to hide its manipulation of votes from *any audit*," underscoring their Rule 9(b) deficiencies. (*See* Doc. 1, ¶ 8 (emphasis added)). Under these circumstances, Plaintiffs cannot satisfy *Winter*.

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Conclusion

For these reasons, this Court should dismiss this Complaint under Rule 9(b) and deny Plaintiffs' motion for preliminary equitable relief.

RESPECTFULLY submitted this 4th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 4th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/ V. Sisneros

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Bowyer, et al.,

Plaintiffs,

v.

Ducey, et al.,

Defendants.

No. 2:20-cv-02321-DJH

PROPOSED INTERVENOR-DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND MOTION TO DISMISS

Expedited Election Matter

Hon. Diane J. Humetewa

I. INTRODUCTION

This is the fourth complaint filed nationwide in the last nine days by attorneys Sidney Powell and L. Lin Wood and others in which they seek to baselessly undermine the legitimacy of the presidential election by fanning the flames of debunked conspiracies, relying on the same discredited or unnamed "experts." *See* Compl., *Feehan v. Wis. Elections Comm'n*, No. 2:20-cv-1771 (E.D. Wis. Dec. 1, 2020); Compl., *King v. Benson*, No. 2:20-cv-13134-LVP-RSW, ECF No. 1 (E.D. Mich. Nov. 25, 2020); Compl., *Pearson v. Kemp*, No. 1:20-cv-4809, ECF No. 1 (N.D. Ga. Nov. 25, 2020).[1] But Plaintiffs' counsel's willingness to propagate their fantastical allegations across multiple jurisdictions does not make their claims actionable or meritorious. To the contrary, there are multiple bases to dismiss this case outright, including lack of standing, laches, black letter Eleventh Amendment jurisprudence, and a total failure to state a cognizable claim for relief. In addition, basic principles of federalism and comity counsel abstention. But even if the Court were to reach Plaintiffs' claims, they can satisfy none of the factors that would justify the injunctive relief that they seek: they are not likely to succeed on their claims, they have failed to establish that they will suffer irreparable harm, and both the public interest and the equities weigh heavily against them. The Arizona Democratic Party ("ADP") respectfully requests that the Court deny Plaintiffs' request for temporary relief and dismiss this suit.[2]

II. BACKGROUND

More than 3.4 million Arizonans cast ballots in the November presidential election. The election is now over. President-elect Biden has won by more than 10,400 votes, the results have been certified, and the Certificate of Ascertainment has been sent to the Archivist of the United States. *See* Compl. ¶ 3. This case is only one in what has become a

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[1] The Court need look no further than Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction here to see the cookie-cutter nature of this action. Dkt No. 2 at 6 (claiming entitlement to relief because Arizona officials failed to administer the election "in compliance with the manner prescribed by the Georgia legislature").

[2] The ADP's motion to intervene is pending before this court. Consistent with discussion at the scheduling conference (Doc. 28), ADP submits a joint response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, within the combined limits of the briefs were they to have been filed individually.

constant drumbeat of baseless attempts to use the judiciary to overturn the clearly expressed will of the people. Since Election Day, the Trump Campaign and its supporters have filed a series of lawsuits raising legally deficient and credulous challenges across at least seven different states. In fact, this is the *seventh* such suit in Arizona alone, including a new case filed just today. One by one, these cases have been thoroughly rejected. This suit should promptly suffer the same fate.

Not only is this case meritless, it is far too late. Plaintiffs inexplicably waited until December 2nd to file—two days after Arizona officials certified the results of the election, and nearly a full month after the election itself. As evidenced by the Complaint, Plaintiffs' claims did not get better with age. Instead, the Complaint relies on wild conspiracy theories, the gist of which are that Arizona election officials "and their collaborators" are alleged to have engaged in an elaborate international conspiracy to "illegally and fraudulently manipulat[e] the vote" in President-elect Biden's favor, purportedly resulting in "hundreds of thousands" of invalid or illegal ballots being cast in Arizona. Compl. ¶¶ 2-3. As support, Plaintiffs attach an unexecuted "declaration" from an unidentified witness and an unexecuted expert witness report (Compl. Exs. 1, 14); reports from supposed experts who have refused to disclose their identities, making it impossible for Plaintiffs to carry their burden of proving admissibility (Compl. Exs. 4, 12, 13); a declaration from a witness who complains, among other things, that she was made to "f[eel] very unwelcome" at a polling location on October 23 because poll watchers were told they could not talk and who was "concerned" because poll workers "correctly" advised voters about their options if they over-voted (and voters generally chose an option the witness did not like) (Compl. Ex. 5); a document from the Maricopa County Republican Committee Chairwoman that Plaintiffs label a "declaration," but which is not signed under penalty of perjury and that appears to be a transcript from statements she made at a meeting with Republican State Representative Mark Finchem and other officials (Compl. Ex. 23); exhibits that have nothing to do with the 2020 presidential election in Arizona (*e.g.*, Compl. Exs. 6-8, 10-11B, 15-16, 18); and other documents that similarly lend no credence to Plaintiffs' claims of fraud and

irregularity (*e.g.*, Compl. Exs. 3, 20-22).

Plaintiffs also rely on other expert witness reports that, aside than being signed, have no indicia of reliability whatsoever (*e.g.*, Compl. Exs. 2, 9, 17, 19). For the reasons set forth in the ADP's experts' rebuttal reports, these expert reports are unreliable and based on flawed methodology. [*See* Stephen Ansolabehere, Response to Report of Dr. William Briggs ("Exhibit 1"); Jonathan Rodden, Expert Report ("Exhibit 2"); Michael C. Herron, Expert Report ("Exhibit 3")]]

On these bases, Plaintiffs claim violations of the Elections and Electors Clauses, Compl. ¶¶ 103-11, the Equal Protection Clause, *id*. ¶¶ 112-23, the Due Process Clause, *id*. ¶¶ 124-34, and generalized "wide-spread ballot fraud," *id*. ¶¶ 135-41, and demand that the Court order Defendants to (1) "de-certify" the election, (2) "disqualif[y]" Arizona's electors "from counting toward the 2020 election," and (3) "direct[]" Arizona electors to "vote for President Donald Trump." *Id*. ¶¶ 142-45. Plaintiffs have also moved for a temporary restraining order and preliminary injunction on the same grounds. *See* Dkt. 2 at 2.

Plaintiffs recognize that Arizona law provides for an election contest to raise assertions of fraud and misconduct, but fail to explain why, instead, they have turned to this federal court. *See* Compl. ¶ 15 (citing A.R.S. § 16-672 in noting that "the factual basis of this Complaint would also support an election contest under Arizona law"); A.R.S. § 16-672 (providing for election contest for, e.g., "misconduct on the part of election board . . . or on the part of any officer making or participating in a canvass for a state election" or "[o]n account of illegal votes). Such a contest was separately brought by Plaintiff Kelli Ward in Arizona State Superior Count in Maricopa County on November 24, 2020. *See Ward v. Jackson*, No. CV2020-015285 (Maricopa Cty. Sup. Ct. Nov. 24, 2020). That contest petition was denied by that court by a decision issued earlier today after a two-day trial, in which the court found that found that the plaintiffs sorely failed to carry the burden of proof. The Court addressed many of the same issues Plaintiffs raise here. As to claims regarding insufficient opportunities to observe ballot counting, the Court held that those claims were untimely given that "[t]he observation procedures for the November general

election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured." *Ward v. Jackson*, No. CV2020-015285 (Maricopa Cty. Sup. Ct. Dec. 4. 2020) ("Exhibit 4"). After a thorough review of the evidence regarding signature matching presented by both sides and testimony by forensic document examiners, the Court found that there was "no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots. *Id*. at 7. Finally, as to illegal votes, the Court concluded that "the evidence did not prove illegal votes, much less enough to affect the outcome of the election." *Id.* at 8. The Arizona Supreme Court has advised that briefs in the matter will be due Monday before noon.

III. LEGAL STANDARD

Motion to Dismiss. In deciding a motion to dismiss, the Court presumes the veracity of all well-pleaded material allegations in the Complaint, *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016), but "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (alteration in original) (quoting Fed. R. Civ. P. 8(a)). "[C]onclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996).

Motion for Preliminary Injunction. Plaintiffs bear the burden of showing they (1) are "likely to succeed on the merits," (2) are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in" their "favor," (4) and "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). This is a demanding standard in any case but, where, as here, Plaintiffs seek a mandatory injunction, it is heightened. *See, e.g.*, *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (holding relief is not warranted "unless the facts and law clearly favor the

moving party." (quoting *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994)).

IV. ARGUMENT

A. The Court should dismiss this case because Plaintiffs lack standing.

To avoid dismissal on Article III grounds, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Plaintiffs fail all three prongs.

No cognizable injury-in-fact. Plaintiffs have failed to establish that they have suffered an injury fact sufficient to maintain any of their claims. As to their due process and equal protection claims in Counts II and III (as well as their freestanding fraud claim in Count IV, for which they cite neither a constitutional nor statutory basis), Plaintiffs do not allege that they were deprived of the right to vote; instead, they allege they are harmed by purported violations of Arizona law which "diluted" their votes. Compl. ¶¶ 117, 129, 140. But this theory of vote-dilution-through-unlawful-voting has been thoroughly and repeatedly rejected by federal courts as a viable basis for standing (including several in the last few weeks alone). *See, e.g.*, *Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120, at *11-14 (3d Cir. Nov. 13, 2020) (rejecting identical theory and explaining "[t]his conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment"); *Donald J. Trump for President, Inc. v. Cegavske*, No. 2:20-CV-1445 JCM (VCF), 2020 WL 5626974, at *4 (D. Nev. Sept. 18, 2020) (similar).

Thus, in *Donald J. Trump for President v. Boockvar*, the court rejected a challenge to Pennsylvania's restrictions on poll watchers and ballot challenges under the theory, like here, that the state's practices would lead to fraud and thus dilution of lawfully submitted votes. The court found that the fears of voter fraud that animated the claims were "based on a series of speculative events—which falls short of the requirement to establish a concrete injury." 2020 WL 5997680, at *33. Other cases have reached similar results. *See, e.g.*, *Martel v Condos*, No. 5:20-cv-131, 2020 WL 5755289, at *3-5 (D. Vt. Sept. 16, 2020)

(holding voters challenging a directive expanding vote-by-mail lacked concrete and particularized injury necessary for standing); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 925-26 (D. Nev. 2020) (same); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) ("[T]he risk of vote dilution" as a result of allegedly inaccurate voter rolls "[is] speculative and, as such, [is] more akin to a generalized grievance about the government than an injury in fact."). Plaintiffs' claims are similarly insufficient.

Plaintiffs also claim they have suffered harm as a result of alleged violations of the Elections and Electors Clauses, but that injury, too, has been repeatedly rejected as "precisely the kind of undifferentiated, generalized grievance about the conduct of government" insufficient to constitute an injury for Article III standing. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (per curiam); *accord Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020).

Plaintiffs' reliance on *Carson v. Simon*, 978 F.3d 1051, 1058 (8th Cir. 2020), in which the Eighth Circuit held that "[a]n inaccurate vote tally is a concrete and particularized injury" to electors under the theory that Minnesota electors are candidates for office under Minnesota law, is misplaced. *See* Compl. ¶ 32. *Carson* is neither binding on this Court nor in the legal mainstream; federal courts have *repeatedly* held that even candidates for office lack Article III standing to challenge alleged violations of state law under the Elections Clause. *See Bognet*, 2020 WL 6686120, at *6-7 (voters and candidate lacked standing to bring claims under Elections and Electors Clauses); *id.* at *8 n.6 (rejecting *Carson* as being based on an incorrect reading of *Bond v. U.S.*, 564 U.S. 211 (2011)); *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020) (holding candidate lacked standing under Elections Clause and concluding that Supreme Court's cases "stand for the proposition that only the state legislature (or a majority of the members thereof) have standing to assert a violation of the Elections Clause," but not individuals such as Plaintiffs

here).[3] Neither of the additional cases Plaintiffs cite in their TRO motion fix this fundamental flaw because they do not mention or address Article III standing to bring claims under either Clause whatsoever, and Plaintiffs provides no explanation regarding either case's significance. *See* Dkt. 2 at 5 (citing *McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cnty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam)).

No traceability. Plaintiffs have also failed to allege facts sufficient to established that their injuries are traceable to Defendants. Taking Plaintiffs' claims at face value, they appear to involve two things. First, a widespread conspiracy plot by both foreign and state nefarious actors to cast tens of thousands of "illegal" votes in Arizona. *See generally* Compl. And, second, actions by local officials which Plaintiffs purport did not follow state law. *Id.* ¶¶ 46-53. Neither conduct is traceable to Governor Ducey or Secretary Hobbs. As to Plaintiffs' outlandish claims of purported voter fraud by tens of thousands of persons unknown, any purported injuries here would be the result of the actions of unidentified criminal actors not before this Court. And, similarly, purported violations of state law by local elections officials are not traceable to the Governor or the Secretary. This lack of traceability dooms Plaintiffs' standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (requiring causal connection between injury and defendant's conduct).

No redressability. Finally, Plaintiffs' injuries are also not redressable by these Defendants.

First, Plaintiffs cite no authority for the proposition that a federal court has the power to order Arizona state officials to "de-certify" an election they have already certified. This claim relies entirely on provisions of Arizona law allowing a state court, following an election contest duly filed in state court and in compliance with state law, to "se[t] aside the election" or hold that a certificate of election "is of no further legal force or effect." A.R.S.

[3] Although separate constitutional provisions, the Electors and Elections Clauses share "considerable similarity" and should be interpreted in the same manner. *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839 (2015) (Roberts, C.J., dissenting); *see also Bognet*, 2020 WL 6686120, at *7 (applying same test for standing under both Elections and Electors Clauses).

§ 16-676; *see* Compl. ¶ 16 (stating "the relief sought is in accord with Arizona law" and citing to A.R.S. § 16-676). But the fact that Arizona's legislature has given *Arizona* courts this power following an election contest does not mean that either the Secretary or Governor—or a *federal* court for that matter—possess that power. To the contrary, as required by the U.S. Supreme Court's decision in *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984), the Eleventh Amendment prohibits a federal court from issuing an injunction ordering a state official to comply with state law. Federal courts also are prohibited from ordering state officials to take an action that they *lack* the ability to do under state law. *See, e.g.*, *Okpalobi v. Foster*, 244 F.3d 405, 427 (5th Cir. 2001) ("[A] state official cannot be enjoined to act in any way that is beyond his authority to act in the first place.").

Second, Plaintiffs' similar request that this Court order an injunction to prevent Governor Ducey "from transmitting the currently certified electoral results [to] the Electoral College" is a factual impossibility. Compl. ¶ 145. The Certificate of Ascertainment has already been transmitted. *See* Nat'l Archives, *2020 Electoral College Results*, https://www.archives.gov/electoral-college/2020 (linking to Arizona's Certificate of Ascertainment, indicating it has already been sent to and received by the Archivist of the United States). Thus, one consequence of Plaintiffs' delay in bringing suit is it has rendered this Court unable to issue the relief they seek.

In sum, Plaintiffs meet none of the three requirements for Article III standing and this Court should dismiss their Complaint on that basis alone.

B. The doctrine of laches bars Plaintiffs' claims.

Even if Plaintiffs were able to establish that they have standing to pursue their claims (and, for the reasons discussed above, they do not), the doctrine of laches independently requires the dismissal of their Complaint. Laches bars a claim when plaintiff engaged in unreasonable delay that prejudiced the defendant. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001). Federal and state courts alike routinely apply laches to bar untimely claims for injunctive relief in election cases. *See, e.g.*, *Soules v. Kauaians for*

Nukolii Campaign Comm., 849 F.2d 1176, 1181 (9th Cir. 1988) (upholding district court decision barring equal protection claim in elections case on basis of laches because "appellants knew the basis for their alleged equal protection challenge well in advance of the proposed special election" and "appellants [] failed to explain adequately their failure to press this claim before the election"); *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922–23 (D. Ariz. 2016) (Campbell, J.) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice." (citation omitted)); *see also Kistner v. Simon*, No. A20-1486, slip op. at 3-4 (Minn. Dec. 4, 2020) ("Exhibit 5") (dismissing two counts of post-election challenge on basis of laches because procedures plaintiffs complained of were publicly known well before election). Under this doctrine, Plaintiffs' extraordinary delay in bringing this case warrants outright dismissal of the Complaint. But at the very least, it bars their request for preliminary injunctive relief.

Each element of laches is satisfied here. First, Plaintiffs "unreasonabl[y] delay[ed]," in asserting these claims. *Ariz. Libertarian Party*, 189 F. Supp. 3d at 922. The general election occurred on November 3, and much of Plaintiffs' "evidence" relates to events that purportedly occurred weeks, months, or even years before then. *See, e.g.*, Compl. ¶ 7 (referencing events which occurred in 2009); *id.* ¶ 72 (relying on an 11th Circuit case from 2018)*; see also Kistner*, No. A20-1486, slip op. at 3-4. Yet Plaintiffs waited nearly a month after the election—and until after Arizona had certified its presidential election results—to seek relief. Plaintiffs concede that if they are granted relief, there would now "certainly not be time to hold a new election." Compl. ¶ 17. Plaintiffs can offer no credible reason why this Court should not find that they "could have, and should have," brought this lawsuit much earlier. *Id.*; *see also Ariz. Pub. Integrity All. Inc. v. Bennett*, No. CV-14-01044-PHX-NVW, 2014 WL 3715130, at *2 (D. Ariz. June 23, 2014) ("Had Plaintiffs filed suit promptly, a motion for preliminary injunction could have been briefed and decided without unreasonable burden on the Defendant, the Court, and the election process.").

Second, the other parties, the public, and the administration of justice would be

prejudiced if the Court excused Plaintiffs' delay in bring this suit. *See Ariz. Libertarian Party*, 189 F. Supp. 3d at 922–23. Plaintiffs' requested relief would disenfranchise some, or all, of Arizona's voters *after* voting has concluded and "erode [] confidence in the electoral process." *Wood*, 2020 WL 6817513, at *8. "Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented." *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) (citing *Reynolds v. Sims*, 377 U.S. 533, 585 (1964)). Indeed, such relief would at a bare minimum "cast an unacceptable degree of uncertainty over the election." *Kistner*, No. A20-1486, slip op. at 4 The doctrine of laches bars Plaintiff's claims.

C. The Eleventh Amendment bars Plaintiffs' claims.

In addition to the hurdles described above, the Eleventh Amendment also separately and independently bars Plaintiffs' claims. As noted *supra*, the Eleventh Amendment prohibits federal courts from granting "relief against state officials on the basis of state law, whether prospective or retroactive." *Pennhurst*, 465 U.S. at 106; *see also Students of Cal. Sch. for the Blind v. Honig*, 745 F.2d 582, 586 (9th Cir. 1984) ("The Supreme Court decided in *Pennhurst*" that the Eleventh Amendment "stands as an absolute bar to actions in federal court alleging that state officials have violated state law"). This is true even when state law claims are styled as federal causes of action. *See, e.g.*, *Massey v. Coon*, No. 87-3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law"); *Balsam v. Sec'y of State*, 607 F. App'x 177, 183–84 (3d Cir. 2015) (finding Eleventh Amendment bars state law claims even when "premised on violations of the federal Constitution").

None of Plaintiffs' claims can reasonably be found to escape this bar. It most clearly prohibits Plaintiffs' free-standing fraud claim in Count IV, in which Plaintiffs' assert that the fraud alleged in the Complaint should result in the invalidation of ballots based on binding Arizona law. Compl. ¶ 138. But it is also true of Plaintiffs' other claims, each of

which, although ostensibly cloaked in the garb of a federal cause of action, ultimately ask the Court to determine that state officials violated state law and compel state officials to do what Plaintiffs believe *Arizona* law requires. This is evidenced by even a cursory review of Plaintiffs' other three purported federal claims. Count I, Plaintiffs' purported Elections and Electors Clause claim, asserts (without stating exactly how) that Plaintiffs violated the U.S. Constitution by exercising powers that are the province of the Arizona Legislature. Compl. ¶ 106. To the extent this is a claim at all (or one that Plaintiffs could assert), it is one about a violation of state separation of powers and is not a federal claim. Count II, Plaintiffs' purported equal protection clause claim, relies on the assertion that Defendants should not be allowed to count any ballots that a poll watcher (or challenger) was unable to observe. *See id*. ¶ 120. But there is no constitutional right to poll watching or observation; any "right" to do so is purely a creature of state law. *See, e.g*., *Donald J. Trump for President, Inc. v. Boockvar*, No. 20-cv-966, 2020 WL 5997680, at *67 (W.D. Pa., Oct. 10, 2020) ("[T]here is no individual constitutional right to serve as a poll watcher." (quoting *Pa. Democratic Party v. Boockvar*, No. 133 MM 2020, 2020 WL 5554644, at *30 (Pa. Sept. 17, 2020))); *Republican Party of Pa. v. Cortés*, 218 F. Supp. 3d 396, 413-414 (E.D. Pa. 2016) (similar). This claim, too, is accordingly premised solely on state law. Next, Count III, Plaintiffs' purported due process claim, relies on alleged violations of Arizona law regarding data retention for electronic voting systems. *See* Compl. ¶¶ 132, 133 (citing to A.R.S. §§ 16-602, 16-608 regarding electronic voting system data retention and asserting that Dominion voting systems violate these rights). The Constitution is not concerned with the minutiae of state electronic voting process data retention requirements. *See, e.g.*, *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("A violation of state law does not . . . transgress against the Constitution."); *Martinez v. Colon*, 54 F.3d 980, 989 (1st Cir. 1995) ("[T]he Constitution is not an empty ledger awaiting the entry of an aggrieved litigant's recitation of alleged state law violations….").

Plaintiffs' TRO motion only serves to underscore that their issues are truly state law claims masquerading as a federal action. While the motion yet again contains accusations

of unverified and illusory fraud, the only actual concrete violations of anything it alleges are purported violations of *Arizona* law. *See* Dkt. 2 at 2-3. This Court cannot order Defendants to de-certify the election or withhold transmission of certification to the Electoral College based on alleged violations of Arizona law without running afoul of the Eleventh Amendment. *See, e.g.*, *Ohio Republican Party v. Brunner*, 543 F.3d 357, 360-61 (6th Cir. 2008) (holding *Pennhurst* bars claim that Secretary of State violated state election law); *Vulliet v. Oregon*, No. 6:12-CV-492-AA, 2012 WL 4863710, at *6 (D. Or. Oct. 10, 2012), *aff'd*, 701 F. App'x 579 (9th Cir. 2017) (dismissing claims against Oregon Secretary of State and Director of Elections for purported violations of Oregon Constitution under *Pennhurst*).

D. Principles of federalism and comity strongly favor abstention.

Even if the Court were to conclude that each of the above hurdles did not conclusively bar it from exercising jurisdiction, principles of federalism and comity strongly favor that the Court decline to do so. The relief Plaintiffs seek calls for an extraordinary intrusion on state sovereignty by a federal court. Under the *Pullman* abstention doctrine, the claims Plaintiffs raise should be addressed in state court. *See R. Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941). *Pullman* recognizes that "federal courts should abstain from decisions when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question," and that abstention in such circumstances "avoid[s] both unnecessary adjudication of federal questions and 'needless friction with state policies . . . .'" *Columbia Basin Apartment Ass'n v. City of Pasco*, 268 F.3d 791, 802 (9th Cir. 2001) (quoting *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)). The Ninth Circuit looks to three factors to determine whether *Pullman* abstention is appropriate, including (1) whether the case "touch[es] on a sensitive area of social policy upon which federal courts ought not to enter unless no alternative to its adjudication is open," (2) whether it is "plain that the constitutional adjudication can be avoided if a definite ruling on the state issue would terminate the controversy," and (3) whether issue of state law is "uncertain." *Id*. Each factor weighs in favor of abstention here.

First, the conduct of elections is a responsibility uniquely constitutionally entrusted to the states. *See* U.S. Const. art. I ¶ 4. There are few areas where a federal court should tread more lightly. And, as Plaintiffs themselves readily note, the factual claims they raise here could just as readily "support an election contest under Arizona law," Compl. ¶ 15 (citing A.R.S. § 16-672). Moreover, as noted above, the election contest brought by Plaintiff Kelli Ward raises many of the same concerns addressed by Plaintiffs. *See supra* Section II. So it can hardly be claimed that there is no alternative to federal court adjudication.

Second, adjudication of the state law issues could avoid constitutional adjudication. Plaintiffs' claims are premised, in part, on local officials violating Arizona election law through (what Plaintiffs claim to be) inadequate signature comparison and subpar electronic data retention. Compl. ¶¶ 46-53. Their TRO motion echoes these state law concerns. Dkt. 2 at 2-3. Plaintiffs also bring a freestanding fraud count, in which they contend that the fraud alleged in their Complaint should lead to the invalidation of ballots under Arizona precedent. *See id.* ¶ 138 (citing *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180, 877 P.2d 277, 279 (1994)). If Plaintiffs' own statements regarding Arizona law are to be believed, then the adjudication of the state law issues they raise could avoid federal adjudication here.

Third, the issues of state law are "uncertain." It is unclear that the signature matching and data retention practices Plaintiffs complain of violate Arizona law, and it is also uncertain whether Plaintiffs' factual assertions could successfully support an election contest in Arizona. These are questions best suited for a state court, making *Pullman* abstention appropriate here.

E. Plaintiffs fail to state a claim on which relief can be granted.

There is yet another basis upon which the Complaint must be dismissed: it fails to state a claim on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Under the Federal Rules, plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. While Rule 8 "does not require 'detailed factual allegations,' [] it demands more than an unadorned, the-defendant-unlawfully-harmed-me

accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). The shortcomings in the Complaint are particularly stark considering Rule 9(b), which applies to fraud allegations. "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b).

Plaintiffs fail to meet the standards of Rule 8, much less Rule 9(b). Plaintiffs' theory is that Arizona election officials—including the state's Republican governor and "the State of Arizona" as a whole—conspired with domestic and international actors to manipulate election results throughout the state. Compl. ¶ 57. Local elections officials allegedly helped advance a "massive election fraud," *id*. ¶ 1, because they used voting machines made by Dominion, *id.* ¶ 2, which is a company created exclusively to ensure election-rigging so that "Venezuelan dictator Hugo Chavez never lost another election," *id*. ¶ 6, which thereby allowed Iran and China to manipulate the general election to ensure President-elect Biden's victory, *id*. ¶ 13, apparently in cahoots with Arizona elections officials who also supposedly enabled mass voter fraud among mail-in voters, *id.* ¶¶ 54, 57.

The Supreme Court has instructed that "[d]etermining whether a complaint states a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. It would defy experience and common sense to accept Plaintiffs' overarching theory that widespread fraud occurred during the most scrutinized election in modern history, particularly based on the allegations they make in the Complaint. Under federal pleading standards, this Court need not credit Plaintiffs' specious inferences and conclusory allegations. They are, quite simply, not remotely plausible.

For these reasons alone, the Complaint should be dismissed. But, in addition to relying on entirely implausible facts, Plaintiffs have failed to state cognizable legal claims. Let us begin with Count II, which Plaintiffs have characterized as a claim brought under the Equal Protection Clause of the U.S. Constitution. Plaintiffs allege that "Defendants[']fail[ure] to comply with the requirements of Arizona law . . . diluted the lawful ballots of Plaintiffs and other Arizona voters . . . ." Compl. ¶ 117. This is not a cognizable equal

protection injury. Vote dilution is a viable basis for federal claims only in certain contexts, such as when laws structurally devalue one community's votes over another's. *See, e.g.*, *Bognet*, 2020 WL 6686120, at *11 ("[V]ote dilution under the Equal Protection Clause is concerned with votes being weighed differently."). Courts have repeatedly found the "conceptualization of vote dilution" that Plaintiffs urge here—that is, "state actors counting ballots in violation of state election law," is not a cognizable equal protection violation. *Id.* For good reason: "if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly cast ballots 'were a true equal-protection problem, then it would transform every violation of state election law . . . into a potential federal equal-protection claim.'" *Bognet*, 2020 WL 6686120, at *11 (quoting *Boockvar*, 2020 WL 5997680 at *45-46).[4]

Plaintiffs have also failed to plead a due process claim. In Count III, Plaintiffs appear to allege that violations of law diluted their votes in violation of the Due Process Clause. *See* Am. Compl. ¶¶ 131–33. But vote dilution is a context-specific theory of constitutional harm premised on the Equal Protection Clause, not the Due Process Clause. And, as set forth above, Plaintiffs have failed to plead a cognizable vote-dilution claim. Even were this Court construed Plaintiffs' allegations as attempting to state a substantive due process claim, the Complaint would still fall short. This is because, "[i]n general, garden variety election irregularities do not violate the Due Process Clause . . . ." *Bennett v. Yoshina*, 140 F.3d 1218, 1226 (9th Cir. 1998). Instead, to "strike down an election on substantive due process grounds," two elements must be met: "(1) likely reliance by voters on an established election procedure and/or official pronouncements about what the procedure will be in the coming election; and (2) significant disenfranchisement that results from a change in the election procedures." *Bennett*, 140 F.3d at 1226–27; *see also Curry v. Baker*, 802 F.2d 1302, 1315 (11th Cir. 1986) (for the due process clause to be implicated problems must "go well

[4] Plaintiffs also claim an equal protection violation because Defendants "violate[d] Plaintiffs' right to be present and have actual observation and access to the electoral process." [Compl. ¶ 118] Plaintiffs, however, do little to explain this theory and are incorrect. "[T]here is no individual constitutional right to serve as a poll watcher." *Boockvar*, 2020 WL 5997680, at *7 (quoting *Pa. Democratic Party v. Boockvar*, 238 A.3d 345, 385 (Pa. 2020)).

beyond the ordinary dispute over the counting and marking of ballots"). In this case, Plaintiffs' complaints fall far short of a constitutional violation. Plaintiffs do not allege disenfranchisement at all. To the contrary, it is Plaintiffs who seek to negate the votes cast by millions of eligible Arizona voters. Count III therefore does not state a due process claim and must be dismissed.

Plaintiffs' Elections and Electors claims as alleged in Count I of the Complaint are similarly unavailing. The Elections and Electors Clauses vest authority in "the Legislature" of each state to regulate "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives", U.S. Const. art. I, § 4, cl. 1, and to direct the selection of presidential electors, U.S. Const. art. II, § 1, cl. 2, respectively. While far from a model of clarity, Plaintiffs' claim appears to be that Defendants' failure to follow state law resulted in the miscounting of various ballots violated the Elections and Electors Clauses. Compl. ¶¶ 106–09. Plaintiffs, however, fail to tie these allegations to the Electors and Elections Clauses. Indeed, Plaintiffs have not explained how any deviation from election procedures, or anything else, automatically constitutes a violation of these Clauses. Nowhere do they allege that Defendants, or any state law, violates the authority of the Legislature to direct selection of the presidential elections, U.S. Const. art. II, § 1, cl. 2, or regulate elections, U.S. Const. art. I, § 4, cl. 1; *See, e.g.*, *Ariz. State Legislature*, 576 U.S. at 824 (evaluating state law considering the meaning of "the Legislature" as used in the Elections Clause).

F. Plaintiffs are not entitled to a temporary or preliminary injunction.

For the reasons discussed above, Plaintiffs have failed to (and cannot establish) that they are likely to succeed on their claims. As discussed further below, they also have failed to carry their burden on any of the factors necessary to entitle them to preliminary relief, much less the extraordinary, unprecedented, and mandatory relief that they seek. Rather than remedying a constitutional violation, Plaintiffs' requested relief would create one. No court has ever done what Plaintiffs ask this Court to do—throw out the election results, discard more than 3.4 million votes, and ordain the losing candidate the victor by judicial proclamation. As another federal court put it last month when the Trump Campaign sought

an order prohibiting Pennsylvania's officials from certifying election results, "[t]his Court has been unable to find any case in which a plaintiff has sought such a drastic remedy in the contest of an election, in terms of the sheer volume of votes asked to be invalidated." *Boockvar*, 2020 WL 6821992, at *1. America is a democracy. "Voters, not lawyers, choose the President. Ballots, not briefs, decide elections." *Id.* at *9.

1. Plaintiffs have a remedy at law and cannot establish irreparable harm.

As a threshold matter, Plaintiffs concede that they have an adequate remedy at law, *see* Compl. at ¶ 15, and hence are not likely to suffer "irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20; *see also Younger v. Harris*, 401 U.S. 37, 43–44 (1971) (noting the "basic doctrine of equity jurisprudence [provides] that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief"). Plaintiffs have an adequate remedy at law here which makes it impossible for them to establish irreparable harm.

As Plaintiffs acknowledge, "the factual basis of this Complaint would also support an election contest under Arizona law since A.R.S. § 16-672 allows for contests on the grounds of misconduct, offenses against the elective franchise, on account of illegal votes, and by reason of erroneous count of votes." Compl. ¶ 15. The availability of this remedy makes their harm, by definition, not irreparable and precludes them from being entitled to injunctive relief. *See*, *e.g.*, *Daniels Health Scis., LLC v. Vascular Health Scis., LLC*, 710 F.3d 579, 585 (5th Cir. 2013) (stating that, "[t]o satisfy [the irreparable harm] prong of the preliminary injunction test, [the moving party] must show that it is 'likely to suffer irreparable harm,' that is, harm for which there is no adequate remedy at law").

Further, because Plaintiffs have not shown a likelihood of success of the merits of their constitutional claims, Plaintiffs' assertion (Mot. at 9) that they will suffer irreparable harm based on those violations are unfounded. There has been no "deprivation of constitutional rights" and no irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Additionally, "Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm." *Oakland Tribune, Inc. v. Chronicle Pub.*

Co., 762 F.2d 1374, 1377 (9th Cir. 1985); *see also* Wright & Miller, 11A *Federal Practice and Procedure*, § 2948.1 (3d ed., Apr. 2017 update) ("A long delay by plaintiff after learning of the threatened harm also may be taken as an indication that the harm would not be serious enough to justify a preliminary injunction."). As discussed above, Plaintiffs' alleged injuries occurred (if they occurred at all), on or before election day. Yet Plaintiffs waited until December 2—nearly four weeks after election day—to file this motion. This Court should consider Plaintiffs' inexcusable delay in determining whether they are now entitled to the "emergency" injunctive relief they seek.

2. The balance of equities and public interest weigh against the issuance of restraining order.

The balance of equities and public interest cut sharply against granting injunctive relief. Plaintiffs' request that this Court "enjoin Governor Ducey from transmitting the currently certified election results to the Electoral College," Mot. at 11, would wreak havoc on Arizona's elections processes and violate the constitutional rights of millions of Arizonans, all while undermining public confidence and trust in the election's results.

For these reasons, in the past several weeks, courts have rightly refused to issue similar injunctions. *See Boockvar*, 2020 WL 6821992, at *1 (construing Trump Campaign's request to enjoin Pennsylvania's certification of results as a request "to disenfranchise almost seven million voters," and refusing to do so); *Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, 2020 WL 6817513 (N.D. Ga. Nov. 20, 2020) (denying request to enjoin Georgia from certifying its election results, concluding that "interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways"). This Court should find the same.

V. CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendant respectfully requests that the Court deny Plaintiffs' request for injunctive relief and dismiss Plaintiffs' Complaint.

Dated: December 4, 2020

/s Alexis E. Danneman

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L.R.CIV. 12.1(c) CERTIFICATION

As required by Local Rule 12.1(c), undersigned counsel certifies that before filing this motion, counsel for ADP discussed the issues asserted in this motion with Plaintiffs' counsel, and the parties were unable to agree that Plaintiffs' Complaint was curable in any part by a permissible amendment.

/s Alexis E. Danneman

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2020, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Indy Fitzgerald

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Exhibit 1

Response to Report of Dr. William Briggs

Stephen Ansolabehere

December 4, 2020

Statement of Inquiry

1. I have been asked to evaluate the report of Dr. William Briggs. I am compensated at the rate of $550 an hour.

2. A brief summary of my high-level opinions and conclusions is below; however, overall, based on my review, I find the estimates and analyses in Dr. Briggs' report to be unreliable and the analysis not up to scientific standards of survey research, data science, or election analysis. There are substantial errors in the design of the survey and errors and inconsistencies in the data used in the analysis that are of sufficient magnitude to invalidate any calculations or estimates based on these data. The extremely low response rate, the high break off rate, and the inconsistencies in data spreadsheets lead me to conclude that the survey should not be assumed to be representative of the population studied, and the data should not be assumed to be accurate. The interpretation of the data does not account for obvious and important features of absentee voting, including permanent absentee voters who do not need to request ballots to receive them, as well as late, rejected, invalid, and spoiled absentee ballots. The errors in design, analysis, and interpretation of the data are so massive that there is no foundation for drawing any conclusions or inferences from Dr. Briggs' report.

Summary Assessment

3. In his report, Dr. Briggs evaluates survey data that was provided to him by a third party and assumes that "the respondents [to the survey] are representative and the data are accurate."[1] There is no indication in his report that he conducted any analysis of the data or that those who provided the data to him did anything to verify its correctness and integrity. Nor is

[1] William M. Briggs, "An Analysis of Surveys Regarding Absentee Ballots Across Several States," November 23, 2020, page 1.

there any showing that he or anyone else analyzed the quality of the survey or the representativeness of the sample on which he based his analysis. It is standard scientific practice in the field of survey research to give careful scrutiny to data before conducting any statistical analyses, including understanding the structure and wording of the survey questions, the sampling method and response rate, and the characteristics of the sample, such as demographic and behavioral indicators.

4. In his report, Dr. Briggs defines two types of purported errors. The first is that people received an absentee ballot even though, according to the survey, they did not request one (Alleged Error #1). The second is that people allegedly returned absentee ballots that election offices did not record (Alleged Error #2). These two alleged errors, Dr. Briggs asserts, combine to create a category of "troublesome ballots." The estimates of Alleged Error #1 and Alleged Error #2 that he presents are deeply flawed because of defects in the design of the survey, fatal data errors evident in the survey toplines, calculation errors, and errors in the interpretation of the data. It is my professional judgment that none of the estimates and projections in his report are valid.

5. The design of the survey contaminates the data and any estimates, rendering them invalid. Specifically, in Question 1 of the survey the surveyor asks to speak to a specific person. Some of the respondents are flagged as "Reached Target," while others are flagged as "Uncertain" or "What is this about?" Both groups of people (Reached Target and Uncertain) are then asked Question 2, "Did you request an absentee ballot?" This is a serious survey design error, because some or perhaps all of the people flagged as "Uncertain" are not the target of the interview. As a result, the structure of the very beginning of the survey allows people who were

not the target to be treated as if they were in the remaining questions. This leads to the contamination of all estimates.

6. The survey also suffers from ambiguously worded questions, which introduces measurement errors in any estimates. Question 2 asks respondents whether they requested an absentee ballot. The question does not follow up and clarify different ways that people obtain absentee ballots, especially, whether the voter did not need to request a ballot in order to receive one because they are permanent absentee voters. According to data reported by county election offices in the State of Arizona to the U.S. Election Assistance Commission, there were 2,545,198 million permanent absentee or early voters (PEVs) in the state out of 2,672,384 absentee voters in the 2018 election. The data are from 2018 because the 2020 data have not yet been reported. **In other words, 95 percent of all absentee voters in the state were automatically sent an absentee ballot without needing to request one for a specific election.** Dr. Briggs is apparently unaware of this critical fact, which completely undermines his analysis.

7. The wording of Question 3 also is very problematic. First, the survey does not ascertain whether a ballot was in fact received. According to figures from the U.S. Election Assistance Commission, there were 102,896 undeliverable absentee ballots. Neither Question 2 nor Question 3 screens out people who did not receive a ballot. Second, Question 3 does not ascertain whether the ballot was mailed back in a timely manner so as to be included in the record of ballots cast. Third, Question 3 asks whether someone voted. As is well known among political scientists and survey researchers, survey questions asking whether someone voted are subject to substantial social desirability biases that lead to inflation in the estimated number of voters.

8. There are also errors and inconsistencies in the survey data. Appended to Dr. Briggs' report is a series of tables, called Topline Tables ("toplines"), for the State of Arizona. Toplines for other states are not disclosed. The toplines provide the basic statistics about the survey reported for each question, as well as the questions themselves and the response categories for each question. There are errors in the spreadsheet of toplines indicating data inconsistencies. For example, in Arizona, there are more respondents to Question 2 than the survey instructions indicate should have been asked Question 2. Generally, such errors indicate fundamental problems with the management of the survey and the databases generated by the survey. It is standard practice in survey research and analysis of survey data to conduct integrity checks to ensure that there are not mistakes in the data. The presence of substantial discrepancies in these topline tables, such as shown here, indicates flaws in the data. Dr. Briggs' report makes no mention of these inconsistencies and errors and assumes that the underlying data are accurate. These errors and inconsistencies reveal that the data are not accurate.

9. In addition, the survey has extremely low response rates. Of the 518,560 absentee voters who were the target of the study, 2,489 were asked and 2,129 people (one-half of one percent) ultimately provided answers to Question 2. High non-response rates generally create biases in survey because the samples are rarely representative of the population under study. Surveys with such a low response rate are not accepted in scientific publications, except on rare occasions and with proper analyses that ensure that the respondents are in fact representative. When researchers have low response rates, they must offer affirmative proof of representativeness or attempt to correct for biases. Neither is done here.

11. The interpretation of the data as evidence of "errors" and "troublesome ballots" fails to account for the rules and realities of absentee voting. First, Dr. Briggs calls Alleged Error #1

absentee ballots that were received by voters but were not "requested." This interpretation fails to consider that 95 percent of absentee ballots sent by election offices are sent to permanent absentee voters, who receive ballots without requesting them. All five states in his report allow for permanent absentee voting for some or all registrants. Second, Dr. Briggs calls Alleged Error #2 ballots that were sent by voters but not recorded at the county election offices. This interpretation fails to account for late, undeliverable, rejected, and spoiled ballots. Most jurisdictions, for example, do not record late ballots in the tally of returned absentee ballots. The results in his analysis, if they are real, are likely the consequence of the normal practice of absentee voting.

II. Qualifications

12. I am the Frank G. Thompson Professor of Government in the Department of Government at Harvard University in Cambridge, MA. Formerly, I was an Assistant Professor at the University of California, Los Angeles, and I was Professor of Political Science at the Massachusetts Institute of Technology, where I held the Elting Morison Chair and served as Associate Head of the Department of Political Science. I am the Principal Investigator of the Cooperative Congressional Election Study (CCES), a survey research consortium of over 250 faculty and student researchers at more than 50 universities, directed the Caltech/MIT Voting Technology Project from its inception in 2000 through 2004, and served on the Board of Overseers of the American National Election Study from 1999 to 2013. I am an election analyst for and consultant to CBS News' Election Night Decision Desk. I am a member of the American Academy of Arts and Sciences (inducted in 2007). My curriculum vitae is attached to this report as Appendix B.

13. I have worked as a consultant to the Brennan Center in the case of *McConnell v. FEC*, 540 U.S. 93 (2003). I have testified before the U.S. Senate Committee on Rules, the U.S. Senate Committee on Commerce, the U.S. House Committee on Science, Space, and Technology, the U.S. House Committee on House Administration, and the Congressional Black Caucus on matters of election administration in the United States. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009) and an amicus brief with Professor Nathaniel Persily and others in the case of *Evenwel v. Abbott*, 138 S. Ct. 1120 (2015). I have served as a testifying expert for the Gonzales intervenors in *State of Texas v. United States* before the U.S. District Court in the District of Columbia (No. 1:11-cv-01303); the Rodriguez plaintiffs in *Perez v. Perry*, before the U.S. District Court in the Western District of Texas (No. 5:11-cv-00360); for the San Antonio Water District intervenor in *LULAC v. Edwards Aquifer Authority* in the U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG); for the Department of Justice in *State of Texas v. Holder*, before the U.S. District Court in the District of Columbia (No. 1:12-cv-00128); for the Guy plaintiffs in *Guy v. Miller* in the U.S. District Court for Nevada (No. 11-OC-00042-1B); for the Florida Democratic Party in *In re Senate Joint Resolution of Legislative Apportionment* in the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); for the Romo plaintiffs in *Romo v. Detzner* in the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412); for the Department of Justice in *Veasey v. Perry*, before the U.S. District Court for the Southern District of Texas, Corpus Christi Division (No. 2:13cv00193); for the Harris plaintiffs in *Harris v. McCrory* in the U.S. District Court for the Middle District of North Carolina (No. 1:2013cv00949); for the Bethune-Hill plaintiffs in *Bethune-Hill v. Virginia*

State Board of Elections in the U.S. District Court for the Eastern District of Virginia (No. 3: 2014cv00852); for the Fish plaintiffs in *Fish v. Kobach* in the U.S. District Court for the District of Kansas (No. 2:16-cv-02105-JAR); and for intervenors in *Voto Latino, et al. v. Hobbs*, in the U.S. District Court for the District of Arizona (No. 2:19-cv-05685-DWL). I served as an expert witness and filed an affidavit in the North Carolina State Board of Elections hearings regarding absentee ballot fraud in the 2018 election for Congressional District 9 in North Carolina.

14. My areas of expertise include American government, with particular expertise in electoral politics, representation, and public opinion, as well as statistical methods in social sciences and survey research methods. I have authored numerous scholarly works on voting behavior and elections, the application of statistical methods in social sciences, legislative politics and representation, and distributive politics. This scholarship includes articles in such academic journals as the Journal of the Royal Statistical Society, American Political Science Review, American Economic Review, the American Journal of Political Science, Legislative Studies Quarterly, Quarterly Journal of Political Science, Electoral Studies, and Political Analysis. I have published articles on issues of election law in the Harvard Law Review, Texas Law Review, Columbia Law Review, New York University Annual Survey of Law, and Election Law Journal, for which I am a member of the editorial board. I am associate editor of the Harvard Data Science Review, and have served as associate editor of the Public Opinion Quarterly. I have coauthored three scholarly books on electoral politics in the United States, The End of Inequality: Baker v. Carr and the Transformation of American Politics, Going Negative: How Political Advertising Shrinks and Polarizes the Electorate, and The Media Game: American Politics in the Media Age. I am coauthor with Benjamin Ginsberg and Ken Shepsle of American Government: Power and Purpose.

III. Sources

15. I have relied on the report of Dr. William Briggs in this case.

16. I have relied on the Election Assistance Commission, "Election Administration and Voting Survey (EAVS)" for 2018: https://www.eac.gov/research-and-data/studies-and-reports. I present data from 2018 because it is the most recent federal election for which data on absentee and permanent absentee voting is available. The 2018 data are instructive about the magnitude of permanent absentee voters and the magnitude of unreturned, late, rejected, and spoiled absentee ballots. The 2020 data are not yet reported.

17. I have relied on the report of Mr. Matthew Braynard in a pending lawsuit in Fulton County, Georgia, Superior Court, *Wood v. Raffensperger*, 2020CV342959.

18. I have relied on the report of Dr. William Briggs in *King v. Whitmer* in the District Court in the Eastern District of Michigan (No. 2:20-cv-13134).

IV. Findings

19. In my professional judgment, there are fundamental flaws in the design of the survey design and the survey data on which Dr. Briggs relied. These flaws created biases in the estimates and analyses that are sufficiently large to completely explain the results that Dr. Briggs presents as nothing more than errors in the data collection process. Perhaps most troubling, the survey is likely highly unrepresentative because it has a response rate less than 1 percent; the survey data are contaminated by respondents who should not have been included in the survey, and the basic data in the Topline summaries of the data do not add up, indicating fatal flaws in the implementation of the survey.

20. The interpretations of the estimates in the survey as errors and troublesome ballots fail to take into account the realities of absentee voting in the State of Arizona. Almost all absentee voters in the State receive absentee ballots for each election without having to request ballots for that election because they are Permanent Absentee and Early Voters (PEVs). In addition, there are large numbers of undeliverable and late absentee ballots, which are typically not recorded as received by the election offices.

A. Critique of Interpretation

i. The survey data and its interpretation do not account for PEVs.

21. The analysis of Question 2 is used to estimate the number of people who received but did not request an absentee ballot. Dr. Briggs calls this Alleged Error #1.

22. The interpretation of these data as an error in balloting does not account for the presence of a large number of Permanent Absentee and Early Voters (PEVs) in Arizona, Michigan, Pennsylvania, and Wisconsin. Georgia automatically mails ballots for voters who qualify for "rollover" ballots – people over 65, disabled, or in the military who sign up annually to have ballots automatically sent to them. I consider rollover ballots to be a form of PEV, but the voter does need to sign up each year.

23. PEVs are automatically sent their absentee ballots. They do not need to request that a ballot be sent for a particular election.

24. In the State of Arizona, nearly all absentee ballots sent are sent to PEVs. In 2018, PEVs were 95 percent of absentee ballots sent by election offices to registered voters. In other words, nearly all voters who received absentee ballots in the State did so without having to request that one be sent to them.

25. In the other states covered in Dr. Briggs' report, there are substantial numbers of PEVs. Table 1 presents data from the number of absentee ballots sent in 2018 and the number of permanent absentee ballots sent to voters in Arizona, Georgia (rollover absentee voters), Michigan, Pennsylvania, and Wisconsin. The number of permanent absentee ballots sent in Arizona, Michigan, and Wisconsin far exceeds the estimated Alleged Error #1 in the first table in Dr. Briggs' report. The EAC reports no data on permanent absentee ballots for Georgia in 2018. Those data cover 2018 and are presented to indicate the likely magnitude of PEVs in the states in 2020. Preliminary reports from some of these states show very high numbers of PEVs and rollover absentee voters. There were at least 582,000 "rollover" ballots in Georgia in 2020.[2]

26. Based on the toplines, Mr. Braynard's survey does not identify PEVS or distinguish them from other absentee voters.

Table 1. Permanent Absentee Voters in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018

	Total Absentee Ballots Sent	Permanent Absentee Ballots Sent (i.e., ballots sent automatically without a specific ballot request)	Permanent Absentee Ballots as a Percent of Total
Arizona	2,672,384	2,545,198	95.2%
Georgia	281,490	*	*
Michigan	1,123,415	549,894	48.9%
Pennsylvania	216,575	6,340	2.9%
Wisconsin	168,788	54,113	32.1%

Source: U.S. Election Assistance Commission, Election Administration and Voting Survey, 2018.
Note: * no data reported.

[2] Stephen Fowler, "Nearly 800,000 Georgians Have Already Requested Absentee Ballots for November" GA Today gpb.org, September 2, 2020. https://www.gpb.org/news/2020/09/02/nearly-800000-georgians-have-already-requested-absentee-ballots-for-november

ii. The interpretation of Question 3 fails to account for the proper handling of late, invalid, and spoiled absentee ballots by Local Election Offices.

27. The analysis of Question 3 of Mr. Braynard's survey is used to estimate the number of people who stated that they returned an absentee ballot but for whom no vote was recorded. Dr. Briggs calls this Alleged Error #2.

28. The interpretation of such cases as errors does not account for absentee ballots that are in fact not received or counted by election officers because the ballots are not returned by the postal system, are returned late by the voter, are spoiled by the voter, or are rejected. Such ballots are the obvious explanation for the data observed. No effort in the survey or the analysis is made to ascertain the likelihood that a voter cast a late or invalid absentee ballot.

29. The number of absentee ballots that are not received or valid is substantial. Table 2 presents counts of rejected, late, undelivered, and voided absentee ballots in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin for 2018, the most recent federal election for which systematic data on absentee voting are available. An undeliverable absentee ballot is one that was returned to the election office as not being deliverable to the address on the voter registration lists. The final column presents the number of sent absentee ballots for which the status of a ballot sent by the election office to a voter was not received and its status is not known. These are likely ballots that simply were not returned by voters or were lost or delayed in the US Postal System. Delays in the postal system were a particular concern in 2020, as there were widespread reports of staffing problems during COVID for USPS, delays in mail delivery, and declines in the rate of on-time delivery.[3] Late, undelivered, rejected, and spoiled ballots are not counted

[3] Hailey Fuchs, "Some Regions Still Experience Slow Delivery of Mail Ballots," New York Times, November 3, 2020, Section A, Page 23. https://www nytimes.com/2020/11/02/us/politics/mail-ballot-usps.html.

under law, and they are comparable in magnitude to the estimates of the Alleged Error #2 reported by Dr. Briggs for each state.

30. Arizona election officials reported to EAC a total of 2,515 late absentee ballots, 27,804 void or spoiled ballots, 8,567 rejected ballots, and 102,896 ballots that were undeliverable in the 2018 election. These figures are not definitive of the numbers for the 2020 election, which have not yet been reported. Rather, they are demonstrative of the fact that there are sound, documented administrative reasons that returned absentee ballots are not recorded as having been voted, especially tardiness, spoilage, and rejection for lack of signatures, valid envelopes, and the like.

Table 2. Rejected, Undelivered, Voided, and Late Absentees in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018

	Rejected Absentee Ballots	Undeliverable Absentee Ballots	Spoiled/Voided Absentee Ballots	Late Absentee Ballots	Status Unknown
Arizona	8,567	102,896	27,804	2,515	642,210
Georgia	7,512	2,322	252	3,525	36,255
Michigan	6,013	791	19,679	2,207	41,120
Pennsylvania	8,714	*	*	8,162	20,622
Wisconsin	2,517	1,718	2,794	1,445	12,407

Source: EAC, EAVS 2018.
Note: * no data reported.

B. Critique of Survey Design

31. Dr. Briggs offers no assessment of the design of the survey that generated the data that he presents. Rather, he assumes that the data are accurate.

32. It is my understanding that Matthew Braynard designed and conducted these surveys. There is no report of the survey design, questionnaire, or response rates, beyond the information embedded in the topline table appended to Dr. Briggs' report.

i. The survey has an unacceptably high non-response rate.

33. The response rate to the survey is measured as the number of people who answered the first substantive question (Q2) in the survey divided by the number of people who the surveyor sought to contact. The response rate to the survey conducted by Mr. Braynard in the State of Arizona is one-half of one percent. That is, of the 518,560 people who the survey research project set out to interview, 99.5 percent of them could not be contacted or refused to participate. That is an extremely low response rate, and it creates substantial doubt about drawing any reliable inferences from the data.

34. Dr. Briggs offered no calculation of a response rate to the surveys in his report.

35. My calculation of the response rate is offered in Table 1. For each phase of the survey, I calculate the percent of people originally sought to be studied who remain in the survey or are asked a given question. The initial phase of the survey consists of matching phone numbers to the registration list and contacting those numbers. The number of cases for which an interview could commence was 5,604, of the original 518,560 registration records (or 1 percent). These 5,604 cases consist of all records for which a message was left, there was an early hang up or refusal at some point during the survey (2,975), and cases that made it to the end of the survey (684).

36. Once the survey commences, there is first a screener question to determine whether the person interviewed should continue with the interview. That is Question 1. Question 2 is the first question of interest in Dr. Briggs' analysis. It asks, "Did you request an Absentee Ballot in the State of <state name>?" People could answer "Yes", "No", some other answer, Refuse to answer, or Hang up.

37. The response rate to the survey items of interest is the percent of people who were asked Question 2. 2,489 of the original 518,560 were asked Question 2, and 2,129 provided an answer to the question. That is a response rate of 0.4 percent.

38. This is an extremely low response rate. In most disciplines of study that I am familiar with, these would not be scientifically acceptable or reliable samples. For example, I am associate editor of the *Harvard Data Sciences Review*, which broadly covers fields of statistics and data sciences, and specialty fields such as political science, public opinion, survey methodology, and economics. Papers with such high non-responses are rejected on their face for this publication as not plausibly valid studies.

39. In my work as an expert witness for the Department of Justice, courts in which I have testified exclude as evidence phone surveys based on registration lists because they have response rates of 2 percent. Specifically, in *Texas v. Holder*, Professor Daron Shaw offered evidence based on phone surveys of registration lists. These surveys had response rates of 2 percent, and the court rejected the data because of serious questions about the representativeness of samples in which 98 percent of respondents could not be contacted or would not respond, and the effects of very low response rates on accuracy and reliability of estimates using surveys with very low response rates. See *Texas v. Holder* in the United States District Court for the District of Columbia No. 12-cv-128 (see pages 30 and 31). In evaluating the surveys conducted by Mr. Maynard and reported by Dr. Briggs, I use the 2 percent threshold as a standard for an unacceptably low response rate.

40. Dr. Briggs' assumption that those who responded to the question are representative of the relevant population under study (i.e., the other 99 percent of people who could not or would not participate in the survey) is highly unlikely to be correct. When surveys have high non-

response rates, it is standard practice to analyze information about the sample and the target population, such as demographic characteristics or behavioral and attitudinal statistics, to confirm that the assumption of representativeness of a sample can be maintained. When the response rates are very low, such an analysis is a necessity in order to determine whether there is any scientific value to the survey. No such analysis is offered here.

Table 3. Phone Survey Targets, Attempts and Completes in Mr. Braynard's survey of Arizona registered voters for whom records show no returned ballots

	Number of Cases	Percent of Targets for Survey Remaining in the Survey Process
People the Survey Sought to Reach (all Unreturned Ballots) [Targets for Survey]	518,560	100%
Data Loads (Phone Numbers Loaded into the Survey System)	81,780	15.77%
"Completes"		
No Answer	74,437	
Numbers/Language	1,663	
VM Message Left	1,945	
Early Hang Up/Refused	2,975	
Q4 = 01*	684	
Subtotal: "Completes"	5,604	1.08%
Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,695	0.71%
Asked Q1	4,525	0.87%
Asked Q2	2,489	0.41%
Asked Q3	2,129	0.41%
Completed Entire Survey (Q5)	684	0.13%

Source: William Briggs' report

*Note: This number is as reported. In table for Q4, 678 cases are Q4 = 01, and 684 is the Sum of All Responses for Q5.

ii. The screening question improperly allows people to take the survey who should not.

41. A second substantial flaw in the survey is that the design of the questionnaire allows people who are not affirmatively determined to be the correct person to take the survey.

42. Past research has documented that phone surveys using registered voter lists are often answered by someone other than the person who was listed on the registered voter file. The two most common problems are that the wrong number was matched to the voter list and that someone other than the person the research sought to speak with answered the phone. The latter occurs most often with landlines.[4]

43. Question 1 (Q1) of the survey asks, "May I please speak to <lead on screen>?" "Lead on screen" is the name from the voter registration list that is linked to the phone number that the survey has dialed. Responses to Q1 are listed as reached target, other/uncertain, refused, and hang up. In the survey toplines for Arizona, the response categories for Question 1 do not specifically describe the branching. I examined the toplines for other states as reported in the appendix to Dr. Briggs' report in *King v. Whitmer*. The other states show that the second response category for Question 1 is assigned to Question 2. For example, in the first table (Georgia), the responses are "Reached Target [Go to Q2]" and "[Go to Q2]," without further explanation. Importantly, both those respondents classified as "Reached Target" and as "Uncertain" in Question 1 are instructed to "Go to Q2."

44. This is an error in the branching design of the survey. People who are not affirmatively identified as the correct person for the interview are allowed to answer the remaining questions in the survey. For example, Reponses to Questions 2 and 3 show evidence

[4] Pew Research Center, "Comparing Survey Sampling Strategies: Random-Digit Dialing vs. Voter Files," 2018. https://www.pewresearch.org/methods/2018/10/09/comparing-survey-sampling-strategies-random-digit-dial-vs-voter-files/, see pages 25-26.

that spouses and other family members are asked Questions 2 and 3, even though they were not the person whose absentee voting records are in question.

45. A significant percent and number of respondents who are listed as not giving an affirmative answer to Question 1 are in fact kept in the survey and asked Question 2. In the Arizona survey, 335 respondents answered Uncertain, but were then asked Question 2. These 335 cases are 15.6 percent of cases who answered Question 1 and were then assigned to Question 2 (i.e., 335/(335+1,812)). These respondents enter the pool for Questions 2 and 3 and contaminate all estimates using these data.

46. Questions 2 and 3 exhibit evidence of these cases. The response categories labeled "Member" correspond to family members. Again, there is no codebook for deciphering the response categories. I relied on the toplines for other states in Dr. Briggs' report in *King v. Whitmer* to clarify these categories. Family members answering on behalf of someone indicates that the survey interviewers did not always speak with the specific person listed on the registration list. The number of family members listed is a small percentage of all of the cases with "Uncertainty" in the sample.

47. I inspected the toplines for other states and discovered similar errors in the branching in all of the states. People whose identity was not clearly identified in Question 1 are asked Question 2. At this point in the branching protocol, my conclusion is that the data are not an accurate reflection of the Target group (i.e., those people who are affirmatively identified as the person whose name appears on the registration list).

iii. Question 3 is subject to memory errors and social desirability bias.

48. Question 3 asks people whether they voted. Specifically, it asks people who said that they requested an absentee ballot whether they returned an absentee ballot; that is, whether they voted that ballot.

49. It has long been understood in political science that respondents to surveys over-report voting in elections. Typically, the overstatement is approximately 10 to 20 percentage points. That is, if 65 percent of people in a sample actually voted, the reported vote rates in surveys are usually around 75 to 85 percent. The most commonly identified sorts of biases are memory errors and social desirability bias in questions asking people whether they voted.[5] When asked whether they voted or cast a ballot, people say "yes" either because they feel that is the socially acceptable answer or because they forgot whether they actually voted in a given election. Questions that ask people whether they voted or cast a ballot will overstate voting and should not be taken on face value as ground truth. The particular form of Question 3 is likely to lead to people saying that they voted a ballot when in fact they had not.

50. There are alternative ways to ask about voting in order to reduce social desirability bias.[6] Those other ways of asking the question are in line with social science practice in research in order to avoid social desirability biases. Question 3 should have been asked a different way so as to avoid over-reporting of voting. As it is, it is of the form of survey question regarding voting that is well known to lead to over-reporting.

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[5] See for example, Allyson L. Holbrook and Jon A. Krosnick, "Social Desirability Bias in Voter Turnout Reports: Test Using the Item Count Technique," *Public Opinion Quarterly* 74 (2010): 37-67. See also Stephen Ansolabehere and Eitan Hersh, "Validation: What Big Data Reveal About Survey Misreporting and the Real Electorate," *Political Analysis* 20 (2012): 437-459

[6] See, for example, Holbrook and Krosnick, op cit., and Michael J. Hanmer, Antoine J. Banks, and Ismail K. White, "Experiments to Reduce the Over-Reporting of Voting: A Pipeline to the Truth," *Political Analysis* 22 (2014): 130-141.

C. Critique of the Survey Databases and Data Analyses

51. There are obvious data errors and inconsistencies revealed in the toplines that are appended to Dr. Briggs' report. Dr. Briggs states that he assumes that "the data is accurate." A routine analysis to check the consistency and integrity of data reported in the toplines is standard practice in the survey research field. Such checks allow researchers to determine whether the survey data and spreadsheet program are producing sensible numbers and, thus, working correctly. Failures in even a small number of integrity checks indicate problems with the survey systems and software, and raise deep concerns about data accuracy generally. I routinely perform such checks on surveys that I conduct and supervise. I have performed such a check, and it reveals that the data lack integrity. They should not be assumed to be accurate.

52. The data integrity checks that I implemented were of two sorts. First, I added up the number of cases in each response category to verify that they sum to the number of cases reported for each question in the row labeled "Sum of Responses." Second, I added up the number of cases at each phase of the survey that are indicated as cases to be asked the next question. For example, I add up the cases in Question 1 that have the flag [Go to Q2] and then check whether that number equals the number of cases for Question 2 in "Sum of Responses." I performed these integrity checks for the Arizona survey toplines appended to Dr. Briggs' report in this case and to the toplines for the surveys that Mr. Braynard conducted in other states and that are appended to Dr. Briggs' report in *King v. Whitmer*.

53. The toplines for one of the surveys (Wisconsin) failed the first integrity check. The response categories for Question 1 in that survey had 2,261 people listed as "A-Reached Target + B-What Is This About?/Uncertain" and 1,677 cases listed as "X=Refused." These numbers sum to 3,938. However, the number of cases that the survey system reported under "Sum of All

Responses" to Question 1 is 3,495. There is a discrepancy of 443 cases that are unaccounted for at the outset of that survey. This indicates to me an error in the program that generated the survey data. This finding means none of the Wisconsin data should be assumed to be reliable and accurate.

54. The integrity checks failed for the Arizona data when I performed the second sort of integrity check. The accounting for the second sort of integrity check is presented in Table 4. The first panel of Table 4 (marked with lower case numerals) reproduces the accounting for "Completes" shown in the toplines appended to Dr. Briggs' report. The second panel reports the number of cases in the Completes, including people who hung up or refused, that should have been asked Question 1 (denoted "A") and the number of cases who were asked Question 1 (denoted "B"). The third set of rows is the number of cases in Question 1 who were assigned to Question 2 (denoted "C") and the number of cases who were asked Question 2 (denoted "D"). The fourth set of rows is the number of cases in Question 2 who were assigned to Question 3 (denoted "E") and the number of cases who were asked Question 3 (denoted "F").

55. The first integrity check in this table is whether the subtotal of Completes equals the number of cases in which calls reached a response (even if an answering machine or refusal). That is, do rows (i), (ii), and (iii) sum to row (iv)? They do. The difference between rows (i)+(ii)+(iii) and row (iv) is zero.

56. The second integrity check in this table is whether the subtotal of Completes eligible for Question 1 equals the number of people asked Question 1. That is, does Row A equal Row B? They are not equal. Row A minus Row B is -866, meaning there are 866 more respondents who were asked Question 2 than were indicated to be calls commenced in the survey. I attempted to resolve this discrepancy by removing various categories, such as Refusals to

Question or Hang ups at the Complete stage. I found no way to account for the excess number of cases who were asked Question 1 but were not accounted for in the Completes portion of the toplines. These respondents mysteriously show up in the interviews and are not accounted for.

57. The third integrity check in this table is whether the number of people who were assigned in Question 1 to [Go to Q2] equals the number of people who answered Question 2. That is, does Row C equal Row D? They are not equal. Row C minus Row D is -342, meaning there are 342 more respondents in Question 2 than were assigned to Question 2 at the Question 1 stage. This is a second failure of the integrity checks.

58. The fourth integrity check in this table is whether the number of people who were assigned in Question 2 to [Go to Q3] equals the number of people who answered Question 3. That is, does Row E equal Row F? They are equal. Row E and Row F equal 2,129 each.

59. Inspection of the toplines for Arizona exposes failures of the integrity checks. The number of cases affected by these failures is substantial: 1,208 (866+342). To put these spreadsheet failures into perspective, the total number of cases in the survey that are listed as either Error #1 or Error #2 is 1,229 (i.e., 885 Question 2 = No and 344 Question 3 = Yes). The presence of integrity check failures leads me to conclude that there are errors in either the program that generated the survey data or the spreadsheets and analysis used to analyze the data. The number of errors is of a sufficiently large magnitude that there can be no confidence in any estimates made using these data.

60. I performed integrity checks for the other states using the toplines appended to Dr. Briggs' report in *King v. Whitmer*. I found similar sorts of spreadsheet inconsistencies and failures in integrity checks in other states.

61. In my experience running, designing, and analyzing large scale surveys through the Cooperative Congressional Election Study and serving on the board of the American National Election Study, errors such as these usually have two sources. They are indicative of either: (i) errors in the program that that assigns questions to people, or (ii) errors in the program that generates the spreadsheet. Either sort of error is catastrophic for this analysis, and they render the estimates, projections, and inferences in Dr. Briggs' report entirely unreliable.

Table 4. Data Integrity Checks for Mr. Braynard's survey of Arizona registered voters		
	Number of Cases	Integrity Checks
"Completes"		
(i) VM Message Left	1,945	
(ii) Early Hang Up/Refused	2,975	
(iii) Q4 = 01*	684	
(iv) Subtotal: "Completes"	5,604	(iv) – ((i) + (ii) + (iii)) = 0
A: Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,659	
B: Asked Q1 (Sum of All Responses)	4,525	A – B = -866
C: Completed Q1 [Go to Q2]*	2,147	
D: Asked Q2 (Sum of All Responses)	2,489	C – D = -342
E: Offered a Response to Q2 (without hanging up or refusing) [Go to Q3]	2,129	
F: Asked Q3 (Sum of All Resonses)	2,129	E – F = 0

Source: William Briggs' report

* Based on Dr. Briggs' report in *Wood v. Raffensperger*, the survey branching in other states asks Question 2 of respondents who are identified as "Reached Target" or "Uncertain" in Question 1. I assume that the branching is the same in the Arizona survey.

D. Conclusion

62. The estimates and projections presented by Dr. Briggs are based on survey data collected in Arizona and four other states (Georgia, Michigan, Pennsylvania, and Wisconsin). My overall assessment of these surveys is that they were not properly designed. Specifically, they have unacceptably low response rates, poorly designed questions that are known to over-report voting, and errors in assigning cases to questions that allow people who should not have been included in the survey to nonetheless answer the questions. These survey design and implementation failures mean that, in hundreds of cases, the wrong people are allowed to answer the surveys, and that the statistician must make implausible assumptions about the representativeness of a sample with a .4 percent response rate in order to extrapolate to a half million people. These survey design and implementation flaws are of sufficient magnitude and severity as to make the estimates completely unreliable and uninformative.

63. The data are not accurate. The Topline summaries of the survey data appended to Dr. Briggs' report reveal fatal accounting errors in the data. No sound estimates or inferences can be drawn based on these data. Dr. Briggs assumed at the outset that the respondents to the surveys are representative and the data are accurate. Neither assumption is correct.

64. The interpretation of the survey responses ignores the realities of absentee voting in the State of Arizona. In Arizona, 95 percent of people are permanent absentee and early voters and are sent a ballot automatically without requesting one for a given election. Dr. Briggs considers as errors all instances in which a voter who was sent an absentee ballot did not request one. These occurrences are not errors, but instead are the normal workings of Arizona's absentee voting system. Also, ballots that voters say they returned but are not recorded are not definitive evidence of "errors." Arizona also has a substantial number of absentee ballots that

are late, undeliverable, spoiled, or invalid. The evidence presented is not evidence of errors in the election but of errors in the survey data presented by Dr. Briggs.

Signed at Boston, Massachusetts, on the date below.
Date: December 3, 2020



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2016-present	Frank G. Thompson Professor of Government, Harvard University
2008-present	Professor, Department of Government, Harvard University
2015-present	Director, Center for American Politics, Harvard University
1998-2009	Elting Morison Professor, Department of Political Science, MIT (Associate Head, 2001-2005)
1995-1998	Associate Professor, Department of Political Science, MIT
1993-1994	National Fellow, The Hoover Institution
1989-1993	Assistant Professor, Department of Political Science, University of California, Los Angeles

FELLOWSHIPS AND HONORS

American Academy of Arts and Sciences	2007
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National Fellow, The Hoover Institution	1993-94
Harry S. Truman Fellowship	1982-86

PUBLICATIONS

Books

2019 *American Government*, 15th edition. With Ted Lowi, Benjamin Ginsberg and Kenneth Shepsle. W.W. Norton.

2014 *Cheap and Clean: How Americans Think About Energy in the Age of Global Warming*. With David Konisky. MIT Press. Recipient of the Donald K. Price book award.

2008 *The End of Inequality: One Person, One Vote and the Transformation of American Politics*. With James M. Snyder, Jr., W. W. Norton.

1996 *Going Negative: How Political Advertising Divides and Shrinks the American Electorate*. With Shanto Iyengar. The Free Press. Recipient of the Goldsmith book award.

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2012 "Arizona Free Enterprise v. Bennett and the Problem of Campaign Finance" *Supreme Court Review* 2011(1):39-79

2012 "The American Public's Energy Choice" *Daedalus* (with David Konisky)

2012 "Challenges for Technology Change" *Daedalus* (with Robert Fri)

2011 "When Parties Are Not Teams: Party positions in single-member district and proportional representation systems" *Economic Theory* 49 (March) DOI: 10.1007/s00199-011-0610-1 (with James M. Snyder Jr. and William Leblanc)

2011 "Profiling Originalism" *Columbia Law Review* (with Jamal Greene and Nathaniel Persily).

2010 "Partisanship, Public Opinion, and Redistricting" *Election Law Journal* (with Joshua Fougere and Nathaniel Persily).

2010 "Primary Elections and Party Polarization" *Quarterly Journal of Political Science* (with Shigeo Hirano, James Snyder, and Mark Hansen)

2010 "Constituents' Responses to Congressional Roll Call Voting," *American Journal of Political Science* (with Phil Jones)

2010 "Race, Region, and Vote Choice in the 2008 Election: Implications for the Future of the Voting Rights Act" *Harvard Law Review* April, 2010. (with Nathaniel Persily, and Charles H. Stewart III)

2010 "Residential Mobility and the Cell Only Population," *Public Opinion Quarterly* (with Brian Schaffner)

2009 "Explaining Attitudes Toward Power Plant Location," *Public Opinion Quarterly* (with David Konisky)

2009 "Public risk perspectives on the geologic storage of carbon dioxide," *International Journal of Greenhouse Gas Control* (with Gregory Singleton and Howard Herzog) 3(1): 100-107.

2008 "A Spatial Model of the Relationship Between Seats and Votes" (with William Leblanc) *Mathematical and Computer Modeling* (November).

2008 "The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting" (with Jonathan Rodden and James M. Snyder, Jr.) *American Political Science Review* (May).

2008 "Access versus Integrity in Voter Identification Requirements." *New York University Annual Survey of American Law,* vol 63.

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2007 "Incumbency Advantages in U. S. Primary Elections," (with John Mark Hansen, Shigeo Hirano, and James M. Snyder, Jr.) *Electoral Studies* (September)

2007 "Television and the Incumbency Advantage" (with Erik C. Snowberg and James M. Snyder, Jr). *Legislative Studies Quarterly*.

2006 "The Political Orientation of Newspaper Endorsements" (with Rebecca Lessem and James M. Snyder, Jr.). *Quarterly Journal of Political Science* vol. 1, issue 3.

2006 "Voting Cues and the Incumbency Advantage: A Critical Test" (with Shigeo Hirano, James M. Snyder, Jr., and Michiko Ueda) *Quarterly Journal of Political Science* vol. 1, issue 2.

2006 "American Exceptionalism? Similarities and Differences in National Attitudes Toward Energy Policies and Global Warming" (with David Reiner, Howard Herzog, K. Itaoka, M. Odenberger, and Fillip Johanssen) *Environmental Science and Technology* (February 22, 2006), http://pubs3.acs.org/acs/journals/doilookup?in_doi=10.1021/es052010b

2006 "Purple America" (with Jonathan Rodden and James M. Snyder, Jr.) *Journal of Economic Perspectives* (Winter).

2005 "Did the Introduction of Voter Registration Decrease Turnout?" (with David Konisky). *Political Analysis*.

2005 "Statistical Bias in Newspaper Reporting: The Case of Campaign Finance" *Public Opinion Quarterly* (with James M. Snyder, Jr., and Erik Snowberg).

2005 "Studying Elections" *Policy Studies Journal* (with Charles H. Stewart III and R. Michael Alvarez).

2005 "Legislative Bargaining under Weighted Voting" *American Economic Review* (with James M. Snyder, Jr., and Michael Ting)

2005 "Voting Weights and Formateur Advantages in Coalition Formation: Evidence from Parliamentary Coalitions, 1946 to 2002" (with James M. Snyder, Jr., Aaron B. Strauss, and Michael M. Ting) *American Journal of Political Science*.

2005 "Reapportionment and Party Realignment in the American States" *Pennsylvania Law Review* (with James M. Snyder, Jr.)

2004 "Residual Votes Attributable to Voting Technologies" (with Charles Stewart) *Journal of Politics*

2004 "Using Term Limits to Estimate Incumbency Advantages When Office Holders Retire Strategically" (with James M. Snyder, Jr.). *Legislative Studies Quarterly* vol. 29, November 2004, pages 487-516.

2004 "Did Firms Profit From Soft Money?" (with James M. Snyder, Jr., and Michiko Ueda) *Election Law Journal* vol. 3, April 2004.

2003 "Bargaining in Bicameral Legislatures" (with James M. Snyder, Jr. and Mike Ting) *American Political Science Review,* August, 2003.

2003 "Why Is There So Little Money in U.S. Politics?" (with James M. Snyder, Jr.) *Journal of Economic Perspectives*, Winter, 2003.

2002 "Equal Votes, Equal Money: Court-Ordered Redistricting and the Public Spending in the American States" (with Alan Gerber and James M. Snyder, Jr.) *American Political Science Review*, December, 2002.
Paper awarded the Heinz Eulau award for the best paper in the American Political Science Review.

2002 "Are PAC Contributions and Lobbying Linked?" (with James M. Snyder, Jr. and Micky Tripathi) *Business and Politics* 4, no. 2.

2002 "The Incumbency Advantage in U.S. Elections: An Analysis of State and Federal Offices, 1942-2000" (with James Snyder) *Election Law Journal,* 1, no. 3.

2001 "Voting Machines, Race, and Equal Protection." *Election Law Journal*, vol. 1, no. 1

2001 "Models, assumptions, and model checking in ecological regressions" (with Andrew Gelman, David Park, Phillip Price, and Larraine Minnite) *Journal of the Royal Statistical Society,* series A, 164: 101-118.

2001 "The Effects of Party and Preferences on Congressional Roll Call Voting." (with James Snyder and Charles Stewart) *Legislative Studies Quarterly* (forthcoming).
Paper awarded the *Jewell-Lowenberg Award* for the best paper published on legislative politics in 2001. Paper awarded the *Jack Walker Award* for the best paper published on party politics in 2001.

2001 "Candidate Positions in Congressional Elections," (with James Snyder and Charles Stewart). *American Journal of Political Science* 45 (November).

2000 "Old Voters, New Voters, and the Personal Vote," (with James Snyder and Charles Stewart) *American Journal of Political Science* 44 (February).

2000 "Soft Money, Hard Money, Strong Parties," (with James Snyder) *Columbia Law Review* 100 (April):598 - 619.

2000 "Campaign War Chests and Congressional Elections," (with James Snyder)

Business and Politics. 2 (April): 9-34.

1999 "Replicating Experiments Using Surveys and Aggregate Data: The Case of Negative Advertising." (with Shanto Iyengar and Adam Simon) *American Political Science Review* 93 (December).

1999 "Valence Politics and Equilibrium in Spatial Models," (with James Snyder), *Public Choice.*

1999 "Money and Institutional Power," (with James Snyder), *Texas Law Review* 77 (June, 1999): 1673-1704.

1997 "Incumbency Advantage and the Persistence of Legislative Majorities," (with Alan Gerber), *Legislative Studies Quarterly* 22 (May 1997).

1996 "The Effects of Ballot Access Rules on U.S. House Elections," (with Alan Gerber), *Legislative Studies Quarterly* 21 (May 1996).

1994 "Riding the Wave and Issue Ownership: The Importance of Issues in Political Advertising and News," (with Shanto Iyengar) *Public Opinion Quarterly* 58: 335-357.

1994 "Horseshoes and Horseraces: Experimental Evidence of the Effects of Polls on Campaigns," (with Shanto Iyengar) *Political Communications* 11/4 (October-December): 413-429.

1994 "Does Attack Advertising Demobilize the Electorate?" (with Shanto Iyengar), *American Political Science Review* 89 (December).

1994 "The Mismeasure of Campaign Spending: Evidence from the 1990 U.S. House Elections," (with Alan Gerber) *Journal of Politics* 56 (September).

1993 "Poll Faulting," (with Thomas R. Belin) *Chance* 6 (Winter): 22-28.

1991 "The Vanishing Marginals and Electoral Responsiveness," (with David Brady and Morris Fiorina) *British Journal of Political Science* 22 (November): 21-38.

1991 "Mass Media and Elections: An Overview," (with Roy Behr and Shanto Iyengar) *American Politics Quarterly* 19/1 (January): 109-139.

1990 "The Limits of Unraveling in Interest Groups," *Rationality and Society* 2: 394-400.

1990 "Measuring the Consequences of Delegate Selection Rules in Presidential Nominations," (with Gary King) *Journal of Politics* 52: 609-621.

1989 "The Nature of Utility Functions in Mass Publics," (with Henry Brady) *American Political Science Review* 83: 143-164.

Special Reports and Policy Studies

2010 *The Future of Nuclear Power*, Revised.

2006 *The Future of Coal*. MIT Press. Continued reliance on coal as a primary power source will lead to very high concentrations of carbon dioxide in the atmosphere, resulting in global warming. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – develop a road map for technology research and development policy in order to address the challenges of carbon emissions from expanding use of coal for electricity and heating throughout the world.

2003 *The Future of Nuclear Power*. MIT Press. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – examines the what contribution nuclear power can make to meet growing electricity demand, especially in a world with increasing carbon dioxide emissions from fossil fuel power plants.

2002 "Election Day Registration." A report prepared for DEMOS. This report analyzes the possible effects of Proposition 52 in California based on the experiences of 6 states with election day registration.

2001 *Voting: What Is, What Could Be.* A report of the Caltech/MIT Voting Technology Project. This report examines the voting system, especially technologies for casting and counting votes, registration systems, and polling place operations, in the United States. It was widely used by state and national governments in formulating election reforms following the 2000 election.

2001 "An Assessment of the Reliability of Voting Technologies." A report of the Caltech/MIT Voting Technology Project. This report provided the first nationwide assessment of voting equipment performance in the United States. It was prepared for the Governor's Select Task Force on Election Reform in Florida.

Chapters in Edited Volumes

2016 "Taking the Study of Public Opinion Online" (with Brian Schaffner) *Oxford Handbook of Public Opinion*, R. Michael Alvarez, ed. Oxford University Press: New York, NY.

2014 "Voter Registration: The Process and Quality of Lists*" The Measure of*

American Elections, Barry Burden, ed..

2012 "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from New Hampshire Elections, 1946-2002" in Confirming Elections, R. Michael Alvarez, Lonna Atkeson, and Thad Hall, eds. New York: Palgrave, Macmillan.

2010 "Dyadic Representation" in Oxford Handbook on Congress, Eric Schickler, ed., Oxford University Press.

2008 "Voting Technology and Election Law" in *America Votes!,* Benjamin Griffith, editor, Washington, DC: American Bar Association.

2007 "What Did the Direct Primary Do to Party Loyalty in Congress" (with Shigeo Hirano and James M. Snyder Jr.) in *Process, Party and Policy Making: Further New Perspectives on the History of Congress*, David Brady and Matthew D. McCubbins (eds.), Stanford University Press, 2007.

2007 "Election Administration and Voting Rights" in *Renewal of the Voting Rights Act*, David Epstein and Sharyn O'Hallaran, eds. Russell Sage Foundation.

2006 "The Decline of Competition in Primary Elections," (with John Mark Hansen, Shigeo Hirano, and James M. Snyder, Jr.) *The Marketplace of Democracy*, Michael P. McDonald and John Samples, eds. Washington, DC: Brookings.

2005 "Voters, Candidates and Parties" in *Handbook of Political Economy*, Barry Weingast and Donald Wittman, eds. New York: Oxford University Press.

2003 "Baker v. Carr in Context, 1946 – 1964" (with Samuel Isaacharoff) in *Constitutional Cases in Contex*t, Michael Dorf, editor. New York: Foundation Press.

2002 "Corruption and the Growth of Campaign Spending"(with Alan Gerber and James Snyder). *A User's Guide to Campaign Finance*, Jerry Lubenow, editor. Rowman and Littlefield.

2001 "The Paradox of Minimal Effects," in Henry Brady and Richard Johnston, eds., *Do Campaigns Matter*? University of Michigan Press.

2001 "Campaigns as Experiments," in Henry Brady and Richard Johnson, eds., Do *Campaigns Matter*? University of Michigan Press.

2000 "Money and Office," (with James Snyder) in David Brady and John Cogan, eds., *Congressional Elections: Continuity and Change*. Stanford University Press.

1996 "The Science of Political Advertising," (with Shanto Iyengar) in *Political Persuasion and Attitude Change*, Richard Brody, Diana Mutz, and Paul

Sniderman, eds. Ann Arbor, MI: University of Michigan Press.

1995 "Evolving Perspectives on the Effects of Campaign Communication," in Philo Warburn, ed., *Research in Political Sociology*, vol. 7, JAI.

1995 "The Effectiveness of Campaign Advertising: It's All in the Context," (with Shanto Iyengar) in *Campaigns and Elections American Style*, Candice Nelson and James A. Thurber, eds. Westview Press.

1993 "Information and Electoral Attitudes: A Case of Judgment Under Uncertainty," (with Shanto Iyengar), in *Explorations in Political Psychology*, Shanto Iyengar and William McGuire, eds. Durham: Duke University Press.

Working Papers

2009 "Sociotropic Voting and the Media" (with Marc Meredith and Erik Snowberg), American National Election Study Pilot Study Reports, John Aldrich editor.

2007 "Public Attitudes Toward America's Energy Options: Report of the 2007 MIT Energy Survey" CEEPR Working Paper 07-002 and CANES working paper.

2006 "Constituents' Policy Perceptions and Approval of Members' of Congress" CCES Working Paper 06-01 (with Phil Jones).

2004 "Using Recounts to Measure the Accuracy of Vote Tabulations: Evidence from New Hampshire Elections, 1946 to 2002" (with Andrew Reeves).

2002 "Evidence of Virtual Representation: Reapportionment in California," (with Ruimin He and James M. Snyder).

1999 "Why did a majority of Californians vote to lower their own power?" (with James Snyder and Jonathan Woon). Paper presented at the annual meeting of the American Political Science Association, Atlanta, GA, September, 1999.
Paper received the award for the best paper on Representation at the 1999 Annual Meeting of the APSA.

1999 "Has Television Increased the Cost of Campaigns?" (with Alan Gerber and James Snyder).

1996 "Money, Elections, and Candidate Quality," (with James Snyder).

1996 "Party Platform Choice - Single- Member District and Party-List Systems,"(with James Snyder).

1995 "Messages Forgotten" (with Shanto Iyengar).

1994 "Consumer Contributors and the Returns to Fundraising: A Microeconomic Analysis," (with Alan Gerber), presented at the Annual Meeting of the American Political Science Association, September.

1992 "Biases in Ecological Regression," (with R. Douglas Rivers) August, (revised February 1994). Presented at the Midwest Political Science Association Meetings, April 1994, Chicago, IL.

1992 "Using Aggregate Data to Correct Nonresponse and Misreporting in Surveys" (with R. Douglas Rivers). Presented at the annual meeting of the Political Methodology Group, Cambridge, Massachusetts, July.

1991 "The Electoral Effects of Issues and Attacks in Campaign Advertising" (with Shanto Iyengar). Presented at the Annual Meeting of the American Political Science Association, Washington, DC.

1991 "Television Advertising as Campaign Strategy: Some Experimental Evidence" (with Shanto Iyengar). Presented at the Annual Meeting of the American Association for Public Opinion Research, Phoenix.

1991 "Why Candidates Attack: Effects of Televised Advertising in the 1990 California Gubernatorial Campaign," (with Shanto Iyengar). Presented at the Annual Meeting of the Western Political Science Association, Seattle, March.

1990 "Winning is Easy, But It Sure Ain't Cheap." Working Paper #90-4, Center for the American Politics and Public Policy, UCLA. Presented at the Political Science Departments at Rochester University and the University of Chicago.

Research Grants

1989-1990 Markle Foundation. "A Study of the Effects of Advertising in the 1990 California Gubernatorial Campaign." Amount: $50,000

1991-1993 Markle Foundation. "An Experimental Study of the Effects of Campaign Advertising." Amount: $150,000

1991-1993 NSF. "An Experimental Study of the Effects of Advertising in the 1992 California Senate Electoral." Amount: $100,000

1994-1995 MIT Provost Fund. "Money in Elections: A Study of the Effects of Money on Electoral Competition." Amount: $40,000

1996-1997 National Science Foundation. "Campaign Finance and Political Representation." Amount: $50,000

1997	National Science Foundation. "Party Platforms: A Theoretical Investigation of Party Competition Through Platform Choice." Amount: $40,000
1997-1998	National Science Foundation. "The Legislative Connection in Congressional Campaign Finance. Amount: $150,000
1999-2000	MIT Provost Fund. "Districting and Representation." Amount: $20,000.
1999-2002	Sloan Foundation. "Congressional Staff Seminar." Amount: $156,000.
2000-2001	Carnegie Corporation. "The Caltech/MIT Voting Technology Project." Amount: $253,000.
2001-2002	Carnegie Corporation. "Dissemination of Voting Technology Information." Amount: $200,000.
2003-2005	National Science Foundation. "State Elections Data Project." Amount: $256,000.
2003-2004	Carnegie Corporation. "Internet Voting." Amount: $279,000.
2003-2005	Knight Foundation. "Accessibility and Security of Voting Systems." Amount: $450,000.
2006-2008	National Science Foundation, "Primary Election Data Project," $186,000
2008-2009	Pew/JEHT. "Measuring Voting Problems in Primary Elections, A National Survey." Amount: $300,000
2008-2009	Pew/JEHT. "Comprehensive Assessment of the Quality of Voter Registration Lists in the United States: A pilot study proposal" (with Alan Gerber). Amount: $100,000.
2010-2011	National Science Foundation, "Cooperative Congressional Election Study," $360,000
2010-2012	Sloan Foundation, "Precinct-Level U. S. Election Data," $240,000.
2012-2014	National Science Foundation, "Cooperative Congressional Election Study, 2010-2012 Panel Study" $425,000
2012-2014	National Science Foundation, "2012 Cooperative Congressional Election Study," $475,000
2014-2016	National Science Foundation, "Cooperative Congressional Election Study,

2010-2014 Panel Study" $510,000

2014-2016 National Science Foundation, "2014 Cooperative Congressional Election Study," $400,000

2016-2018 National Science Foundation, "2016 Cooperative Congressional Election Study," $485,000

2018-2020 National Science Foundation, "2018 Cooperative Congressional Election Study," $844,784.

2019-2022 National Science Foundation, RIDIR: "Collaborative Research: Analytic Tool for Poststratification and small-area estimation for survey data." $942,607

Professional Boards

Editor, Cambridge University Press Book Series, Political Economy of Institutions and Decisions, 2006-2016

Member, Board of the Reuters International School of Journalism, Oxford University, 2007 to present.

Member, Academic Advisory Board, Electoral Integrity Project, 2012 to present.

Contributing Editor, *Boston Review*, The State of the Nation.

Member, Board of Overseers, American National Election Studies, 1999 - 2013.

Associate Editor, Public Opinion Quarterly, 2012 to 2013.

Editorial Board of Harvard Data Science Review, 2018 to present.
Editorial Board of American Journal of Political Science, 2005 to 2009.
Editorial Board of Legislative Studies Quarterly, 2005 to 2010.
Editorial Board of Public Opinion Quarterly, 2006 to present.
Editorial Board of the Election Law Journal, 2002 to present.
Editorial Board of the Harvard International Journal of Press/Politics, 1996 to 2008.
Editorial Board of Business and Politics, 2002 to 2008.
Scientific Advisory Board, Polimetrix, 2004 to 2006.

Special Projects and Task Forces

Principal Investigator, Cooperative Congressional Election Study, 2005 – present.

CBS News Election Decision Desk, 2006-present

Co-Director, Caltech/MIT Voting Technology Project, 2000-2004.

Co-Organizer, MIT Seminar for Senior Congressional and Executive Staff, 1996-2007.

MIT Energy Innovation Study, 2009-2010.
MIT Energy Initiative, Steering Council, 2007-2008
MIT Coal Study, 2004-2006.
MIT Energy Research Council, 2005-2006.
MIT Nuclear Study, 2002-2004.
Harvard University Center on the Environment, Council, 2009-present

Expert Witness, Consultation, and Testimony

2001	Testimony on Election Administration, U. S. Senate Committee on Commerce.
2001	Testimony on Voting Equipment, U.S. House Committee on Science, Space, and Technology
2001	Testimony on Voting Equipment, U.S. House Committee on House Administration
2001	Testimony on Voting Equipment, Congressional Black Caucus
2002-2003	*McConnell v. FEC*, 540 U.S. 93 (2003), consultant to the Brennan Center.
2009	Amicus curiae brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009).
2009	Testimony on Voter Registration, U. S. Senate Committee on Rules.
2011-2015	*Perez v. Perry*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2011-2013	*State of Texas v. United States,* the U.S. District Court in the District of Columbia (No. 1:11-cv-01303), expert witness on behalf of the Gonzales intervenors.
2012-2013	*State of Texas v. Holder*, U.S. District Court in the District of Columbia (No. 1:12-cv-00128), expert witness on behalf of the United States.
2011-2012	*Guy v. Miller* in U.S. District Court for Nevada (No. 11-OC-00042-1B), expert witness on behalf of the Guy plaintiffs.
2012	*In re Senate Joint Resolution of Legislative Apportionment*, Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490), consultant for the Florida Democratic Party.
2012-2014	*Romo v. Detzner*, Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412), expert witness on behalf of Romo plaintiffs.
2013-2014	*LULAC v. Edwards Aquifer Authority*, U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG,), consultant and expert witness on behalf of the City of San Antonio and San Antonio Water District
2013-2014	*Veasey v. Perry*, U. S. District Court for the Southern District of Texas, Corpus

	Christi Division (No. 2:13-cv-00193), consultant and expert witness on behalf of the United States Department of Justice.
2013-2015	*Harris v. McCrory,* U. S. District Court for the Middle District of North Carolina (No. 1:2013cv00949), consultant and expert witness on behalf of the Harris plaintiffs. (later named *Cooper v. Harris*)
2014	Amicus curiae brief, on behalf of neither party, Supreme Court of the United States, *Alabama Democratic Conference v. State of Alabama*.
2014- 2016	*Bethune-Hill v. Virginia State Board of Elections*, U. S. District Court for the Eastern District of Virginia (No. 3:2014cv00852), consultant and expert on behalf of the Bethune-Hill plaintiffs.
2015	Amicus curiae brief in support of Appellees, Supreme Court of the United States, *Evenwell v. Abbott*
2016-2017	*Perez v. Abbott*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2017-2018	Fish v. Kobach, U. S. District Court in the District of Kansas (No. 2:16-cv-02105-JAR). Expert witness of behalf of the Fish plaintiffs.

Exhibit 2

December 4, 2020

***Bowyer v. Ducey,* Case No. 2:20-cv-02321-DJH**

United States District Court for the District of Arizona

Expert Report of Jonathan Rodden, PhD

737 Mayfield Avenue
Stanford, CA 94305



Jonathan Rodden, PhD

I. INTRODUCTION AND SUMMARY

Yesterday evening, December 3, 2020, I received three declarations, each of which makes rather strong claims to have demonstrated "anomalies" or "irregularities" in the results of the presidential election in Arizona on November 3, 2020. I have been asked by Counsel to assess the validity of their claims. Unfortunately, these reports do not meet basic standards for scientific inquiry. For the most part, they are not based on discernable logical arguments, and they are completely divorced from any existing social science literature. Without any citations to relevant scientific literature about statistics or elections, the authors identify common and easily explained patterns in the 2020 election results, and without explanation, assert that they are somehow "anomalous." Each of these reports lacks even a basic level of clarity or transparency about research methods that would be expected in a scientific communication. As detailed below, each of these reports is based on puzzling but serious mistakes and misunderstandings about how to analyze election data.

II. QUALIFICATIONS

I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab ("the Lab")—a center for research and teaching with a focus on the analysis of geo-spatial

data in the social sciences. In my affiliation with the Lab, I am engaged in a variety of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as an Appendix to this report.

In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics*. One of these papers was recently selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published

in the last year, and another received an award from the American Political Science Association section on social networks.

I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I have recently completed a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others.

I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent papers published in the *Annals of Internal Medicine* and *The New England Journal of Medicine.* I have developed a national data set of geo-coded precinct-level election results that has

been used extensively in policy-oriented research related to redistricting and representation.[1]

I have been accepted and testified as an expert witness in six recent election law cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat'l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, voting, ballots, and election administration. I am being compensated at the rate of $500/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

III. DATA SOURCES

I have collected county-level data on presidential elections for each year from 1974 to 2020 from the Arizona Secretary of State, along with yearly county-level data on registration by party in Arizona. I also consulted precinct-level election

[1] The dataset can be downloaded at http://projects.iq.harvard.edu/eda/home.

results from Maricopa and Pima counties. I created a national county-level dataset on election results using information assembled from county election administrators by the New York Times and Associated Press, along with demographic data from the 2014-2018 American Community Survey (ACS), as well as the September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and as described in detail below, data on voting technologies used in each U.S. jurisdiction collected by Verified Voting. I have also collected yearly county-level population estimates for Arizona from the U.S. Census Department.

IV. DO "DOMINION" COUNTIES PRODUCE ANOMALOUS ELECTION RESULTS?

I received a report without a named author that purports to provide empirical analysis suggesting that Joseph Biden received higher vote shares in counties that use voting machines made by the manufacturer Dominion. The language of the report indicates that the author posits a *causal* relationship, whereby certain types of machines are responsible for boosting the Democratic vote share. The data, research design, and analysis are not adequately explained. To the extent the research is explained at all, the design and analyses are flawed in several crucial respects. First, the author relies on idiosyncratic, non-standard statistical techniques that are not suited for the analysis the author wishes to accomplish, and more importantly, the

author appears to rely on a correlation that is driven primarily by cross-state variation, and makes no effort to address a serious causal inference problem.

To demonstrate these problems and conduct a more appropriate analysis, I have created my own dataset of county-level votes from 2008 to 2020, merged with county demographic data from the 2014-2018 American Community Survey (ACS),[2] September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and data on voting technologies used in each jurisdiction collected by Verified Voting.[3] Verified Voting is a "non-partisan organization focused exclusively on the critical role technology plays in election administration" that has developed "the most comprehensive publicly-accessible database of voting systems used around the country."[4] I accessed a dataset showing the various voting systems that were in place for each jurisdiction in 2012, 2016, and 2020.

The report mentions a Chi-Squared Automatic Interaction Detection approach, but provides no details about the analysis or the dataset, and provides no output. This is not a standard technique used in the analysis of election data, and the author provides no explanation of why this unusual approach was selected. The

[2] Demographic variables from the ACS include: the age distribution, sex distribution, percent Black, percent Latino, the percent of renters, median household income, percent of the county with a college degree, and percent under the poverty line.
[3] In preparing this this data set and conducting the analysis set forth in this section of the report, I received assitance from William Marble—a advanced PhD candidate in political science at Stanford University. Mr. Marble has worked with me in a similar capacity in the past and it is standard to utilize such assistants in my field of expertise.
[4] https://verifiedvoting.org/about/

author presents a scatterplot that seems to be based on a prediction from some kind of statistical model, but the author does not explain anything about the model. The author goes on to mention, in a single sentence, some type of matching analysis. The author provides no details about how the matching analysis was set up, which variables were used, whether the analysis relied on within-state or cross-state variation, and crucially, whether or not it was possible to achieve adequate balance on all of the selected matching variables.

For each of these approaches, the author breezily mentions having conducted some analysis without providing even the slightest details. The normal approach in a scientific communication would be to provide readers with details on what type of empirical model had been chosen and why, which variables were included, how the model performed, and so on. The author also typically provides output for readers to assess, and discusses a variety of robustness checks and sensitivity analyses, so that readers can form judgments about whether the results are sensible, credible, and meaningful.

Since the author provides very few hints about research design, analysis, or data, it is not possible to reconstruct the analysis. Nevertheless, since the relevant data are available, it is worthwhile to assess the author's claim that the introduction of certain types of voting technology, via some unspecified form of fraud, actually has a causal impact on vote shares. We would like to answer the following question:

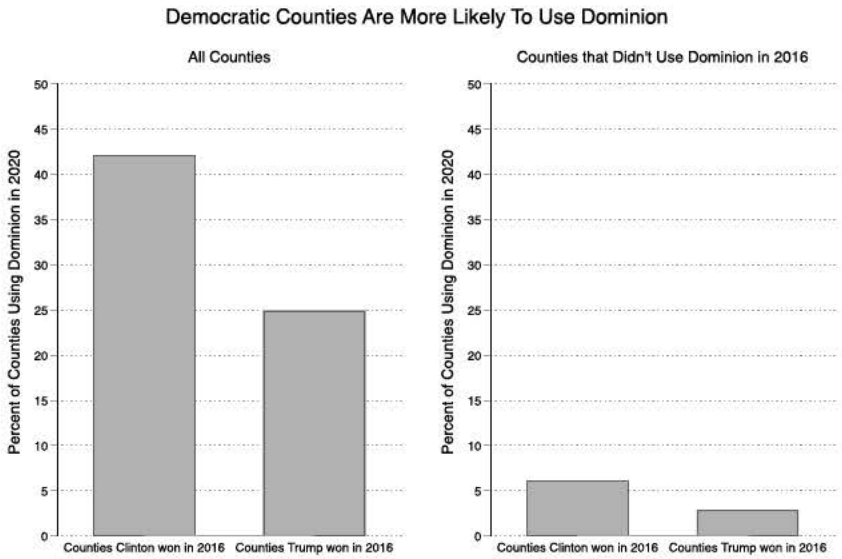
if there are two counties that are otherwise identical in every respect, including their initial type of voting technology, and one switches from some other voting technology to Dominion and the other stays the same, does the switching county exhibit a change in voting behavior relative to the "control" county that stayed the same? In the ideal world, we would conduct an experiment, much like a drug trial, randomly assigning some counties but not others to either the "treatment condition"—the use of Dominion software—or the control condition—the maintenance of the existing system. By randomizing a sufficiently large number of counties to the treatment and control condition, a researcher would be able to anticipate that there are no systematic differences between the treatment and control counties. Above all, we would hope that this randomization would achieve a balance between the two groups, such that prior Democratic or Republican voting would be similar in the two groups, as would other correlates of voting behavior, such as income, race, and education. We would then be able to isolate any possible impact of voting equipment.

Unfortunately, this type of experiment is unavailable to us. Counties and states have adopted voting technology in a way that is far from random. Counties that adopted Dominion systems between 2016 and 2020 are quite different from those that did not. Counties that switched to Dominion systems between 2016 and 2020 have larger shares of female residents, Latino residents, and college-educated

residents, and have lower median incomes. All of these variables are correlated with political attitudes. Moreover, they are likely correlated with *unobservable* variables that also correlate with political attitudes and partisanship.

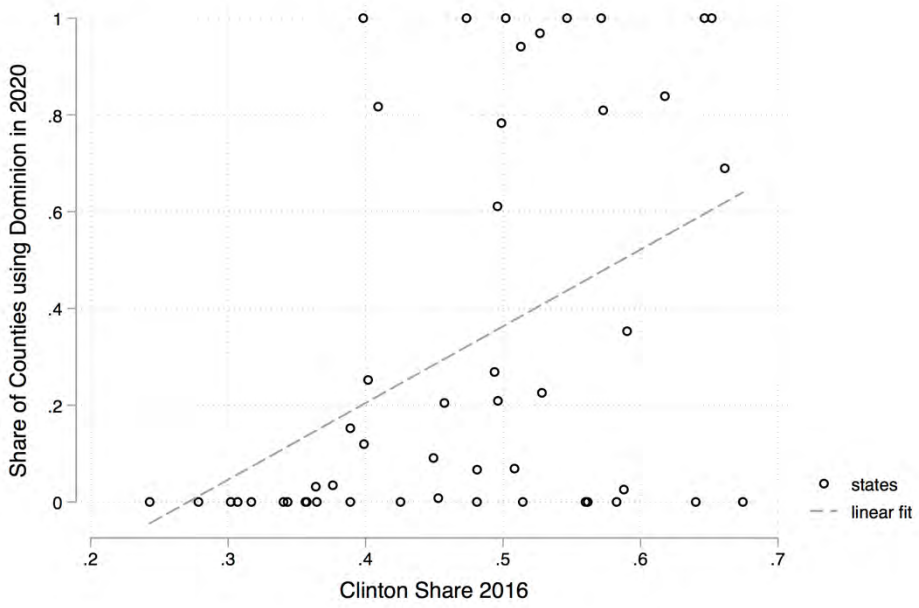
Even worse, it is clearly the case that Democratic counties have been more likely to adopt Dominion machines than Republican counties. This is demonstrated in Figure 1. The left-hand panel considers all counties in the country, and shows that counties won by Clinton in 2016 were far more likely than counties won by Trump to make use of Dominion technology in 2020. The right-hand panel focuses on counties that were not yet using Dominion technology in 2016, and shows that counties won by Clinton were significantly more likely than counties won by Trump to adopt Dominion technology.

Figure 1: Voting Technology Use in 2020 by County Partisanship



Seven states have adopted Dominion technology across all of their counties, and 20 states have not adopted Dominion technology in any of their counties. The former counties are predominately Democratic, and the latter lean Republican. This can be seen in Figure 2, which plots Hillary Clinton's 2016 statewide vote share on the horizontal axis, and the share of counties using Dominion software in 2020 on the vertical axis. It shows that Dominion software was mostly prominently in use in 2020 in states that were already relatively Democratic in 2016.

Figure 2: Clinton 2016 Vote Share and 2020 Voting Technology



By now it should be clear why the author of the report on Dominion software faces a vexing causal inference problem. If extremely Democratic counties in states like those in New England adopted a certain software in the past, and one examined

a contemporary correlation between voting behavior and the use of that technology, that correlation could not plausibly be interpreted as evidence that the technology *caused* the voting outcomes, even if one attempted to control for potential observable confounders like race and income. It is simply not plausible that Connecticut is more Democratic than Wyoming because of its voting technology.

State Fixed Effects Model

The author ignores these complexities altogether, but unfortunately, there is no easy solution to this causal inference problem. At a minimum, we can try to draw inferences from *within* the states where there is variation across counties in voting technology, attempting to control for observable county-level confounders. This can be achieved by estimating a model with "fixed effects" for states. Inclusion of state-level fixed effects allows us to control for a variety of common factors within states that cause there to be a correlation in counties' outcomes within the same state. This does not "solve" the causal inference problem, but at least it allows for more valid comparisons. For this reason, inclusion of fixed effects is standard practice in social science research for this type of study.[5]

[5] For example, see Angrist, J., and Pischke, S., *Mostly Harmless Econometrics*. 2009. Princeton, NJ: Princeton University Press.

I estimate a county-level model in which the dependent variable is the 2020 Democratic vote share, and the main independent variable of interest is a binary variable indicating whether the state used Dominion technology in 2020. The model includes a set of demographic control variables, past election results, and state-level fixed effects. The full results are presented in Appendix Table A1. The coefficient capturing the impact of the use of Dominion technology is statistically indistinguishable from zero.

Placebo Test Using Bordering Counties

In sum, when we rely on comparisons of counties within states, there is no evidence that election technology has an impact on vote shares. As mentioned, the author provides no regression output or details about the analysis, but he or she seems to have estimated some sort of regression model. The author makes no mention of having included fixed effects. As one can see in Figure 2 above, it is clear that a naïve empirical model without fixed effects for states would generate the illusion of a relationship between voting technology and election outcomes, simply because Democratic states have been somewhat more likely to purchase Dominion equipment.

A good way to see this is to conduct a "placebo" test in which we examine Biden's vote share in counties that *did not* use Dominion systems, but border a

county that *did* use Dominion. If there is an impact of voting software on election outcomes via fraud, it should most certainly not be detected in counties that border the Dominion counties but use some other election technology system. If we see that those counties have elevated Democratic vote shares mimicking the supposed "effect" of Dominion software—what is known as a "placebo" effect—we should be very skeptical about claims that use of the software is associated with increased Democratic voting. Rather, we would understand that the correlation reported by the report's author is driven by some features of the types of regions where Dominion software has been adopted—not the software itself.

The result of this analysis is shown in Appendix Table A2. It shows results of a linear regression of Biden vote share on an indicator variable for whether a county borders a Dominion county. This regression is estimated among counties that did not use Dominion systems, and includes a set of demographic control variables. It shows that Biden received a higher vote share, of about .86 of a percentage point, in counties that border a Dominion county than in those that do not. It would be implausible to claim that voting technology in bordering counties has a causal impact on Biden's vote share. A more plausible interpretation is that there are some common features of politics in the regions that have adopted the software, and the type of research design that appears to have been used in the report is likely to turn up spurious results.

Placebo Test Using Prior Election Results

A research strategy designed to estimate the effect of one variable on another variable can be evaluated by its tendency to detect an effect when an effect *does* exist, and its tendency *not* to detect an effect when an effect *does not* exist. When a research design detects an effect when none exists, we say it returned a *false positive*. Designs with a high false positive rate are not very informative: an effect could be detected by the research design due to the existence of a real effect, or it could be a false positive.

We can make a further evaluation of the propensity of the research design the author appears to have used in his or her report to return false positives by seeing whether it detects that *future* events have an "effect" on *past* outcomes. Of course, this is logically impossible — we know that events happening in the future cannot affect past outcomes. Thus, any effect detected on past outcomes is necessarily a false positive.

In Appendix Table A3, I replicate the basic research design that I believe lies behind the claims in the report. It uses linear regression models, without state fixed effects, to predict Democratic vote share as a function of whether a county used Dominion voting technology in 2020, along with county-level demographic and economic control variables. Except, instead of predicting *2020* vote share, I predict

2012 and *2016* vote share. I exclude counties that used Dominion systems at the time of the election being analyzed.

The results indicate that in 2012, in counties that did not use Dominion in 2012 but did use them in 2020, Obama received about 5 to 6 percentage points higher vote share, compared to counties that did not use Dominion machines in either 2012 or 2020. The next column shows a similar pattern for 2016. Future use of Dominion predicts higher Clinton vote share in 2016, even in counties that did not use Dominion in 2016.

These results are false positives: there is no logical way that future use of Dominion voting machines could have affected past outcomes. Instead, these results are due to the fact that counties that used Dominion voting systems in 2020 are politically different than counties that did not, even after controlling for demographic and economic variables. This test shows that the simple type of research design that was breezily described in the report is ill-equipped to detect differences in vote shares that are *caused* by use of particular voting systems. As such, the statistical analysis mentioned in the report provides no evidence of fraud due to use of Dominion voting machines.

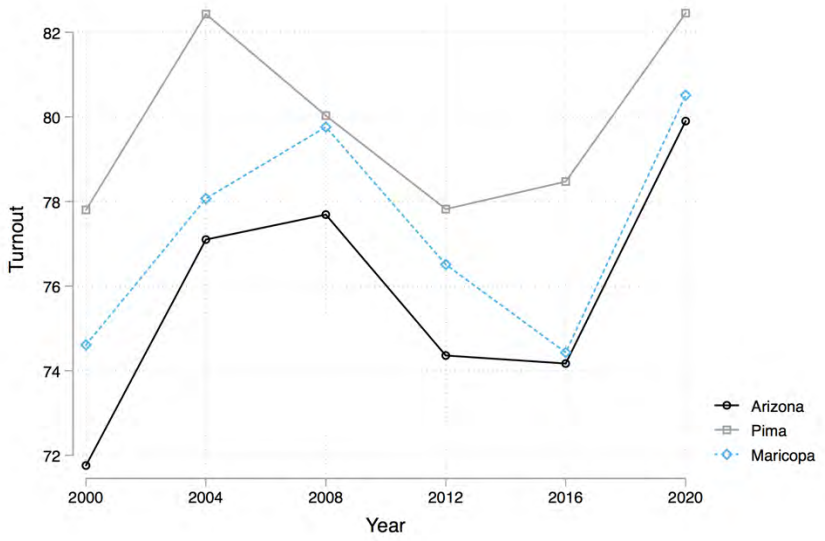
V. RAMSLAND REPORT

This report begins with some unsubstantiated claims about Antrim County, Michigan and Dallas County, Texas. These claims are difficult to understand, and

they do not seem to include any type of evidence. Next, Mr. Ramsland contends that turnout figures in Pima County and Maricopa County, Arizona are a "red flag," evidently because Mr. Ramsland believes they are too high. Without explanation or citations from the academic literature, he contends that any turnout number above 80 percent is suspicious.

Quite simply, high turnout is not a "red flag" indicating fraud. Turnout was high around the United States in the 2020 election. It was especially high in suburbs and rural areas. The numbers in Arizona are not atypical. In Figure 3 below, I present data on turnout in each presidential election over the last decade in Arizona as a whole, as well as in Maricopa and Pima counties.

Figure 3: Turnout in Arizona as a Whole, and in Maricopa and Pima Counties



Turnout was indeed higher in Arizona as a whole in 2020, reaching 79.9 percent. This was driven, of course, by Maricopa County, which accounts for the lion's share of the Arizona electorate. As can be seen in Figure 3, Pima County typically has higher turnout than Maricopa, or Arizona as a whole. Turnout in Pima County in 2020 was comparable to that in 2004. In short, there is nothing anomalous or suspicious about turnout in Arizona in 2020, or in the two counties mentioned by Mr. Ramsland.

He goes on to list a series of high-turnout suburban and rural precincts. Many of the rural precincts listed by Mr. Ramsland provided strong support to President Trump, while the suburban precincts were, for the most part, hotly contested but leaned toward Joseph Biden. A similar group of rural and suburban precincts with very high turnout can be found in every state around the United States. It is not clear what this might possibly have to do with election fraud.

Mr. Ramsland then goes on to claim that instead of counting votes in the traditional way, code was activated to use ranked choice voting to tally votes in Arizona's 2020 presidential election. From this discussion, it seems likely that Mr. Ramsland is not familiar with ranked choice voting. It involves a different type of ballot, in which voters rank their preferences among candidates. This type of ballot was not used in Arizona. Even if all of the ballots in Arizona were somehow counted or processed using ranked choice voting, but using ballots that only allowed voters

to select one candidate, the result would be the same. Ranked choice voting is a system where in the first round of counting, if one candidate has a majority, the process is over, and no votes are redistributed. If there were multiple candidates and voters' choices were ranked, there would then be a second round, where the lowest-ranked candidate would be dropped, and those voters who ranked that candidate first would then have their second-choice votes tallied. But clearly, nothing of the sort happened in Arizona. Jo Jorgensen, the Libertarian candidate, received a significant number of votes, as did candidates from other parties and write-in candidates.

Finally, Mr. Ramsland concludes with some ideas about votes being "injected" at various times during the counting process. It appears that while watching election returns as they were released by a polling firm called Edison Research, Mr. Ramsland became concerned that votes were reported in bunches throughout the evening. It is not clear how the timing of data releases by Edison Research might be related to election fraud.

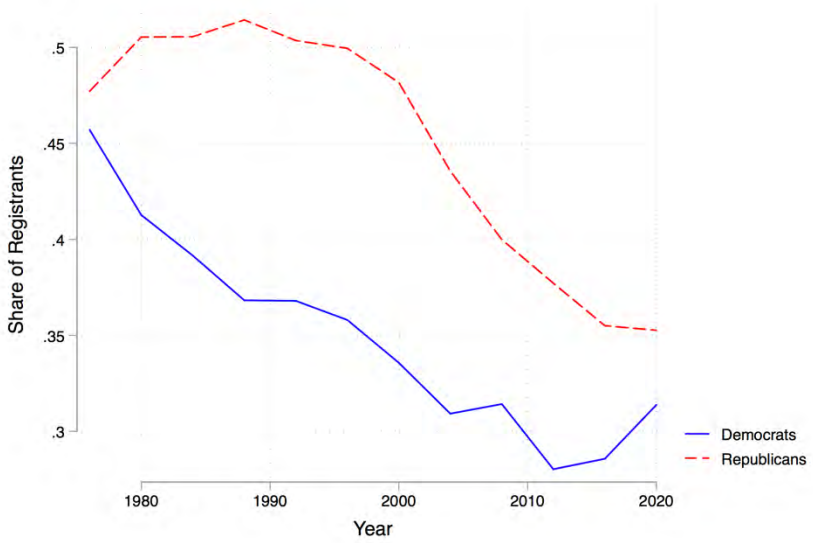
VI. KESHEL REPORT

Like Mr. Ramsland, Mr. Keshel also takes issue with Arizona's election result. He characterizes the result as a "substantial deviance from statistical norms and results regarding voting patterns in Arizona" (paragraph 4). He does not explain what "statistical norms" he considers, and cites no literature about how one might

go about identifying such a thing. Mr. Keshel's concern, evidently, is that Mr. Biden's gains were too high. To the extent that he identifies a method of analysis, he appears to claim that if a party has won frequently in a geographic place in the past, as the Republican Party has in Maricopa County, it is suspicious if that party loses support. Evidently Mr. Keshel would be suspicious about a number of outcomes in U.S. election, including the increase in support for the Republican Party in the industrial Midwest in 2016, or the rather striking increase in votes for President Trump in several Hispanic counties in Florida and Texas in 2020. Especially in the presence of a controversial incumbent, changing political fortunes for a party in a particular geographic area are quite normal, and are not viewed by election analysts as evidence of fraud.

Another claim made by Mr. Keshel is that a party should show "proper progression in keeping with historic party registration trends" (paragraph 15). He does not explain his method for empirically measuring this "proper progression," but in Arizona, party registration numbers are not remotely useful for this purpose. Figure 4 helps explain why. It plots Democrats as a share of total registrants (in blue), as well as Republicans as a share of total registrants (in red).

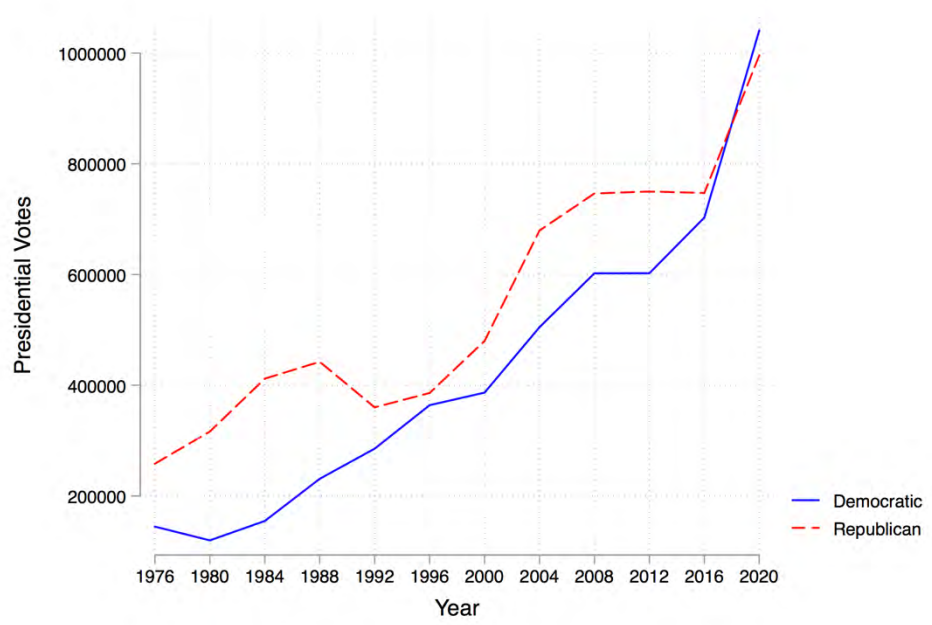
Figure 4: Party Registration Over Time in Maricopa County, AZ



Democrats and Republicans are both falling dramatically as a share of total registrants, as increasing numbers of voters decline to register with one of the two major parties. But the two major parties continue to virtually monopolize votes for president and other offices. In other words, neither party is "in keeping with historic party registration trends." Much of the battle in Maricopa County is over the large number of voters who are not registered with either party.

In any case, as with turnout, it is difficult to characterize Arizona's 2020 election result, or that of Maricopa County in particular, as anomalous. Figure 5 simply plots Democratic and Republican votes over time in Maricopa County.

Figure 5: Votes for Democratic and Republican Presidential Candidates Over Time, Maricopa County, AZ



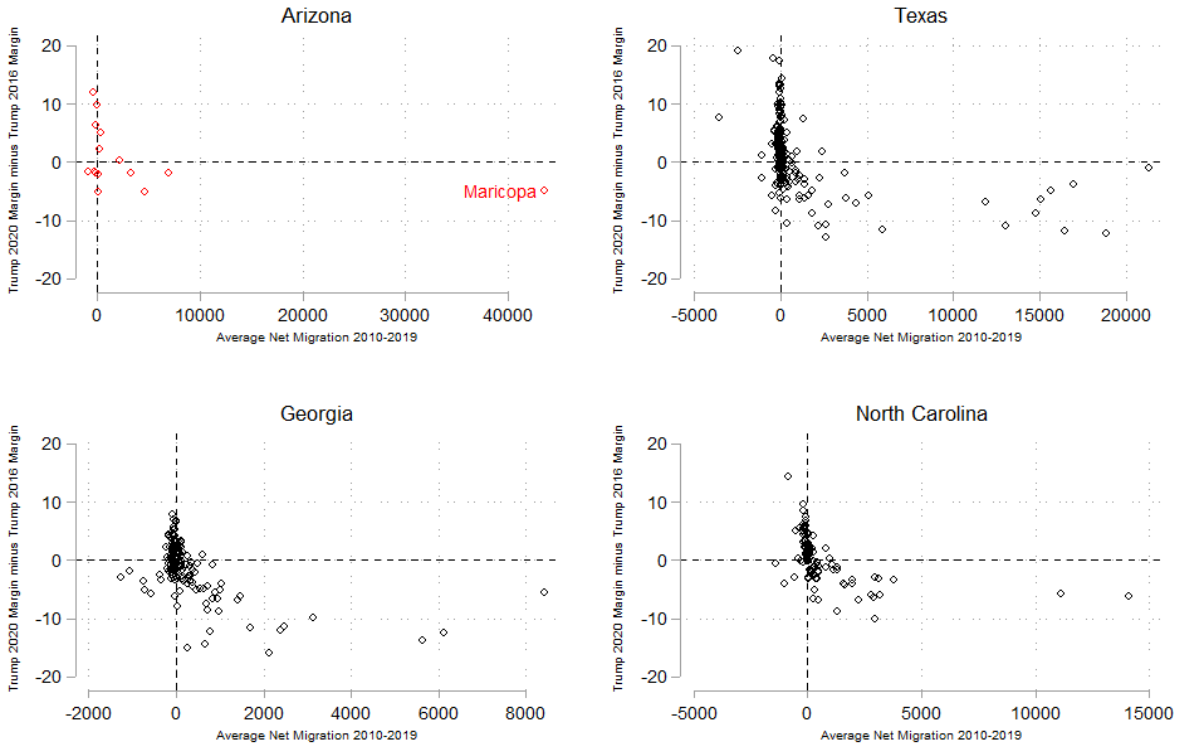
The rapid growth in votes cast for both parties is a function of Maricopa County's rapid growth, fueled by in-migration from other states. Cross-state migrants to places like Maricopa County are typically college-educated young people—a group that has in recent years become a core constituency of the Democratic Party. As a result, the most rapidly growing counties in the United States are also quickly becoming more Democratic.[6] As Maricopa County has become more educated and diverse, the growth in the blue line has caught up with the growth of the red line in Figure 5. Much of the gap had already been closed by 2016, and it is not surprising that, through the continuation of the trend of in-migration and strong turnout, the blue line finally surpassed the red line in 2020.

[6] Jonathan Rodden, 2019, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. New York: Basic Books.

Finally, Mr. Keshel believes that Maricopa County is an outlier in the extent to which it has experienced the above-mentioned combination of increased population and increased Democratic voting. This is not the case. Let us examine other states where in-migration of educated young people to sprawling suburbs is changing the political complexion of the state: Texas, Georgia, and North Carolina.

In Figure 6, I plot the change in Trump vote margin from 2016 to 2020 on the vertical axis, so that a positive number indicates that Trump's performance *improved*, and a negative number indicates that it *declined.* On the horizontal axis is average yearly net in-migration, calculated by the census department, from the years 2010 to 2019. The observations are counties. I include identical graphs for Arizona, Texas, Georgia, and North Carolina—all states that have thriving, growing metro areas with strong labor markets and affordable suburbs that are attracting migrants from around the United States. Note that the only thing different about the graphs for each state is the horizontal axis. It goes all the way beyond 40,000 for Arizona. For Texas, the scale stops at 20,0000, and the other states at even lower values. If I did not allow the horizontal axis to vary for Arizona, it would be literally off the charts. This graph clarifies that the population growth of Maricopa County, driven by in-migration, is very unique. According to census estimates, Maricopa County gained 63,000 residents in 2019 alone.

Figure 6: Net Migration and Change in Presidential Voting Behavior, 2016 to 2020, Counties of Arizona, Texas, Georgia, and North Carolina



As we can see on the graph, in every one of these states, rapidly growing counties like Maricopa moved toward the Democratic presidential candidate from 2016 to 2020. Every single county that experienced substantial growth can be found in the lower right-hand corner of the graph for its state, where Biden out-performed Clinton—often by a wide margin. In fact, given its extreme level of growth, Maricopa is something of an outlier in that it did not swing *further* toward the Democratic presidential candidate. Note that most of the high-growth counties in Texas and Georgia moved further in a Democratic direction than did Maricopa.

It is also useful to note that Trump experienced large increases in vote share in many of the counties where population growth is either stagnant or where out-migration is occurring (on the left side of the graph). In some cases, these vote shifts are substantial. In fact, in order to make the data fit on the graphs, some of the declining, majority-Latino counties in Texas where Trump made extremely large gains had to be left off. If one adopts Mr. Keshel's faulty logic—whereby large vote gains are indicative of fraud—one would need to look at some of these declining rural counties, where in several states, the shift in voting was more dramatic than in the growing suburban counties. But to be clear, this argument is flawed: voting can and does shift among social groups in response to policies and behavior or incumbents as well as platforms of candidates.

In sum, Mr. Keshel has provided no evidence whatsoever that would be indicative, or even suggestive, of fraud in Arizona.

VII. CONCLUSION

In conclusion, these reports do not take a scientific approach to the questions they address. They are completely disconnected from the wealth of knowledge about elections and statistics that has been accumulated in the scholarly literature. They feature vague and illogical stories about "anomalies" that, upon basic confrontation with context, logic, and data, turn out not to be anomalies at all, but mere descriptions

of patterns of historical and contemporary election results that are already well known to scholars and pundits alike. They contain no evidence of fraud or irregularities in the election results of 2020 in Arizona or anywhere else.

Appendix

Table A1: Fixed Effects Model, County-Level Democratic Vote Share in 2020

	Dem vote share, 2020
Dominion 2020	0.031
	(0.25)
Hart 2020	-0.014
	(0.08)
female	-0.003
	(0.18)
Black	0.022
	(2.57)*
Latino	-0.078
	(9.43)**
College	0.086
	(7.31)**
Age 25-34	0.014
	(0.52)
Age 35-44	0.074
	(2.56)*
Age 45-54	-0.028
	(0.85)
Age 55-64	0.123
	(4.16)**
Age 65 and over	-0.030
	(1.63)
Median income	-0.016
	(1.79)
Poverty rate	-0.003
	(0.16)
Unemployment rate	-0.140
	(3.73)**
Renter share	-0.011
	(0.88)
Share urban	0.019
	(7.81)**
Log population density	0.240
	(3.54)**
Dem. vote share 2016	1.047
	(51.38)**
Dem. vote share 2012	-0.093
	(3.76)**
Dem. vote share 2008	-0.026
	(1.43)
Constant	0.465
	(0.26)
R^2	0.99

N	3,110

* $p<0.05$; ** $p<0.01$

Table A2: Border Placebo Analysis

	Dem vote share, 2020
Dominion 2020	0.855*
	(1.96)
Hart 2020	-3.860
	(6.97)**
female	0.067
	(0.60)
Black	0.389
	(16.44)**
Latino	0.148
	(5.00)**
College	0.746
	(13.81)**
Age 25-34	-0.238
	(1.53)
Age 35-44	-0.504
	(3.03)**
Age 45-54	0.060
	(0.33)
Age 55-64	0.738
	(3.70)**
Age 65 and over	-0.231
	(2.43)*
Median income	0.156
	(3.05)**
Poverty rate	0.564
	(5.58)**
Unemployment rate	0.901
	(6.10)**
Renter share	0.274
	(4.56)**
Share urban	0.014
	(1.04)
Log population density	1.812
	(7.04)**
Constant	-25.082
	(2.43)*
R^2	0.68
N	1,846

* $p<0.05$; ** $p<0.01$

Table A3: Previous Election Placebo Analysis

	2012 Dem vote share	2016 Dem vote share
2020 Dominion	5.605	3.310
	(1.241)**	(1.358)*
female	0.400	0.198
	(0.131)**	(0.113)
Black	0.352	0.466
	(0.024)**	(0.021)**
Latino	0.143	0.258
	(0.034)**	(0.031)**
College	0.331	0.660
	(0.061)**	(0.054)**
Age 25-34	-0.411	-0.254
	(0.177)*	(0.153)
Age 35-44	-0.799	-0.576
	(0.194)**	(0.168)**
Age 45-54	0.272	0.269
	(0.225)	(0.198)
Age 55-64	0.842	0.850
	(0.235)**	(0.206)**
Age 65 and over	-0.117	-0.033
	(0.120)	(0.100)
Median income	0.152	0.150
	(0.061)*	(0.050)**
Poverty rate	0.656	0.671
	(0.108)**	(0.098)**
Renter share	0.325	0.337
	(0.077)**	(0.068)**
Share urban	0.008	0.006
	(0.016)	(0.013)
Log population density	2.444	2.387
	(0.276)**	(0.246)**
Constant	-29.495	-41.937
	(12.358)*	(10.381)**
R^2	0.39	0.61
N	1,946	2,097

* $p<0.05$; ** $p<0.01$

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Assistant Professor of Political Science, MIT, 1999–2003.

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Working Papers

Federalism and Inter-regional Redistribution, Working Paper 2009/3, Institut d'Economia de Barcelona.

Representation and Regional Redistribution in Federations, Working Paper 2010/16, Institut d'Economia de Barcelona (with Tiberiu Dragu).

Chapters in Books

Political Geography and Representation: A Case Study of Districting in Pennsylvania (with Thomas Weighill), forthcoming 2021.

Decentralized Rule and Revenue, 2019, in Jonathan Rodden and Erik Wibbels, eds., *Decentralized Governance and Accountability*, Cambridge University Press.

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Lessons and Conclusions (Chapter 13), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Online Interactive Visualization

Stanford Election Atlas, 2012 (collaboration with Stephen Ansolabehere at Harvard and Jim Herries at ESRI)

Other Publications

How America's Urban-Rural Divide has Shaped the Pandemic, 2020, *Foreign Affairs*, April 20, 2020.

An Evolutionary Path for the European Monetary Fund? A Comparative Perspective, 2017, Briefing paper for the Economic and Financial Affairs Committee of the European Parliament.

Representation and Regional Redistribution in Federations: A Research Report, 2009, in *World Report on Fiscal Federalism*, Institut d'Economia de Barcelona.

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Decentralization and the Challenge of Hard Budget Constraints, *PREM Note* 41, Poverty Reduction and Economic Management Unit, World Bank, Washington, D.C. (July).

Decentralization and Hard Budget Constraints, *APSA-CP* (Newsletter of the Organized Section in Comparative Politics, American Political Science Association) 11:1 (with Jennie Litvack).

Book Review of *The Government of Money* by Peter Johnson, *Comparative Political Studies 32,7: 897-900.*

Fellowships and Honors

Fund for a Safer Future, Longitudinal Study of Handgun Ownership and Transfer (LongSHOT), GA004696, 2017-2018.

Stanford Institute for Innovation in Developing Economies, Innovation and Entrepreneurship research grant, 2015.

Michael Wallerstein Award for best paper in political economy, American Political Science Association, 2016.

Common Cause Gerrymandering Standard Writing Competition, 2015.

General support grant from the Hewlett Foundation for Spatial Social Science Lab, 2014.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2012.

Sloan Foundation, grant for assembly of geo-referenced precinct-level electoral data set (with Stephen Ansolabehere and James Snyder), 2009-2011.

Hoagland Award Fund for Innovations in Undergraduate Teaching, Stanford University, 2009.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, beginning Fall 2010.

Research Grant on Fiscal Federalism, Institut d'Economia de Barcelona, 2009.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2008.

United Postal Service Foundation grant for study of the spatial distribution of income in cities, 2008.

Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fellow, Center for Advanced Study in the Behavioral Sciences, 2006-2007.

National Science Foundation grant for assembly of cross-national provincial-level dataset on elections, public finance, and government composition, 2003-2004 (with Erik Wibbels).

MIT Dean's Fund and School of Humanities, Arts, and Social Sciences Research Funds.

Funding from DAAD (German Academic Exchange Service), MIT, and Harvard EU Center to organize the conference, "European Fiscal Federalism in Comparative Perspective," held at Harvard University, November 4, 2000.

Canadian Studies Fellowship (Canadian Federal Government), 1996-1997.

Prize Teaching Fellowship, Yale University, 1998-1999.

Fulbright Grant, University of Leipzig, Germany, 1993-1994.

Michigan Association of Governing Boards Award, one of two top graduating students at the University of Michigan, 1993.

W. J. Bryan Prize, top graduating senior in political science department at the University of Michigan, 1993.

Other Professional Activities

International Advisory Committee, Center for Metropolitan Studies, Sao Paulo, Brazil, 2006–2010.

Selection committee, Mancur Olson Prize awarded by the American Political Science Association Political Economy Section for the best dissertation in the field of political economy.

Selection committee, Gregory Luebbert Best Book Award.

Selection committee, William Anderson Prize, awarded by the American Political Science Association for the best dissertation in the field of federalism and intergovernmental relations.

Courses

Undergraduate

Politics, Economics, and Democracy

Introduction to Comparative Politics

Introduction to Political Science

Political Science Scope and Methods

Institutional Economics

Spatial Approaches to Social Science

Graduate

Political Economy of Institutions

Federalism and Fiscal Decentralization

Politics and Geography

Consulting

2017. Economic and Financial Affairs Committee of the European Parliament.

2016. Briefing paper for the World Bank on fiscal federalism in Brazil.

2013-2018: Principal Investigator, SMS for Better Governance (a collaborative project involving USAID, Social Impact, and UNICEF in Arua, Uganda).

2019: Written expert testimony in *McLemore, Holmes, Robinson, and Woullard v. Hosemann*, United States District Court, Mississippi.

2019: Expert witness in *Nancy Corola Jacobson v. Detzner*, United States District Court, Florida.

2018: Written expert testimony in *League of Women Voters of Florida v. Detzner* No. 4:18-cv-002510, United States District Court, Florida.

2018: Written expert testimony in *College Democrats of the University of Michigan, et al. v. Johnson, et al.*, United States District Court for the Eastern District of Michigan.

2017: Expert witness in *Bethune-Hill v. Virginia Board of Elections*, No. 3:14-CV-00852, United States District Court for the Eastern District of Virginia.

2017: Expert witness in *Arizona Democratic Party, et al. v. Reagan, et al.*, No. 2:16-CV-01065, United States District Court for Arizona.

2016: Expert witness in *Lee v. Virginia Board of Elections*, 3:15-cv-357, United States District Court for the Eastern District of Virginia, Richmond Division.

2016: Expert witness in *Missouri NAACP v. Ferguson-Florissant School District*, United States District Court for the Eastern District of Missouri, Eastern Division.

2014-2015: Written expert testimony in *League of Women Voters of Florida et al. v. Detzner, et al.*, 2012-CA-002842 in Florida Circuit Court, Leon County (Florida Senate redistricting case).

2013-2014: Expert witness in *Romo v Detzner*, 2012-CA-000412 in Florida Curcuit Court, Leon County (Florida Congressional redistricting case).

2011-2014: Consultation with investment groups and hedge funds on European debt crisis.

2011-2014: Lead Outcome Expert, Democracy and Governance, USAID and Social Impact.

2010: USAID, Review of USAID analysis of decentralization in Africa.

2006–2009: World Bank, Independent Evaluations Group. Undertook evaluations of World Bank decentralization and safety net programs.

2008–2011: International Monetary Fund Institute. Designed and taught course on fiscal federalism.

1998–2003: World Bank, Poverty Reduction and Economic Management Unit. Consultant for *World Development Report*, lecturer for training courses, participant in working group for assembly of decentralization data, director of multi-country study of fiscal discipline in decentralized countries, collaborator on review of subnational adjustment lending.

Last updated: October 19, 2020

Exhibit 3

A Overview

1 I have been engaged by Defendant-Intervenors' Counsel *Perkins Coie LLP* to write an expert report in the matter of *Bowyer et al. v. Ducey et al.* Counsel requested that I evaluate the contention in "Declaration of Matthew Bromberg Ph.D" (hereinafter, the Bromberg Declaration, dated December 1, 2020 and filed on December 2, 2020) that there was "vote switching" in Maricopa County, Arizona, in the 2020 presidential election that favored Democratic candidate for president Joe Biden at the expense of Republican candidate Donald Trump. Counsel requested as well that I offer a brief evaluation of the claims in the Bromberg Declaration about fraudulent votes cast in the 2020 presidential election beyond Arizona, namely, in Georgia, Pennsylvania, and Milwaukee, Wisconsin.

2 The 2020 General Election took place on November 3, 2020. In the race in Arizona for the office of President of the United States, the Arizona Secretary of State has certified that Democratic candidate Joe Biden received 1,672,143 votes and Republican candidate Donald Trump, 1,661,686 votes. This constitutes a margin of 10,457 votes.[1]

3 As of the writing of this expert report, Matthew Bromberg, the author of the Bromberg Declaration, has to the best of my knowledge disclosed neither the data not the computer code he used in the process of producing his declaration. I accordingly reserve the right to supplement this report in light of any disclosures that he puts forward in the future.

B Summary of conclusions

I. The Bromberg Declaration offers no evidence of voter fraud—and in particular vote switching from Donald Trump to Joe Biden—in Maricopa County, Arizona during the 2020 presidential election.

[1] See "President of the United States," *Arizona Secretary of State*, available at `https://results.arizona.vote/#/featured/18/0` (last accessed December 4, 2020).

II. There is no basis for the key theory in the Bromberg Declaration that voting precincts in Maricopa County with relatively few voters were more susceptible to voter fraud than precincts with greater numbers of voters. This theory does not appear in the literature on voter fraud and there is no evidence presented in the Bromberg Declaration in support of it. Lacking this theory, the Bromberg Declaration cannot say anything about voter fraud in Maricopa County in the 2020 election.

III. The Bromberg Declaration misunderstands how in-person voters in Maricopa County cast their ballots in the 2020 election. In this election, the county used voting centers on Election Day. Each eligible voter in Maricopa County could use any of the county's 175 centers to cast an in-person ballot. Maricopa County's in-person voters in this election, that is, were *not* restricted to voting in the polling places associated with their precincts, of which there were 744. The total number of presidential votes cast by the voters who belong to any given precinct in Maricopa County thus has no implication for how many ballots were physically cast in it on November 3, 2020. Therefore, the theory putatively offered in the Bromberg Declaration about the susceptibility to voter fraud of Maricopa County precincts with relatively few voters is of absolutely no relevance to the 2020 presidential race in the county and in fact to any races contested in the 2020 election.

IV. When voters in Maricopa County are aggregated at the precinct level (which ignores the matter of *where* these individuals cast their ballots in the 2020 election), the results of the presidential race bear strong similarity to the results of the race for a seat in the United States Senate. The precincts in which Joe Biden did well are also precincts in which Mark Kelly, Democratic candidate for Senate, did well, and vice versa. This implies that the pattern in Maricopa County precincts that was noted in the Bromberg Declaration—whereby precincts with smaller numbers of voters tended to have more Biden votes than Trump votes—reflects established political preferences in Maricopa County, not illegal vote switching.

V. Voter fraud is rare in the United States. Nonetheless, the Bromberg Declaration presents

a model that purports to discover significant voter in Georgia, Pennsylvania, and Milwaukee, Wisconsin. The model assumes that when a ballot is counted is uncorrelated with the presidential vote on it. This is known not to be the case. Thus, the claims in the Bromberg Declaration about voter fraud beyond Arizona do not follow from the arguments made in it.

C Organization of this report

4 In the next section of this report, I present my qualifications.

5 I then summarize literature on voter fraud in American elections.

6 Next, I evaluate the analysis of Maricopa County presented in the Bromberg Declaration.

7 Finally, I briefly discuss claims about voter fraud made in the Bromberg Declaration that extend beyond Arizona.

D Qualifications

8 I am the William Clinton Story Remsen 1943 Professor of Government at Dartmouth College in Hanover, New Hampshire and from 2015 to 2020 was Chair of the Program in Quantitative Social Science. I have taught at Dartmouth since 2003 and previously was on the faculty of Northwestern University. I have served as a visiting professor at Harvard University (July 2008–January 2009), the University of Rochester (September 2006–December 2006), and the Hertie School of Governance in Berlin (August 2011–August 2012). I have also served as a visiting scholar at the Hertie School of Governance (August 2016–July 2017).

9 In January 1998, I received a doctorate in the field of Political Economy from the Graduate School of Business at Stanford University. I also have a master's degree in statistics from

Stanford University (June 1995), a master's degree in political science from the University of Dayton (August 1992), and a bachelor's degree in mathematics and economics from Carnegie-Mellon University (May 1989).

10 I have published many scholarly articles on election administration and American elections, three such articles in 2019 and two in 2018. Among other subjects, I have written on the effects of ballot formats, patterns in invalid votes, the availability of early voting, and polling place congestion. My articles rely on statistical analyses, and my ongoing research agenda focuses heavily on issues in election administration.

11 I have published over 20 articles in peer-reviewed political science journals, including in the field's top general journals (*American Political Science Review*, *American Journal of Political Science*, and *Journal of Politics*). I have published in specialty journals as well (*Election Law Journal*, *American Politics Research*, and *Legislative Studies Quarterly*).

12 I have published two articles on voter fraud in American elections. Cottrell, Herron and Westwood (2018) is a statistical study of the allegations made by Donald Trump about voter fraud in the period surrounding the 2016 General Election. It concludes that there is no evidence in support of these allegations. Herron (2019) is an analysis of allegations made after a 2018 election in North Carolina's 9th Congressional District. It concludes that patterns in absentee votes cast in this district were consistent with allegations of absentee ballot fraud.

13 I was a testifying expert for defendants in *Law et al. v. Whitmer et al.* (Case No.: 20 OC 00163 1B) and in *Jennings v. Elections Canvassing Commission of the state of Florida* (2006 WL 4404531 (Fla.Cir.Ct.)) and a testifying expert for plaintiffs in *Alliance for Retired American et al. v. Matthew Dunlap et al.* (DKT NO. CV-20-95), *Michigan Alliance for Retired Americans et al. v. Jocelyn Benson et al.* (Civil Action No. 2020-000108-MM), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.* (226-2017-CV-433), and *Veasey et al. v. Abbott et al.*

(265 F. Supp. 3d 684 (S.D. Tex. 2017)). In addition, I have written expert reports in approximately 12 other cases relating to aspects of election law and election administration.

14 My written and oral testimony was credited by courts in their written opinions in *Law et al. v. Whitmer et al.*, *Donald J. Trump for President, Inc. v. Stephen Bullock et al.* (Case No.: 6:20-cv-00066-DLC), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.*, and in *Veasey et al. v. Abbott et al.*. My opinions and testimony have never been found by a court to be unreliable.

15 At the request of counsel working on the litigation "Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District," I submitted a draft of a working paper on North Carolina's 9th Congressional District to the North Carolina State Board of Elections. As to the paper's comparison of absentee ballot candidate support rates in Bladen County, North Carolina, in 2018 to absentee ballot candidate support rates in other counties in North Carolina, in three other states, and in elections that dated back to 2012, the Board wrote, "We find this information credible."[2] My paper on North Carolina's 9th Congressional District appears in *Election Law Journal*, a peer-reviewed publication (Herron, 2019).

16 My *curriculum vitae* is attached as Appendix A.

17 I am being paid at a rate of $550/hour for work in this litigation. My compensation is contingent neither on the results of the analyses described herein nor on the contents of this report.

E Voter fraud in the United States

18 To provide context for the breadth of the Bromberg Declaration's claims about fraud, I offer a definition of voter fraud and then review the extensive academic literature on this subject, which

[2]The Board's decision, which invalidated the 2018 election in the 9th Congressional District, can be found at `https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf` (last accessed November 13, 2020).

the Contest ignores.

E.1 Defining voter fraud

19 The study of voter fraud in the United States is part of the field of election administration.

20 For the purposes of this report, I define an instance of voter fraud as *an intentional act of deception aimed at subverting electoral processes*.[3] Instances of voter fraud can include, but are not necessarily limited to, the following behaviors:

Absentee or mail ballot fraud: improperly acquiring and then submitting an absentee or mail ballot or ballots.

Double voting: voting more than once in an election in which this is not permitted.

Election official fraud: improper actions taken by election officials, actions intended to change validly cast votes, or actions taken to affect voter registration records.

Non-citizen voting: participating in a federal election when one is not a citizen of the United States.

Voter impersonation: voting in-person (as opposed to via mail) on an election day in someone else's name, either in the name of a properly registered voter or using the registration records of a fictional individual.

[3]The North Carolina State Board of Elections (NCSBE) is responsible for managing elections in North Carolina. Since 2015, it has published a breakdown of voting irregularities that raise questions about election integrity. Referring to instances of potential voter fraud in the 2016 General Election, the NCSBE wrote that, "[Voter] [f]raud, in most cases, is an intent crime that requires prosecutors to show that the voter knowingly committed a crime." See p. 7 of "Post-Election Audit Report," *North Carolina State Board of Elections*, April 21, 2017, available at https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf (last accessed November 15, 2020).

21 The above types of voter fraud can in principle be combined. A non-citizen of the United States could during the course of participating in a federal election impersonate a properly registered voter. Or, an individual could vote twice in an election, once using the individual's own (and proper) registration and the second time using a fictional registration.

22 Moreover, each entry in the above list of behaviors should be understood as encompassing a broad range of behaviors. An individual could, hypothetically, execute a double voting fraud by voting twice in one state. Or, such an individual could, hypothetically, vote in more than one state.

23 This list above is neither exclusive nor exhaustive.

24 I list the above types of behaviors because they describe the sorts of actions that, based on my experience with academic literature on the subject, could in principle be characterized as voter fraud. What a court in any state determines is illegal depends, however, on that state's particular laws.

25 It is my general understanding that, for an action to be denoted fraud, it must involve an intent to deceive. In this report, I treat allegations of voter fraud as actual fraud even where I cannot determine if there was an intent to deceive. To that extent that I do this, my report is over-inclusive with respect to instances of voter fraud and thus conservative.[4]

26 Elections are regulated affairs subject to state laws and potentially local laws as well. A voter can behave in a way that is illegal in his or her state but not intentionally deceptive and thus not fraudulent.

[4]Fraudulent actions of voters or intended voters are similar to what the United States Election Assistance Commission (EAC) might call "acts of deception." The EAC, a federal body established in the aftermath of the contested 2000 presidential election, published a report, "Election Crimes: An Initial Review and Recommendations for Future Study," in December 2006, that categorizes in detail a variety of election-related crimes. The report is available at `https://www.eac.gov/sites/default/files/eac_assets/1/6/Initial_Review_and_Recommendations_for_Further_Study.pdf` (last accessed November 22, 2020).

27 The examples of voter fraud I have offered above are hypothetical. Later in this report I describe research that seeks to estimate the rates at which various forms of voter fraud have occurred in recent American elections.

28 In my experience, most scholars of American election administration broadly consider voter fraud to consist of fraudulent actions taken by voters themselves and not by the individuals who supervise elections. Henceforth, when I refer to voter fraud, I mean actions involving voters or intended voters themselves. In contrast, when in this report a particular example of fraud is associated with an election official or a poll worker, I am explicit about this so that there is no confusion over the type of person, official or voter, who perpetrated an alleged fraud.

E.2 Evidence of voter fraud in the United States

29 The literature on the prevalence of voter fraud in American elections incorporates a variety of research methodologies. This exemplifies triangulation, wherein multiple research approaches are brought to bear on a single problem. If voter fraud in the United States is widespread, one would expect at least one of the methodologies in the literature to have detected evidence of it.

30 One methodology used in the study of voter fraud systematically tracks cases of alleged voter fraud in media reports and in official government documents. Examples of this methodology are Minnite and Callahan (2003), Minnite (2007), Levitt (2007), Minnite (2010), and Levitt (2014).

31 These studies conclude that rates of voter fraud in American elections are very low.

32 An illustrative example from Levitt (2014) is as follows. Between the years 2000 and 2014, during which Levitt estimates that over one billion ballots were cast across general and primary elections in the United States, there were approximately 31 documented "incidents" involving voter fraud.[5] The ratio of 31 to one billion is minuscule.

[5]Levitt defines "incident" very broadly, and thus conservatively. A voter fraud incident is not necessarily a conviction for voter fraud. Levitt writes: "Some of these 31 incidents have been thoroughly investigated (including some

33 Minnite (2010) is likewise instructive in its coverage of voter fraud cases at the federal level (Chapter 3) and its analyses (Chapter 4) of fraud in four states (California, Minnesota, New Hampshire, and Oregon), among other things. As noted above, Oregon's elections are effectively all-mail operations.

34 Using data from the United States Department of Justice (DOJ), Minnite finds very little evidence of voter fraud. A September 2014 report published by the United States Government Accountability Office similarly concluded that, "[T]here were no apparent cases of in-person voter impersonation charged by DOJ's Criminal Division or by U.S. Attorney's offices anywhere in the United States, from 2004 through July 3, 2014" (p. 70).[6]

35 With respect to California, which is the most populous state in the country, Minnite draws a variety of conclusions. One is that state officials investigate claims of voter fraud when they present themselves. While perhaps not surprising, this conclusion implies that findings of a lack of fraud across California elections are meaningful and do not simply reflect state elections officials' lack of interest in voter fraud.

36 Minnite concludes as well that approximately one-third of fraud allegations in California in her period of study did not lead to charges because they lacked evidence or suspects could not be identified; a second third of these allegations were dropped because no legal violation was found or a suspect was determined to lack criminal intent; and, of allegations that produced legal violations, the majority did not lead to criminal penalties, and only one-third of individuals determined to have committed a violation were actually found guilty of a crime. The modal voter fraud Minnite identified in California was fraudulent registration—as opposed to fraudulent voting of any type, either in-person voting or absentee voting.

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prosecutions). But many have not. Based on how other claims have turned out, I'd bet that some of the 31 will end up debunked: a problem with matching people from one big computer list to another, or a data entry error, or confusion between two different people with the same name, or someone signing in on the wrong line of a pollbook."

[6]See "Issues Related to State Voter Identification Laws," *United States Government Accountability Office*, September 2014, available at `https://www.gao.gov/assets/670/665966.pdf` (last accessed November 15, 2020).

37 Minnite studied Oregon as well, which is notable insofar as this state relies heavily on mail-in ballots. Based on her analysis, Minnite concludes that, "The evidence of voter fraud since Oregon adopted vote-by-mail, however, is practically non existent."

38 Another methodology in the study of fraud involves surveying election officials. In the aftermath of the 2016 General Election, Famighetti, Keith and Pérez (2017) "interviewed a total of 44 administrators representing 42 jurisdictions in 12 states" (p. 1), inquiring about the prevalence of non-citizen voting. Famighetti, Keith and Pérez write that 40 jurisdictions reported "no known incidents of noncitizen voting in 2016" (p. 1). Moreover, they state that,

> "In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions" (p. 1).

39 The "30 incidents" noted above represent an upper bound on the number of times that noncitizen voter fraud was committed in the jurisdictions studied by Famighetti, Keith and Pérez. These incidents, according to the researchers, do not represent voter fraud convictions. They represent only referrals.

40 Famighetti, Keith and Pérez write as well that, "In California, Virginia and New Hampshire – the states where [United States President Donald] Trump claimed the problem of noncitizen voting was especially acute – no official we spoke with identified an incident of noncitizen voting in 2016" (p. 2).

41 The study of voter fraud by Famighetti, Keith and Pérez is notable because it focused solely on the 2016 General Election. Compared to preceding elections, it is well known that

the 2016 election and its aftermath were awash in fraud allegations. By focusing on such an election, Famighetti, Keith and Pérez's study biases itself toward finding evidence of voter fraud. Scientifically speaking, this is not what one would call a conservative bias; rather, the bias in Famighetti, Keith and Pérez's work pushes the study in the direction of finding evidence of a phenomenon of interest, here, voter fraud. Despite this bias, the rate of potential voter fraud described by Famighetti, Keith and Pérez is very small.

42 Huefner et al. (2007) constitutes another example of a study that involved efforts to reach out to election officials. This wide-ranging study details the electoral environments of five states (Illinois, Michigan, Minnesota, Ohio, and Wisconsin), and the authors write as follows:

> "On the whole, voting fraud is exceedingly rare. Although allegations of voting fraud have been widely publicized in the media, most all of these have evaporated upon closer investigation" (p. 120).

43 Still another approach in the voter fraud literature uses statistical tools in efforts to determine if patterns in election returns and voting records are consistent with public claims about the prevalence of voter fraud (Christensen and Schultz, 2014; Goel et al., 2020). Goel et al. is a study of double voting, and their analysis relies on an extensive database that contains approximately 104 million vote records. The particular question of interest to Goel et al. is whether the records show evidence of duplicates, i.e., of people who voted more than once in the 2012 General Election. This question is complicated because, when one has a database of millions of individuals, there will with virtual certainty be many cases of people with the same names and birthdates.[7]

44 Goel et al. conclude that, "[D]ouble voting is not currently carried out in such a systematic way that it presents a threat to the integrity of American elections" (p. 467). Goel et al. conclude

[7] Such a duplicate name problem arose in the 2016 General Election in North Carolina. Four individuals in the state were accused of having voted illegally, only to be exonerated when it was discovered that they had the same names as incarcerated felons. This example illustrates how innocuous coincidences can present themselves as voter fraud. See "Republicans claim 43 voters are ineligible felons. Many of them aren't," *The News & Observer*, November 23, 2016, available at `http://www.newsobserver.com/news/politics-government/election/article116789083.html` (last accessed November 15, 2020).

as well that measurement error in official election data could explain "a significant portion, if not all" of the cases of double voting that they identify.

45 By "measurement error," Goel et al. are referring to inaccuracies in turnout records. These inaccuracies can be the result of human recording errors, for example, in which a voting jurisdiction's record of one individual is mistakenly associated with the record of another.

46 With two academics, I published an article on voter fraud in the 2016 General Election. This article—Cottrell, Herron and Westwood (2018)—appears in *Electoral Studies*, a peer-reviewed, academic journal that focuses on elections. The article assesses the voter fraud allegations promulgated by Donald Trump and individuals associated with him.

47 My co-authors and I twice described some of our results in *The Washington Post*.[8] The first time was on December 2, 2016, and the second, on February 28, 2017.

48 In our article, my colleagues and I used statistical techniques to search for evidence of three types of fraud. In particular, we looked for:

I. Evidence of widespread non-citizen voter fraud across counties in the United States.

II. Evidence that election officials in the United States conspired against Donald Trump.

III. Evidence that the 2016 General Election in New Hampshire was contaminated by residents of Massachusetts who, allegedly, traveled north on November 8, 2016, in order to cast illegal votes.

[8]Our short articles in *The Washington Post* are available at `https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/02/we-checked-trumps-allegations-of-voter-fraud-we-found-no-evidence-at-all` and at `https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/28/we-cant-find-any-evidence-of-voting-fraud-in-new-hampshire` (last accessed November 15, 2020).

49 With respect to the first two points above, my co-authors and I uncovered no evidence of widespread non-citizen voter fraud and no evidence that election officials in the United States conspired against Trump. Our county-level consideration of three states mentioned post-election by Donald Trump—California, New Hampshire, and Virginia—also did not turn up evidence of widespread fraud (these states were also examined by the aforementioned Famighetti, Keith and Pérez (2017)). With respect to the third point above, my co-authors and I found no evidence of illegal voting in New Hampshire.

50 My research project on voter fraud was initiated during the summer of 2016, months before the presidential election. My co-authors and I are cognizant of the fact that establishing a negative is challenging, and we do not argue that our failure to uncover evidence of fraud surrounding the 2016 General Election conclusively proves that there was not voter fraud in that election. Rather, what one can infer from my co-authored study on voter fraud is that its attempts to uncover evidence of widespread and systematic fraud were not successful.

51 The literature on voter fraud reviewed here is peer-reviewed, in most cases in publicly accessible journals and books, and in some cases is available online. It incorporates a variety of different research designs and data sources. Despite these differences, the contributions to the literature share a common finding: voter fraud in American elections is rare.[9] While election scholars do not assert that the fraud rate in American elections is literally zero, no credible scholars working in this literature have concluded that voter fraud poses a threat to election integrity in the United States.

[9]One exception to the scholarly consensus about a lack of widespread voter fraud in the United States is Richman, Chattha and Earnest (2014), who derive estimates of non-citizen voting rates from the 2008 and 2010 waves of the Internet-based survey known as the Cooperative Congressional Election Study (CCES). Some CCES survey respondents indicated that, although they were non-citizens, they had voted in the 2008 General Election or in the 2010 Midterm Election.

Richman, Chattha and Earnest's (2014) claims about non-citizen voting would be dramatic if valid, and they would contradict effectively all of the studies on voter fraud discussed in this report. However, Ansolabehere, Luks and Schaffner (2015) show that it is virtually certain that Richman, Chattha and Earnest's results on non-citizen voting reflect survey measurement error, in particular, the incorrect classification of citizen CCES respondents as non-citizen respondents.

52 No evidence contradicting this finding was produced by a presidential commission on voter fraud established in the aftermath of the 2016 General Election and shut down on January 3, 2018. No official reports of widespread and systematic voter fraud have come to light based on the commission's work.[10] Recently, Benjamin Ginsberg, a co-chair of the 2013 Presidential Commission on Election Administration, commented on the work of this commission, noting that, "[A]fter decades of looking for illegal voting, there's no proof of widespread fraud. At most, there are isolated incidents – by both Democrats and Republicans."[11]

E.3 Voter fraud and mail voting

53 There is no evidence that voter fraud rates associated with mail-in voting are systematically higher than voter fraud rates associated with other forms of voting and with other aspects of election administration.

54 Drawing on recent entries in a database of potential election irregularities developed by *The Heritage Foundation*, a study released by *The Brookings Institution* considers the prevalence of voter fraud specifically in the country's five all-mail states.[12] The authors of this report identify 29 "fraudulent votes attempted by mail" out of 49,917,586 general election votes cast in the period under review. The number 29 is approximately 0.000058 percent of 49,917,586.[13]

[10]On the origins and end of the presidential voter fraud commission, which offered no evidence that widespread fraud affected the 2016 General Election, see "Trump Closes Voter Fraud Panel That Bickered More Than It Revealed," *The New York Times*, January 4, 2018, available at https://www.nytimes.com/2018/01/04/us/voting-fraud-commission.html (last accessed November 15, 2020).

[11]For Mr. Ginsburg's comments on the lack of evidence about voter fraud in the United States, see "Republicans have insufficient evidence to call elections 'rigged' and 'fraudulent'," *The Washington Post*, September 8, 2020, available at https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/ (last accessed November 15, 2020). The 2013 Presidential Commission on Election Administration, on which Mr. Ginsburg served, is described at https://bipartisanpolicy.org/the-presidential-commission-on-election-administration/ (last accessed November 15, 2020).

[12]For the Heritage Foundation's database, see https://www.heritage.org/voterfraud (last accessed November 14, 2020). My referencing this database should be not considered an endorsement of it. I note it here because the database is the source for the cited *Brookings Institution* report.

[13]"Low rates of fraud in vote-by-mail states show the benefits outweigh the risks," *The Brookings Institution*, June 2, 2020, available at https://www.brookings.edu/blog/fixgov/2020/06/02/low-rates-of-fraud-in-vote-by-mail-states-show-the-benefits-outweigh-the-risks/ (last accessed November 12, 2020).

F Allegations in the Bromberg Declaration of voter fraud in Maricopa County

55 The allegations in the Bromberg Declaration about Maricopa County appear on pp. 14-15, in the Declaration's section titled "Maricopa Precinct Analysis."

F.1 Precinct size and support for Joe Biden

56 In its analysis of Maricopa County, the Bromberg Declaration contains two figures, both of which plot candidate vote shares (in percentages) against precinct size. These figures constitute the entirety of the Declaration's evidence of fraud in Maricopa County. In particular, Figure 18 in the Bromberg Declaration plots the vote percentages of Joe Biden, Donald Trump, and third party presidential candidates against precinct size, and Figure 19 is similar except it focuses only on aggregate third party presidential candidates.

57 Based on its Figure 18, the Bromberg Declaration asserts that, "The Biden percentage is higher in the smaller precincts, primarily at the expense of Trump. . . " (p. 14). As shown below, I do not dispute this rough characterization.

58 The Bromberg Declaration goes on to posit that the existence of this relationship "suggest[s] vote switching" (p. 14) and refers to the relationship between precinct size and Biden support as "an anomaly." By "vote switching," the Bromberg Declaration appears to mean a process in which legal votes for Donald Trump were switched to Joe Biden. The Bromberg Declaration implicitly claims that this happened in Maricopa County precincts with relatively few voters.

F.2 The Bromberg Declaration's theory about precinct size

59 The basis in the Bromberg Declaration for the claim that a relationship between precinct size and Biden support is evidence of vote switching can be found on p. 8: "But one could also

theorize the opportunity for cheaters to cheat in small precincts, where there may be less oversight." In other words, the Bromberg Declaration offers the theory that small precincts "may" have less oversight and that "cheaters" take advantage of this.

60 There is no evidence in Bromberg Declaration that Maricopa County precincts with fewer voters do in fact have less oversight; no evidence that election official staffing levels per voter are lower in smaller precincts than they are in larger precincts; no evidence that the physical layout of small precincts is different than the physical layout of large precincts; and in fact no evidence that small precincts in Maricopa County differ in any way whatsoever from the county's large precincts except for the fact that the former have fewer voters.

61 There is no evidence in the academic literature on voter fraud reviewed earlier in favor of the Bromberg Declaration's "theory" that small precincts are susceptible to voter fraud. Moreover, there are no citations in the Bromberg Declaration to peer-reviewed studies of the relationship between precinct size and voter fraud.

62 It is well known that the political affiliations of voters are not uniformly distributed across jurisdictions like counties. Some areas of counties (in particular, urban areas) have more Democratic voters, and other areas (those less urban), more Republican voters (e.g., Rodden, 2019). If precinct size measured by numbers of voters is correlated geographically with political preferences, this will induce a *spurious* relationship between precinct size and candidate vote shares within precincts. Spurious relationships are not evidence of voter fraud.

63 In its discussion of precinct size and the "theory" that small precincts are relatively prone to fraud, the Bromberg Declaration cites "An Electoral System in Crisis," a webpage dating to 2016 that claims to be an analysis of the Wisconsin recount that took place four years ago. The authors of this webpage argue that a relationship between precinct size and candidate vote totals indicates the presence of "irregularities" but provide no evidence at all in favor of this assertion outside of an

offhand comment that such a relationship is a "complete violation of the Law of Large Numbers."

64 This assertion is nonsensical. The Law of Large Numbers in its standard form is a result in probability theory which states that independent samples from a common population converge to true population parameters as the number of observations increases. It is not clear in the Wisconsin recount webpage what units are being sampled and whether these units are drawn from the same population. The webpage's invocation of the Law of Large Numbers does not make any sense. The webpage does not provide any calculation that support its "complete violation" allegation – just rhetoric.

65 In short, Bromberg Declaration asserts that a relationship between precinct size and Biden vote share is indicative of fraud, but there is no reason whatsoever to believe this and no evidence to support such a "theory."

F.3 Whether small precincts are fraud-prone is irrelevant because Maricopa County used voting centers in the 2020 election

66 Regardless of whether there is any evidence behind it, the "theory" in the Bromberg Declaration about precinct size and voter fraud is applicable to the study of Maricopa County in the 2020 election only to the extent that in-person voters in the county actually voted in their precincts. In fact, they did not do this.

67 In the 2020 election, Maricopa County offered in-person voting at what are known as *voting centers*. A voting center is a location at which any eligible voter in the county may cast an in-person ballot. In particular, there were 175 voting centers in Maricopa County for the purposes of in-person voting during the 2020 General Election.[14]

[14] I downloaded the set of Maricopa County voting centers from `http://web.archive.org/web/20201104002036/https://recorder.maricopa.gov/pollingplacefiles/VotingSitesSchedule.xlsx` (last accessed December 4, 2020).

68 The Maricopa County elections department informed the county's voters that, "There are **no** assigned locations" (bold in original) for voting in the 2020 election. See Appendix B, which displays text from the Maricopa County elections office webpage.

69 Consequently, the author of the Bromberg Declaration has literally no idea where any of the ballots attributed to the county's precincts were actually cast. To make matters worse, the author appears not even to distinguish between in-person votes and ballots mailed in or submitted via drop boxes (and this distinction is in principle important insofar as the "theory" of voter fraud in the Bromberg Declaration that connects precinct size and fraud does not make sense when applied to votes not cast in-person).[15] In short, the number of votes associated with any given precinct in Maricopa County—and this is what is displayed in Figures 18 and 19 in the Bromberg Declaration—has no implications for how many ballots were actually cast in said precinct and thus, per the "theory" in the Bromberg Declaration, were ostensibly vulnerable to fraud.

70 I downloaded precinct returns for the 2020 General Election from the Maricopa County elections department webpage.[16] There were 744 unique precinct names used in the 2020 election. Insofar as there were in this election 175 voting centers in Maricopa County, I know for certain that there is not a one-to-one match between the precincts and voting centers (not to mention the fact that the county's webpage was explicit that voters could cast in-person ballots in any voting center that they wished).

F.4 Precinct size and support for Democratic candidates

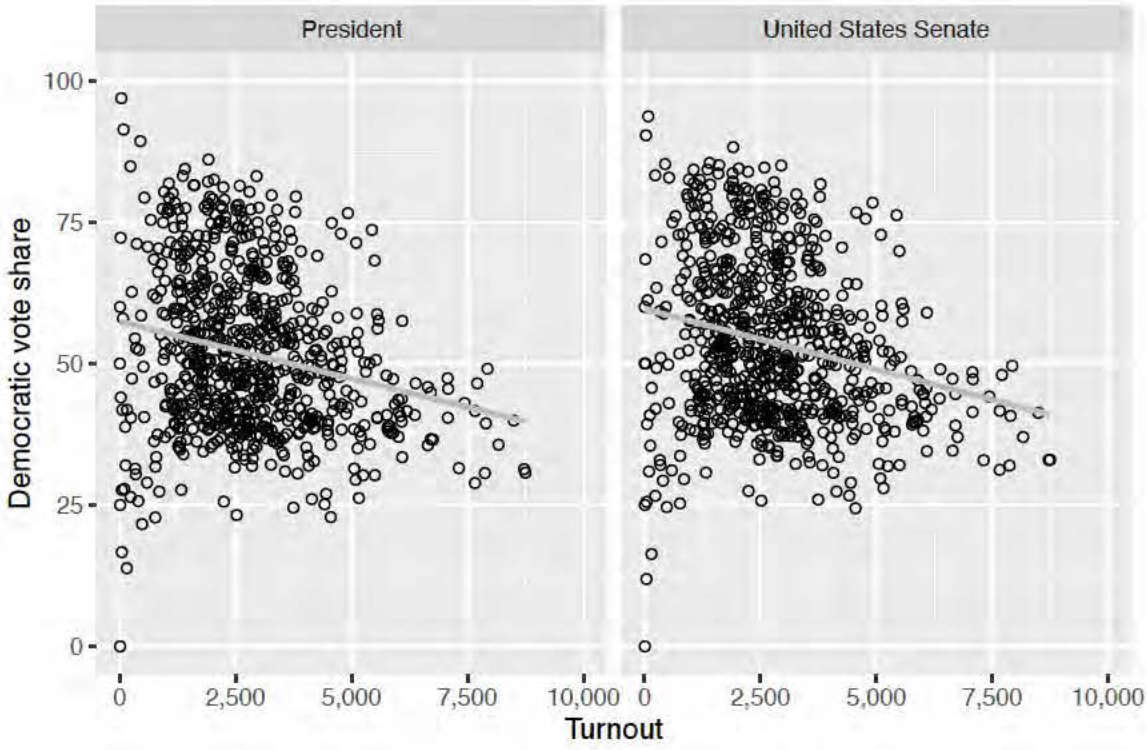
71 Figure 1 displays the relationship between precinct size (horizontal axis) and support for Democratic candidates (vertical axis). Each point in the figure denotes a single precinct in Maricopa County. The figure's left panel is for the United States presidential contest, and in this panel

[15] Because the author of Bromberg Declaration has not, to the best of my knowledge, disclosed his computer code, I cannot be entirely what he did to produce his Figures 18 and 19. However, the text of Bromberg Declaration refers generically to precinct "size," which I take to mean, the number of votes cast in the precinct.

[16] These returns are available at `https://recorder.maricopa.gov/media/ArizonaExportByPrecinct_110320.txt` (last accessed December 3, 2020).

Democratic vote share means, Joe Biden's vote share. In Figure 1's right panel, Democratic vote share for the United State Senate race means, Mark Kelly's vote share.

Figure 1: Democratic candidate support and turnout by precinct



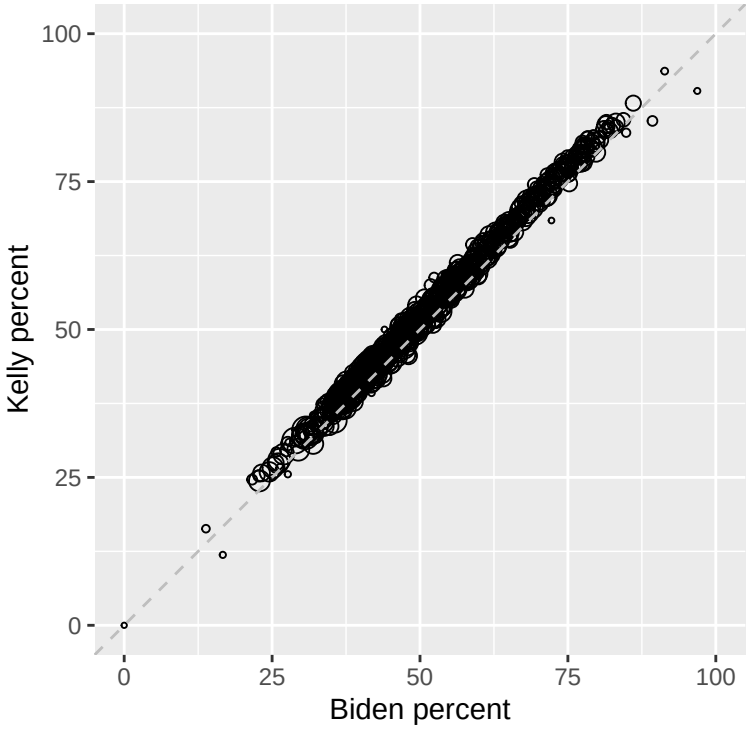
72 Both panels of Figure 1 have superimposed linear regression lines to ease interpretation. These lines are sloped down, indicating that precincts in Maricopa County with greater voter turnout had lower Biden vote share (left panel) and lower Kelly vote share (right panel).

73 The key implication of Figure 1 is the similarly between its two panels. They are, evidently, virtually identical. This suggests that the relationship between turnout and Democratic vote share across Maricopa County precincts reflects established political preference in the county—not vote switching that affected the 2020 presidential contest.

74 More evidence to this effect is apparent in Figure 2, which plots Joe Biden and Mark Kelly vote shares against each other. Each point in the figure is again a precinct where the size of each

point is proportional to overall precinct turnout.

Figure 2: Joe Biden and Mark Kelly support rates by precinct



75 Figure 2 has a dashed 45-degree line superimposed on it. Points *above* the line connote precincts where Mark Kelly's vote share was greater than Joe Biden's; points *below* the line connote precincts where Joe Biden's vote share was greater than Mark Kelly's; and, points on the line connote precincts where Joe Biden's vote share was equal to Mark Kelly's.

76 The points in Figure 2 show that precincts in Maricopa County where Joe Biden did well (upper right of the figure) are also precincts where Mark Kelly did well. And, precincts in Maricopa County where Joe Biden did less well (lower left) are similarly precincts where Mark Kelly did not do well. This clear regularity suggests that the relationship noted in the Bromberg Declaration between precinct turnout and Biden vote share is spurious and has nothing to do with voter fraud. Rather, the distribution of precincts across the county is such that smaller ones (namely, those with lower turnout in the 2020 election) tended to be consistently Democratic. There is noth-

ing anomalous about this correlation between political preferences and geography and nothing irregular.

G Allegations in the Bromberg Declaration of voter fraud beyond Arizona

77 Most of claims in the Bromberg Declaration do not directly concern Arizona, instead speaking to alleged voter fraud in Georgia (pp. 4-5), Pennsylvania (pp. 5-6) and Milwaukee, Wisconsin (pp. 6-8).

78 The number of fraudulent votes claimed in Bromberg Declaration is extensive. For example, the Declaration claims "that 105,639 fraudulent Biden ballots were added between Wednesday and Thursday of 11/05/2020 in Milwaukee alone" (p. 8). Total turnout in Milwaukee was 315,483 voters,[17] meaning that the Bromberg Declaration asserts that roughly one-third of Milwaukee's ballots were contaminated by fraud. There is nothing remotely close to a result like this in the literature on voter fraud that I have surveyed above.

79 None of what follows bears directly on the Bromberg Declaration's discussion of Maricopa County. However, the material below is nonetheless notable insofar as it shows that literally all of the claims in the Declaration about voter fraud—and not simply those concerning Arizona—do not follow from the analysis in the Declaration.

G.1 A model of voting and voter fraud

80 The Bromberg Declaration offers what its author calls two models of candidate vote share. One model assumes that there is no voter fraud (see equation (2) in the Declaration) and the second

[17] "SUMMARY REPORT," *City of Milwaukee Election Commission*, December 6, 2020, `https://city.milwaukee.gov/election/ElectionInformation/ElectionResults` (last accessed December 4, 2020).

that there is a form of voter fraud in which a some votes are switched from one candidate to another (see equation (3)). Henceforth I refer to a singular model in the Bromberg Declaration, by which I mean both the no-fraud and fraud-based models mentioned in this paragraph.

81 Two key assumptions render the model in the Bromberg Declaration of no use in the study of voter fraud.

G.2 An arbitrary assumption for the prior probability of fraud

82 Key to the technical exposition of the model in Bromberg Declaration is a parameter called p_F that denotes what is called the "prior probability of fraud." Intuitively, this prior probability of fraud is the probability of fraud in a jurisdiction that one would have assumed before (i.e., *prior* to) an election.

83 The Bromberg Declaration assumes that $p_F = 0.01$, meaning that there is a one percent chance of vote switching in a jurisdiction (p. 3).

84 The Bromberg Declaration provides no explanation, no justification, and no citations for its assumption about the likelihood of fraud. The number 0.01 is simply invented.

85 Sometimes scholars must make assumptions in their research. However, it is incumbent on such researchers to explore the consequences of their assumptions and to see if their results depend on a particular assumption or are robust to alternative assumptions. No such robustness checks appear in the Bromberg Declaration. I cannot conduct any robustness checks because, to the best of my knowledge, no computer code associated with the Declaration has been disclosed. Thus, the arbitrariness of the prior fraud parameter in Bromberg Declaration undermines any value that the model could have had.

G.3 Changes in candidate support among absentee ballots do not constitute

86 Underlying the model in Bromberg Declaration is the implicit assumption that there is no correlation between the timing of when a set of ballots was counted in November 2020 and the presidential votes on these ballots. The model, when it encounters temporal changes in a jurisdiction's presidential candidate support (i.e., ten hours after polls closed on November 3, Joe Biden's support changes from 42 percent to 44 percent) attributes these changes to fraud.

87 Intuitively speaking, this is because the model does not allow for the possibility that ballot counting is not completed uniformly across a jurisdiction, like a state. For example, the model rules out (with the exception of fraud) the possibility that ballots counted in the immediate aftermath of an election are different than those counted 24 hours later.

88 This assumption is contrary to what is known about contemporary American elections. In particular, Foley (2013) and Foley and Stewart III (2020) document what they call a "blue shift" in which a state's presidential results shift in the days after an election in a Democratic direction. The Bromberg Declaration is written as if the blue shift phenomenon simply does not exist.

89 The 2020 election was historic in its heavy use of mail-in ballots. However, Democrats were more likely to vote via mail than Republicans, and this was known well before November 3.[18] Give that some states counted absentee ballots in the days after November 3 (in particular Pennsylvania), this feature of the 2020 election certainly exaggerated the blue shift compared to what one would have expected had ballots been case in 2020 like they were in 2016.[19]

90 Ignoring the issue regarding the technical assumption about the prior fraud parameter noted above, the results in the Bromberg Declaration about Georgia, Pennsylvania, and Milwaukee, Wis-

[18] See "Huge Absentee Vote in Key States Favors Democrats So Far," *The New York Times*, October 10, 2020, available at `https://www.nytimes.com/2020/10/10/us/politics/early-voting-swing-states.html` (last accessed December 4, 2020).

[19] On Pennsylvania, see "Why Pennsylvania is still counting votes after Election Day," *ABCNews*, November 3, 2020, available at `https://abcnews.go.com/Politics/pennsylvania-counting-votes-election-day/story?id=73993649` (last accessed December 4, 2020).

consin are not examples of fraud. They can be easily rationalized by the blue shift.

G.4 Concluding thoughts about analyses beyond Arizona

91 Earlier I noted that the part of Bromberg Declaration that engages states other than Arizona does not bear directly on the claims made in this litigation. Nonetheless, I have now explained that all the Declaration's claims about voter fraud rest on false assumptions, either an assumption about a "theory" relating precinct size and presidential vote share (no such theory exists) or an assumption that when a ballot is counted is orthogonal to the presidential vote on it (which is known not to be the case).

92 None of the claims in Bromberg Declaration about voter fraud—and not simply those concerning Arizona—follow from the arguments made in the Declaration.

H Conclusion

93 This report evaluates the contention in the Bromberg Declaration that there was voter fraud in Maricopa County, Arizona in the 2020 presidential election.

94 The contention relies on a "theory" that does not exist and a misunderstanding of how in-person voting proceeded in Maricopa County county this past November. Namely, the Bromberg Declaration assumes that voters in the county cast in-person ballots in their precincts (of which there were 744), but in reality they did not, voting in-person in voting centers (of which there were 175). This misunderstanding of how Maricopa County voters cast ballots is a fatal flaw to the Declaration's analysis of the county, which was already flawed based on its reliance on a non-existent theory. In short, Bromberg Declaration contains no evidence whatsoever that there were any fraudulent ballots cast in Maricopa County in the 2020 General Election.

95 The Bromberg Declaration also contains no evidence whatsoever that there were any fraudulent ballots cast in Georgia, Pennsylvania, and the Milwaukee, Wisconsin. Its claims of voter fraud in these locales rest on a faulty assumption that when a ballot is counted has no bearing on the presidential candidate supported on it. In fact, it is known that ballots counted later in presidential elections tend to be Democratic, and this fact undermines the Bromberg Declaration's analysis of Georgia, Pennsylvania, and Milwaukee, Wisconsin.

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Publications

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"Alvin Greene? Who? How did he win the United States Senate nomination in South Carolina?" (with Joseph Bafumi, Seth J. Hill, and Jeffrey B. Lewis). *Election Law Journal* 11(4): 358-379. 2012.

"Souls to the Polls: Early Voting in Florida in the Shadow of House Bill 1355" (with Daniel A. Smith). *Election Law Journal* 11(3): 331-347. 2012.

"Leapfrog Representation and Extremism: A Study of American Voters and their Members in Congress" (with Joseph Bafumi). *American Political Science Review* 104(3): 519-542. 2010.

"Economic Crisis, Iraq, and Race: A Study of the 2008 Presidential Election" (with Seth J. Hill and Jeffrey B. Lewis). *Election Law Journal* 9(1): 41-62. 2010

"Prejudice, Black Threat, and the Racist Voter in the 2008 Presidential Election" (with Joseph Bafumi). *Journal of Political Marketing* 8(4): 334-348. 2009.

"Voting Technology and the 2008 New Hampshire Primary" (with Walter R. Mebane, Jr., and Jonathan N. Wand). *William & Mary Bill of Rights Journal* 17(2): 351-374. 2008.

"Ballot Formats, Touchscreens, and Undervotes: A Study of the 2006 Midterm Elections in Florida" (with Laurin Frisina, James Honaker, and Jeffrey B. Lewis). *Election Law Journal* 7(1): 25-47. 2008.

"Gerrymanders and Theories of Lawmaking: A Study of Legislative Redistricting in Illinois" (with Alan E. Wiseman). *Journal of Politics* 70(1): 151-167. 2008.

"Estimating the Effect of Redistricting on Minority Substantive Representation" (with David Epstein, Sharyn O'Halloran, and David Park). *Journal of Law, Economics, and Organization* 23(2): 499-518. 2007.

"Did Ralph Nader Spoil Al Gore's Presidential Bid? A Ballot-Level Study of Green and Reform Party Voters in the 2000 Presidential Election" (with Jeffrey B. Lewis). *Quarterly Journal of Political Science* 2(3): 205-226. 2007.

"Assessing Partisan Bias in Voting Technology: The Case of the 2004 New Hampshire Recount" (with Jonathan N. Wand). *Electoral Studies* 26(2): 247-261. 2007.

"Term Limits and Pork" (with Kenneth W. Shotts). *Legislative Studies Quarterly* 31(3): 383-404. 2006.

"Black Candidates and Black Voters: Assessing the Impact of Candidate Race on Uncounted Vote Rates" (with Jasjeet S. Sekhon). *Journal of Politics* 67(1): 154–177. 2005.

"Government Redistribution in the Shadow of Legislative Elections: A Study of the Illinois Member Initiatives Grant Program" (with Brett A. Theodos). *Legislative Studies Quarterly* 24(2): 287–312. 2004.

"Studying Dynamics in Legislator Ideal Points: Scale Matters." *Political Analysis* 12(2): 182–190. 2004.

"Logical Inconsistency in EI-based Second Stage Regressions" (with Kenneth W. Shotts). *American Journal of Political Science* 48(1): 172–183. 2004.

"Overvoting and Representation: An examination of overvoted presidential ballots in Broward and Miami-Dade Counties" (with Jasjeet S. Sekhon). *Electoral Studies* 22: 21–47. 2003.

"Using Ecological Inference Point Estimates as Dependent Variables in Second Stage Linear Regressions" (with Kenneth W. Shotts). *Political Analysis* 11(1): 44–64. 2003.

"Cross-contamination in EI-R" (with Kenneth W. Shotts). *Political Analysis* 11(1): 77–85. 2003.

"A Consensus on Second Stage Analyses in Ecological Inference Models" (with Christopher Adolph, Gary King, and Kenneth W. Shotts). *Political Analysis* 11(1): 86–94. 2003.

"The Butterfly Did It: The Aberrant Vote for Buchanan in Palm Beach County, Florida" (with Jonathan N. Wand, Kenneth W. Shotts, Jasjeet S. Sekhon, Walter R. Mebane, Jr., and Henry E. Brady). *American Political Science Review* 95(4): 793–810. 2001.

"Interest Group Ratings and Regression Inconsistency." *Political Analysis* 9(3): 260–274. 2001.

"Leadership and Pandering: A Theory of Executive Policymaking" (with Brandice Canes–Wrone and Kenneth W. Shotts). *American Journal of Political Science* 45(3): 532–550. 2001.

"Law and Data: The Butterfly Ballot Episode" (with Henry E. Brady, Walter R. Mebane, Jr., Jasjeet S. Sekhon, Kenneth W. Shotts, and Jonathan N. Wand). *PS: Political Science & Politics* 34(1): 59–69. 2001.

"Cutpoint–Adjusted Interest Group Ratings." *Political Analysis* 8(4): 346–366. 2000.

"Estimating the Economic Impact of Political Party Competition in the 1992 British Election." *American Journal of Political Science* 44(2): 326–337. 2000.

"Artificial Extremism in Interest Group Ratings and the Preferences versus Party Debate." *Legislative Studies Quarterly* 24(4): 525–542. 1999.

"Post–Estimation Uncertainty in Limited Dependent Variable Models." *Political Analysis* 8(1): 83–98. 1999.

"Measurement of Political Effects in the United States Economy: A Study of the 1992 Presidential Election" (with James Lavin, Donald Cram, and Jay Silver). *Economics & Politics* 11(1): 51–81. 1999.

"The Influence of Family Regulation, Connection, and Psychological Autonomy on Six Measures of Adolescent Functions" (with Melissa R. Herman, Sanford M. Dornbusch, and Jerald R. Herting). *Journal of Adolescent Research* 12(1): 34–67. 1997.

Book chapters

"Wait Times and Voter Confidence: A Study of the 2014 General Election in Miami-Dade County" (with Daniel A. Smith, Wendy Serra, and Joseph Bafumi). In *Races, Reforms, & Policy: Implications of the 2014 Midterm Elections*, Christopher J. Galdieri, Tauna S. Sisco, and Jennifer C. Lucas, eds. Akron, OH: University of Akron Press. 2017.

"A Dynamic Model of Multidimensional Collective Choice" (with David P. Baron). In *Computational Models in Political Economy*, Ken Kollman, John H. Miller, and Scott E. Page, eds. Cambridge, MA: The MIT Press. 2003.

"Law and Data: The Butterfly Ballot Episode" (with Henry E. Brady, Walter R. Mebane Jr., Jasjeet Singh Sekhon, Kenneth W. Shotts, and Jonathan Wand). In *The Longest Night: Polemics and Perspectives on Election 2000*, Arthur J. Jacobson and Michel Rosenfeld, eds. Berkeley: University of California Press. 2002.

Book reviews

The Timeline of Presidential Elections: How Campaigns Do (and Do Not) Matter, Robert S. Erikson and Christopher Wlezien. *Political Science Quarterly* 128(3): 552-553. 2013.

Voting Technology: The Not-So-Simple Act of Casting a Ballot, Paul S. Herrnson, Richard G. Niemi, Michael J. Hanmer, Benjamin B. Bederson, and Frederick C. Conrad. *Review of Policy Research* 25(4): 379-380. 2008.

Other publications

"In two political battlegrounds, thousands of mail-in ballots are on the verge of being rejected" (with Daniel A. Smith). *The Conversation*, October 23, 2020. Available at `https://theconversation.com/in-two-political-battlegrounds-thousands-of-mail-in-ballots-are-on-the-verge-of-being-rejected-148616`.

"Rejected mail ballots pile up in Florida" (with Daniel A. Smith). *Tampa Bay Times*, October 16, 2020. Available at `https://www.tampabay.com/opinion/2020/10/16/rejected-mail-ballots-pile-up-in-florida-column`.

"Minor postal delays could disenfranchise thousands of Florida vote-by-mail voters" (with Daniel A. Smith). *Tampa Bay Times*, August 14, 2020. Available at `https://www.tampabay.com/opinion/2020/08/14/minor-postal-delays-could-disenfranchise-thousands-of-florida-vote-by-mail-voters-column`.

"Want to know how many people have the coronavirus? Test randomly" (with Daniel N. Rockmore). *The Conversation*, April 13, 2020. Available at `https://theconversation.com/want-to-know-how-many-people-have-the-coronavirus-test-randomly-135784`.

"If more states start using Ohio's system, how many voters will be purged?" (with Daniel A. Smith). *The Washington Post*, Monkey Cage, June 17, 2018.

"Do we have a right not to vote? The Supreme Court suggests we don't" (with Daniel A. Smith). *New York Daily News*, June 12, 2018.

"Nearly 4 million black voters are missing. This is why" (with David Cottrell, Javier M. Rodriguez, and Daniel A. Smith). *The Washington Post*, Monkey Cage, April 11, 2018.

"We can't find any evidence of voting fraud in New Hampshire" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, February 28, 2017.

"We checked Trump's allegations of voter fraud. We found no evidence at all" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, December 2, 2016.

"High ballot rejection rates should worry Florida voters" (with Daniel A. Smith). *Tampa Bay Times*, October 28, 2012.

"Logistic Regression." *The Encyclopedia of Political Science*, George Thomas Kurian, James E. Alt, Simone Chambers, Geoffrey Garrett, Margaret Levi, and Paula D. McClain, eds., Washington, D.C.: CQ Press. 2010.

"Using XEmacs Macros to Process ASCII Data Files." *The Political Methodologist* 13(2): 13–18. 2005.

"Ohio 2004 Election: Turnout, Residual Votes and Votes in Precincts and Wards" (with Walter R. Mebane, Jr.), in "Democracy At Risk: The 2004 Election in Ohio," report published by the Democratic National Committee. 2005.

"Poisson Regression." *The Encyclopedia of Social Science Research Methods*, Alan Bryman, Michael Lewis-Beck, and Tim Futing Liao, eds. Thousand Oaks, CA: Sage Publications, 2003.

"Pork barrel race to the bottom" (with Brett A. Theodos). *Illinois Issues* 29(2): 22–23. 2003.

"Teaching Introductory Probability Theory." *The Political Methodologist* 10(2): 2–4. 2002.

"Ballot cost Gore thousands of votes" (with Henry E. Brady and Jonathan N. Wand). *The San Diego Union–Tribune*, p. G3, November 19, 2000.

Work in progress

"Residual votes in the 2020 election in Georgia" (with David Cottrell, Felix E. Herron, and Daniel A. Smith).

"Vote-by-mail ballot rejection and experience with mail-in voting" (with David Cottrell and Daniel A. Smith).

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida" (with Michael D. Martinez and Daniel A. Smith).

Awards

Best Paper Award, State Politics and Policy Section, 2013 Annual Meeting of the American Political Science Association. *Getting Your Souls to the Polls: The Racial Impact of Reducing Early In-Person Voting in Florida* (with Daniel A. Smith).

Grants

Committee for Scholarly Innovation and Advancement Awards, Dartmouth College, February, 2014. Project title: "The Dynamics of Voting Lines in Miami-Dade County." Financial support: $32,000.

The Rockefeller Center for Public Policy and the Social Sciences, Dartmouth College, May, 2006. Project title: "Large Scale Survey of Americans in Multiple Congressional Districts." Financial support: $8,500.

National Science Foundation, SES-041849, July, 2004. Project title: "A Ballot-Level Study of Intentional and Unintentional Abstention in Presidential Election Voting." Financial support: $65,749.

Nelson A. Rockefeller Center for the Social Sciences, Dartmouth College, January, 2004. Project title: "Intentional Invalid Votes in Leon County, Florida." Financial support: $1,115.

American Enterprise Institute, August, 1999. Project title: "Tenure in Office and Congressional Voting" (with Kenneth W. Shotts). Financial support: $182,500.

University Research Grants Committee, Northwestern University, February, 1999. Project Title: "Representation, Policy Uncertainty, and Divided Government." Financial support: $4,087.

Stanford University Graduate School of Business, 1997–1998 Academic Year. Dissertation Research Grant.

Recent conference presentations

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," 2019 Annual Meeting of the American Political Science Association, Washington, DC.

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," Election Sciences, Reform, and Administration conference, 2019, University of Pennsylvania.

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida," Congressional Elections & the Presidency: Politics in 2018, March 30, 2019, Saint Anselm College, Manchester NH.

"Estimating the Differential Effects of Purging Inactive Registered Voters," 2018 Annual Meeting of the American Political Science Association, Boston MA.

"Estimating the Differential Effects of Purging Inactive Registered Voters," Election Sciences, Reform, and Administration conference, 2018, University of Wisconsin-Madison.

Keynote address, "Mortality, Incarceration, and African-American Disenfranchisement," *Balancing the Scales: The United States in an Age of Inequality*, November 11, 2016, John F. Kennedy Institute, Freie Universität Berlin.

"Missing Black Men and Representation in American Political Institutions," 2016 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

Invited seminars

University of Iowa, 1999
Boston University, 2000
Dartmouth College, 2000
Harvard University, 2000
University of Minnesota, 2000
University of Rochester, 2000
University of Wisconsin, Madison, 2000
Yale University, 2000
Columbia University, 2001
University of California, Berkeley, 2002
University of Illinois, 2002
Brown University, 2003
Temple University, 2003
University of Chicago, 2003
New York University, 2004
Princeton University, 2004
University of Michigan, 2005
George Washington University, 2006
Emory University, 2006
Harvard University, 2007
Loyola Law School, 2007
Columbia University, 2007
University of Chicago, 2007
Yale University, 2007
Stanford University, 2008
Columbia University, 2008
Northwestern University, 2008
Princeton University, 2008
Duke University, 2009
Hertie School of Governance, 2010
Emory University, 2010
University of Mannheim, 2011
University of Heidelberg, 2011
University of Passau, 2012
University of Göttingen, 2012
Freie Universität Berlin, 2012
Laval University, 2012
University of Montreal, 2012
Middlebury College, 2013
University of Illinois, Champaign, 2013
University of Illinois, Chicago, 2013
University of Wisconsin, Madison, 2013
Yale University, 2014
University of Virginia, 2015
University of California, San Diego, 2015
American University, 2015
Massachusetts Institute of Technology, 2015
Princeton University, 2015
University of California, Los Angeles, 2016
The Ohio State University, 2016
Freie Universität Berlin, 2016
Deutsch-Amerikanisches Institut, Nürnberg, 2017
Universität Bonn, 2018
Freie Universität Berlin, 2018
Northwestern University, 2018
University of Pittsburgh, 2019
University of Salzburg, 2019
Universität Bonn, 2019
Freie Universität Berlin, 2019
Humboldt University, 2019
University of North Carolina, Charlotte, 2019

Professional activities

Division Chair, Representation and Electoral Systems, 2017 Annual Meeting of the Midwest Political Science Association.

Associate Editor, *Research & Politics*. November, 2016–present.

Editorial Board, *American Politics Research*, September, 2015–present.

Editorial Board, *Political Analysis*, January, 2010–present.

Editorial Board, *USENIX Journal of Election Technology and Systems*, March 2013–June 2016.

Editorial Board, *American Political Science Review*, 2010–2012.

Editorial Board, *American Journal of Political Science*, 2006–2009.

"Race, Voting Procedures, and New Developments in Voting Rights," panel organized for the 2013 Annual Meeting of the Midwest Political Science Association.

Division Chair, Formal Theory, 2007 Annual Meeting of the American Political Science Association.

Co-editor, *The Political Methodologist*, Fall 2004–Spring 2006.

Publications Committee, Society for Political Methodology, 2005–2006, 2015–present.

Dartmouth College activities

Chair, American Politics Search Committee, Department of Government, August 2018–March 2019.

Chair, Committee on Priorities, July 2015–June 2016.

Committee on Priorities, July 2013–June 2015, Fall 2019–present.

American politics search committee, Department of Government, August 2014–December 2014.

Research Computing Director search committee, October 2013–October 2014.

Senior Search Committee, Department of Government, 2013.

Research Computing Advisory Committee, Spring 2013.

Chair, American Politics Search Committee, Department of Government, 2012-2013.

Recruitment Planning Committee, Department of Government, 2010 and 2012-2013.

Committee on Standards, 2008-2010.

Task Force on Collaboration and Social Software, 2007-2008.

Biostatistics search committee, Dartmouth Medical School, 2006-2007.

Research Computing Oversight Committee, 2006.

Council on Computing, 2005-2007.

Clement Chair search committee, Department of Government, 2005-2006.

Northwestern University activities

Program Committee, Mathematical Methods in the Social Sciences, 2001-2002.

American Politics Search Committee, Department of Political Science, 2000–2001, 2001-2002.

Formal Theory Search Committee, Department of Political Science, 1997–1998.

Teaching interests

Statistical methods: introductory and applied statistics, research design, computing in R.

American politics: representation, election irregularities, election administration.

Political economy: game theory.

Reviewer for

American Journal of Political Science
American Political Science Review
American Politics Quarterly
American Politics Review
British Journal of Political Science
Cambridge University Press
Chapman & Hall
Congress & the Presidency
Du Bois Review
Economics & Politics
Election Law Journal
Electoral Studies
Emerging Markets Finance & Trade
Interest Groups & Advocacy
Int'l Journal of Environmental Research and Public Health
John Wiley & Sons, Inc.
Journal of Legal Studies
Journal of Money, Credit and Banking
Journal of Politics
Journal of Public Economics
Journal of Race, Ethnicity, and Politics
Journal of Theoretical Politics
Journal of Women, Politics & Policy
Legislative Studies Quarterly
The National Science Foundation
Nonprofit Policy Forum
Perspectives on Politics
Policy Studies Journal
Political Analysis
Political Behavior
Political Research Quarterly
Political Science Quarterly
Political Science Research and Methods
Political Studies
Politics & Gender
Politics, Groups, and Identities
Polity
Prentice Hall Higher Education Group
Proceedings of the National Academy of Sciences
Public Administration
Public Choice
Public Opinion Quarterly
PS: Political Science and Politics
Quarterly Journal of Economics
Quarterly Journal of Political Science
Race and Social Problems
Science Advances
The Social Science Journal
Social Science Quarterly
Sociological Methods & Research
The Sociological Quarterly
Springer
State Politics & Policy Quarterly
Time-Sharing Experiments for the Social Sciences
The University of Michigan Press
W. W. Norton & Company
World Politics

Foreign language

German: C1 (telc Prüfung, Ausstellung July 27, 2017).

Other employment

Intelligence Analyst and Military Officer, United States Air Force, Foreign Technology Division, Wright–Patterson Air Force Base, 1989–1992.

B Maricopa County description of voting center

96 This appendix displays part of the Maricopa County elections department page that explains to eligible voters that they can vote in any voting center in the county. The source of this image is `http://web.archive.org/web/20201104002036/https://recorder.maricopa.gov/pollingplace/` (last accessed December 4, 2020).

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MARICOPA COUNTY
Elections Department

MENU

English Content (default.aspx)
Contenido Español (default_es.aspx)

Where Do I Vote?

Election Day is Tuesday, November 3. There are **no** assigned locations. Maricopa County voters can drop off an early ballot or vote in person at any Vote Center. Visit BeBallotReady.Vote (http://web.archive.org/web/20201104002036/http://beballotready.vote/) to find out if you're registered, what's on your ballot and more. All Vote Centers in the list below are open from 6 a.m. – 7 p.m. on Election Day. If you have any questions please call us at (602) 506-1511.

Exhibit 4

Clerk of the Superior Court
*** Filed ***
12/4/2020 4:05 p m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

KELLI WARD

DENNIS I WILENCHIK

v.

CONSTANCE JACKSON, et al.

SARAH R GONSKI

ROOPALI HARDIN DESAI
JOSEPH EUGENE LA RUE
DAVID SPILSBURY
ROY HERRERA
DANIEL A ARELLANO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE WARNER
BRUCE SPIVA
PERKINS COIE LLP
700 THIRTEENTH STREET NW
SUITE 600
WASHINGTON DC 20005

MINUTE ENTRY

East Court Building – Courtroom 414

9:15 a.m. This is the time set for a continued Evidentiary Hearing on Plaintiff's anticipated election contest petition via GoToMeeting.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

The following parties/counsel are present virtually through GoToMeeting and/or telephonically:

- Plaintiff Kelli Ward is represented by counsel, John D. Wilenchik.

- Defendants Constance Jackson, Felicia Rotellini, Fred Yamashita, James McLaughlin, Jonathan Nez, Luis Alberto Heredia, Ned Norris, Regina Romero, Sandra D. Kennedy, Stephen Roe Lewis, and Steve Gallardo (collectively, the "Biden Elector Defendants") are represented by counsel, Sarah Gonski, Bruce Spiva (*pro hac vice*), Daniel Arellano, and Roy Herrera.

- Intervenors Adrian Fontes (in his official capacity as Maricopa County Recorder) and Maricopa County Board of Supervisors (collectively, "County Intervenors") and are represented by counsel, Thomas Liddy, Emily Craiger, and Joseph La Rue.

- Intervenor Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Rooplai Desai and Kristen Yost. State Election Director Sambo "Bo" Dul is also present.

Counsel for Biden Elector Defendants addresses the court as to the court's ruling denying any Rule 50 motion practice after the conclusion of Plaintiff's case. Discussion is held thereon and counsel for Biden Elector Defendants states his position on the record. The court affirms its prior ruling denying the request for any Rule 50 motion practice.

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

Biden Elector Defendants' Case:

Linton Mohammed is sworn and testifies.

Biden Elector Defendants' exhibit 16 is received in evidence.

Linton Mohammed is excused.

Biden Elector Defendants rest.

Intervenor Secretary of State's Case:

Sambo "Bo" Dul is sworn and testifies.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

Intervenor Secretary of State's exhibit 32 is received in evidence.

Sambo "Bo" Dul is excused.

Intervenor Secretary of State rests.

LET THE RECORD REFLECT that the court notes its prior acquaintance with County Intervenors' witness, Reynaldo Valenzuela, due to election matters while serving previously as the civil presiding judge.

County Intervenors' Case:

Reynaldo Valenzuela is sworn and testifies.

County Intervenors' exhibit 29 is received in evidence.

10:31 a.m. The court stands at recess.

10:41 a.m. Court reconvenes with the parties and respective counsel present.

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

Reynaldo Valenzuela continues to testify.

County Intervenors' exhibit 30 is received on evidence.

Reynaldo Venezuela is excused.

Scott Jarrett is recalled and testifies further.

Scott Jarrett is excused.

County Intervenors rest.

Plaintiff's Rebuttal:

Liesl Emerson is sworn and testifies.

Liesl Emerson is excused.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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Plaintiff rests.

11:30 a.m. The court stands at recess.

11:36 a.m. Court reconvenes with the parties and respective counsel present.

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

Closing arguments are presented.

Based on the testimony and evidence presented,

IT IS ORDERED taking this matter under advisement with a written ruling to be issued as a "**LATER**:" to this minute entry.

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

LET THE RECORD FURTHER REFLECT counsel indicate on the record that the courtroom clerk may dispose of Plaintiff's exhibits 2 through 13 and 15; County Intervenors' exhibit 21; and Intervenor Secretary of State's exhibits 33 and 34 not offered or received in evidence.

12:22 p.m. Matter concludes.

LATER:

Based on the evidence presented, the Court makes the following findings, conclusions, and orders. For reasons that follow, the relief requested in the Petition is denied.

1. Background.

On November 30, 2020, Governor Ducey certified the results of Arizona's 2020 general election, and the Biden/Harris ticket was declared the winner of Arizona's 11 electoral votes. The same day, Plaintiff filed this election challenge under A.R.S. § 16-672. In order to permit this matter to be heard and appealed (if necessary) to the Arizona Supreme Court before the Electoral College meets on December 14, 2020, the Court held an accelerated evidentiary hearing on December 3 and 4, 2020.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

2. The Burden Of Proof In An Election Contest.

A.R.S. § 16-672 specifies five grounds on which an election may be contested, three of which are alleged here:

> A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:
>
> 1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.
>
> . . .
>
> 4. On account of illegal votes.
>
> 5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

A.R.S. § 16-672(A)(1). Arizona law provides two remedies for a successful election contest. One is setting aside the election. A.R.S. § 16-676(B). The other is to declare the other candidate the winner if "it appears that a person other than the contestee has the highest number of legal votes." A.R.S. § 16-676(C).

The Plaintiff in an election contest has a high burden of proof and the actions of election officials are presumed to be free from fraud and misconduct. *See Hunt v. Campbell*, 19 Ariz. 254, 268, 169 P. 596, 602 (1917) ("the returns of the election officers are prima facie correct and free from the imputation of fraud"); *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986) ("One who contests an election has the burden of proving that if illegal votes were cast the illegal votes were sufficient to change the outcome of the election."). A plaintiff alleging misconduct must prove that the misconduct rose to the level of fraud, or that the result would have been different had proper procedures been used. *Moore*, 148 Ariz. at 159, 713 P.2d

at 821. "[H]onest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).

These standards derive, in large part, from Arizona's constitutional commitment to separation of powers. Ariz. Const. Art. 3. The State Legislature enacts the statutes that set the rules for conducting elections. The Executive Branch, including the Secretary of State and county election officials, determine how to implement those legislative directives. These decisions are made by balancing policy considerations, including the need to protect against fraud and illegal voting, the need to preserve citizens' legitimate right to vote, public resource considerations, and—in 2020—the need to protect election workers' health. It is not the Court's role to second-guess these decisions. And for the Court to nullify an election that State election officials have declared valid is an extraordinary act to be undertaken only in extraordinary circumstances.

3. <u>The Evidence Does Not Show Fraud Or Misconduct</u>.

A.R.S. § 16-672(A)(1) permits an election contest "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." Plaintiff alleges misconduct in three respects. First is that insufficient opportunity was given to observe the actions of election officials. The Court previously dismissed that claim as untimely. *See Lubin v. Thomas*, 213 Ariz. 496, 497, 144 P.3d 510, 511 (2006) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice."). The observation procedures for the November general election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured.

Second, Plaintiff alleges that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file. Under Arizona law, voters who vote by mail submit their ballot inside an envelope that is also an affidavit signed by the voter. Election officials review all mail-in envelope/affidavits to compare the signature on them with the signature in voter registration records. If the official is "satisfied that the signatures correspond," the unopened envelope is held until the time for counting votes. If not, officials attempt to contact the voter to validate the ballot. A.R.S. § 16-550(A).

This legislatively-prescribed process is elaborated on in the Secretary of State's Election Procedures Manual. The signature comparison is just one part of the verification process. Other

safeguards include the fact that mail-in ballots are mailed to the voter's address as listed in voter registration records, and that voters can put their phone number on the envelope/affidavit, which allows election officials to compare that number to the phone number on file from voter registration records or prior ballots.

Maricopa County election officials followed this process faithfully in 2020. Approximately 1.9 million mail-in ballots were cast and, of these, approximately 20,000 were identified that required contacting the voter. Of those, only 587 ultimately could not be validated.

The Court ordered that counsel and their forensic document examiners could review 100 randomly selected envelope/affidavits to do a signature comparison. These were envelope/affidavits as to which election officials had found a signature match, so the ballots were long ago removed and tabulated. Because voter names are on the envelope/affidavits, the Court ordered them sealed. But because the ballots were separated from the envelope/affidavits, there is no way to know how any particular voter voted. The secrecy of their votes was preserved.

Two forensic document examiners testified, one for Plaintiff and one for Defendants. The process forensic document examiners use to testify in court for purposes of criminal guilt or civil liability is much different from the review Arizona election law requires. A document examiner might take hours on a single signature to be able to provide a professional opinion to the required degree of certainty.

Of the 100 envelope/affidavits reviewed, Plaintiff's forensic document examiner found 6 signatures to be "inconclusive," meaning she could not testify that the signature on the envelope/affidavit matched the signature on file. She found no sign of forgery or simulation as to any of these ballots.

Defendants' expert testified that 11 of the 100 envelopes were inconclusive, mostly because there were insufficient specimens to which to compare them. He too found no sign of forgery or simulation, and found no basis for rejecting any of the signatures.

These ballots were admitted at trial and the Court heard testimony about them and reviewed them. None of them shows an abuse of discretion on the part of the reviewer. Every one of them listed a phone number that matched a phone number already on file, either through voter registration records or from a prior ballot. The evidence does not show that these affidavits are fraudulent, or that someone other than the voter signed them. There is no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots.

Third, Plaintiff alleges errors in the duplication of ballots. Arizona law requires election officials to duplicate a ballot under a number of circumstances. One is where the voter is overseas and submits a ballot under UOCAVA, the Uniformed And Overseas Citizens Absentee Voting Act. Another is where the ballot is damaged or otherwise cannot be machine-tabulated. When a duplicate is necessary, a bipartisan board creates a duplicate ballot based on the original. A.R.S. § 16-621(A). In 2020, Maricopa County had 27,869 duplicate ballots out of more than 2 million total ballots. The vast majority of these were either mail-in ballots or UOCAVA ballots. 999 of them came from polling places.

The Court ordered that counsel could review 100 duplicate ballots. Maricopa County voluntarily made another 1,526 duplicate ballots available for review. These ballots do not identify the voter so, again, there is no way to know how any individual voter voted. Of the 1,626 ballots reviewed, 9 had an error in the duplication of the vote for president.

Plaintiff called a number of witnesses who observed the duplication process as credentialed election observers. There was credible testimony that they saw errors in which the duplicated ballot did not accurately reflect the voter's apparent intent as reflected on the original ballot. This testimony is corroborated by the review of the 1,626 duplicate ballots in this case, and it confirms both that there were mistakes in the duplication process, and that the mistakes were few. When mistakes were brought to the attention of election workers, they were fixed.

The duplication process prescribed by the Legislature necessarily requires manual action and human judgment, which entail a risk of human error. Despite that, the duplication process for the presidential election was 99.45% accurate. And there is no evidence that the inaccuracies were intentional or part of a fraudulent scheme. They were mistakes. And given both the small number of duplicate ballots and the low error rate, the evidence does not show any impact on the outcome.

The Court finds no misconduct, no fraud, and no effect on the outcome of the election.

4. <u>The Evidence Does Not Show Illegal Votes</u>.

A.R.S. § 16-672(A)(2) permits an election contest "[o]n account of illegal votes." Based on the facts found above, the evidence did not prove illegal votes, much less enough to affect the outcome of the election. As a matter of law, mistakes in the duplication of ballots that do not affect the outcome of the election do not satisfy the burden of proof under Section 16-672(A)(2).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

5. The Evidence Does Not Show An Erroneous Vote Count.

A.R.S. § 16-672(A)(5) permits an election contest on the ground that, "by reason of erroneous count of votes" the candidate certified as the winner "did not in fact receive the highest number of votes." Plaintiff has not proven that the Biden/Harris ticket did not receive the highest number of votes.

6. Orders.

Based on the foregoing,

IT IS ORDERED denying the relief requested in the Petition.

IT IS FURTHER ORDERED denying the request to continue the hearing and permit additional inspection of ballots.

IT IS FURTHER ORDERED, as required by A.R.S. § 16-676(B), confirming the election.

IT IS FURTHER ORDERED that any request for costs and/or attorneys' fees be filed, and a form of final judgment be lodged, no later than January 5, 2020. If none of these is filed or lodged, the Court will issue a minute entry with Rule 54(c) language dismissing all remaining claims.

The Court finds no just reason for delay and enters this partial final judgment under Ariz. R. Civ. P. 54(b). The Court makes this finding for purposes of permitting an immediate appeal to the Arizona Supreme Court.

/ s / RANDALL H. WARNER

JUDGE OF THE SUPERIOR COURT

Exhibit 5

FILED
December 4, 2020
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN SUPREME COURT

A20-1486

Tyler Kistner, et al.,

Petitioners,

vs.

Steve Simon, in his official capacity as the
Minnesota Secretary of State and as a member of the
State Canvassing Board, Margaret H. Chutich,
Gordon L. Moore, III, Regina Chu, and Christian Sande,
in their official capacity as members of the
State Canvassing Board,

Respondents.

ORDER

On November 24, 2020, petitioners Tyler Kistner, et al., filed a petition under Minn. Stat. § 204B.44 (2018), asking this court to temporarily restrain the State Canvassing Board from certifying the results of the general election held in Minnesota on November 3, 2020, and to require a full recount of the federal and state offices on the ballot for the 2020 general election, conducted with adequate public access and in compliance with Minnesota law. That same day, we ordered the petitioners to file proof showing that the petition was served on the named respondents and that they had complied with the service requirements set forth in Minnesota Statutes § 204B.44(b). We also directed the parties to file briefs addressing the issues of laches, mootness, and finality. On November 30, 2020, we granted the motion of the Minnesota Democratic-Farmer-Labor Party (Minnesota DFL) to intervene in this proceeding.

A petition may be filed to correct certain "errors, omissions, or wrongful acts which have occurred or are about to occur," including "any wrongful act, omission, or error of any election judge . . . or any other individual charged with any duty concerning an election." Minn. Stat. § 204B.44(a)(4). The petitioners have the burden to show by a preponderance of the evidence that relief under section 204B.44 is required. *Weiler v. Ritchie*, 788 N.W.2d 879, 882–83 (Minn. 2010).

Petitioners assert three claims: (1) under the First and Fourteenth Amendments to the United States Constitution and Article I of the Minnesota Constitution, (2) under Article III of the Minnesota Constitution, the Separation of Powers Clause; and (3) under the Due Process Clauses of the United States and Minnesota Constitutions, U.S. Const. amend. XIV, Minn. Const., art. I, § 7. Counts I and II rest on challenges to consent decrees entered by the district court that suspended the witness requirement for absentee and mail ballots for the 2020 general election. *See LaRose v. Simon*, No. 62-CV-20-3149, Order (Ramsey Cty. Dist. Ct. filed Aug. 3, 2020); *NAACP-Minn. v. Simon*, No. 62-CV-20-3625, Order (Ramsey Cty. Dist. Ct. filed Aug. 3, 2020); *see also* Minn. Stat. § 203B.07, subd. 3 (2018) (explaining the process for completing the ballot in the presence of another individual). Count III challenges the processes used in some counties for conducting the postelection review. *See* Minn. Stat. § 206.89 (2018).

Respondents—the Secretary of State and the members of the State Canvassing Board—contend that petitioners' claims are barred by laches because they could have sued or asserted these claims earlier in the election process. Similarly, the Minnesota DFL argues that petitioners' delay is inexcusable because their challenges to the procedures that

governed the 2020 general election in Minnesota, including the postelection reviews, should have been asserted earlier.

Petitioners disagree. They assert that they did not "slumber" in their rights, but instead filed their petition within a matter of days after the last postelection review was completed, on November 20, 2020.

Laches is an equitable doctrine applied to " 'prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay.' " *Winters v. Kiffmeyer*, 650 N.W.2d 167, 169 (Minn. 2012) (quoting *Aronovitch v. Levy*, 56 N.W.2d 570, 574 (Minn. 1953)). "The first step in a laches analysis is to determine if petitioner unreasonably delayed asserting a known right." *Monaghen v. Simon*, 888 N.W.2d 324, 329 (Minn. 2016). We have insisted that petitioners move expeditiously under section 204B.44 because the time constraints associated with elections demand diligence in asserting known rights. *See, e.g.*, *Trooien v. Simon*, 918 N.W.2d 560, 561 (Minn. 2018) ("The orderly administration of elections does not wait for convenience.").

Although petitioners assert that the petition was filed shortly after the postelection reviews were completed, their first two claims focus on events that pre-date those reviews, including the suspension of the witness requirement for absentee ballots in the general election or other events that occurred at early voting locations before November 3, 2020. The suspension of the witness requirement was publicly announced in Minnesota well before voting began on September 18, 2020. It was the subject of two proceedings in Ramsey County District Court, followed by consolidated appeals in this court. *LaRose & NAACP-Minn. v. Simon*, Nos. 62-CV-20-3149, 62-CV-20-3265, *appeals filed*, Nos. A20-

1040, A20-1041 (Aug. 10, 2020). Given the undisputed public record regarding the suspension of the witness requirement for absentee and mail ballots, petitioners had a duty to act well before November 3, 2020, to assert claims that challenged that procedure; asserting these claims 2 months after voting started, 3 weeks after voting ended, and less than 24 hours before the State Canvassing Board met to certify the election results is unreasonable. We also must consider the impact of petitioners' requested relief on election officials, candidates, and voters who participated in the 2020 general election knowing that the witness requirement was suspended. *Clark v. Pawlenty*, 755 N.W.2d 293, 301 (Minn. 2008). Petitioners' proposed recount of the entirety of the 2020 general election results would cast an unacceptable degree of uncertainty over the election, potentially leaving Minnesotans without adequate elected representation. The proposed full recount, regardless of the vote difference between candidates, *see* Minn. Stat. § 204C.35, subd. 1(b) (2018) (mandating a recount only with certain margins of difference), would impose unacceptable burdens on voters and election officials alike. Counts I and II must therefore be dismissed.

Count III of the petition focuses almost exclusively on the postelection reviews that were conducted after November 3, 2020. *See* Minn. Stat. § 206.89, subd. 2 (prohibiting the start of these reviews "before the 11th day after the state general election"). The facts available to us do not clearly establish that petitioners could have asserted this claim sooner. Laches therefore may not be applicable to this claim.

Count III must nonetheless be dismissed. Minnesota Statutes § 204B.44(b) requires the petitioner to serve the petition on the election official charged with a wrongful act. It is the duty of county auditors or other county or local officials to conduct postelection

reviews. *See* Minn. Stat. § 206.89, subds. 1–2, 3. Consistent with this statutory duty, petitioners alleged in connection with their challenges to these reviews that wrongful acts and errors were committed by "county officials." Thus, by their own allegations and under the plain language of section 204B.44(b), petitioners were required to serve *county* election officials with a copy of the petition. Serving the Secretary of State, alone, does not suffice. At the very least, petitioners should have served the petition on the specific county officials named in their petition and supporting affidavits. These election officials, not the Secretary of State, have direct knowledge of the facts regarding the postelection reviews conducted after the November 3 election and, thus, are in the best position to respond to the allegations in the petition.

We directed petitioners to ensure that the petition was served in compliance with Minn. Stat. § 204B.44. They did not file proof that shows any county election officials were served with the petition. Thus, Count III must be dismissed.

Based upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the petition filed on November 24, 2020, be and the same is, dismissed.

Dated: December 4, 2020

BY THE COURT:

Lorie S. Gildea
Chief Justice

CHUTICH, THISSEN, and MOORE, III, JJ., took no part in the consideration or decision of this matter.

DIETZEN, Acting Justice, appointed pursuant to Minn. Const. art. VI, § 2, and Minn. Stat. § 2.724, subd. 2 (2018).

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Defendant Governor Ducey's Combined: (a) Motion to Dismiss and (b) Response to Plaintiffs' Motion for TRO and Preliminary Injunction

Assigned to: Hon. Diane Humetewa

Hearing set: December 8, 2020 at 9:15 a.m.

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Introduction

Arizona has strong election laws that prioritize accountability and that clearly lay out procedures for conducting, canvassing, and even contesting the results of an election. It is managed by dedicated and professional election administrators, with support from thousands of volunteer poll workers and poll observers that represent opposing political parties, as mandated by law. *See, e.g.*, A.R.S. §§ 16-531 (appointment of election board); 16-590(C) (appointment of poll observers); 16-615(B) (transporting the official returns envelop); *see also Elections Procedure Manual*, Ariz. Secy. of State, at 86, 96, 105, 133, 157, 178, 184, 197, 203 (2019).[1] Arizona also has clear deadlines that the Governor's Office, in conjunction with the majority of the county recorders (from both parties), argued to the Ninth Circuit needed to be maintained this year, despite COVID-19, in order to ensure the sanctity and security of the election process. *See Mi Familia Vota v. Hobbs*, 977 F.3d 948 (9th Cir. 2020).

With this backdrop, Plaintiffs have brought suit alleging widespread fraud in Arizona's election. In their Complaint, Plaintiffs fail in any way to link Governor Ducey's ministerial duties in the elections process to their voter-fraud theories. The only allegations in the Complaint that even mention Governor Ducey are completely unrelated to Plaintiffs' theories and legal claims. (*See* Doc. 1 at ¶¶ 33-35, 145). Furthermore, Plaintiffs' requests for relief from the Governor are moot because Governor Ducey has already performed his non-discretionary, ministerial acts in connection with this election: observing the final state-wide canvass and transmitting a "certificate of ascertainment" to the National Archivist.

Accordingly, Governor Ducey moves for dismissal of all claims against him with prejudice under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Dismissal is appropriate for several reasons, including that: (1) the relief Plaintiffs seek against the Governor is moot; (2) the Eleventh Amendment bars Plaintiffs' claims against the Governor; (3) Plaintiffs have failed

[1] The Secretary of State's Election Procedures Manual has the force of law pursuant to A.R.S. § 16-452 and is available at https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf.

to allege any facts to support a plausible claim that Governor Ducey violated their constitutional rights or any other law; and (4) Plaintiffs lack Article III standing to sue the Governor. For similar reasons, this Court should also deny Plaintiffs' request for a TRO or preliminary injunction as to Defendant Governor Ducey. (*See* Doc. 28). Plaintiffs will not be harmed by the dismissal of Governor Ducey because the Maricopa County Board of Supervisors—the party that has responsibility related to the conduct of elections, certification of election results and that retains custody of the equipment in question—has intervened in this case. In accordance with L.R. Civ. P 12.1(c), a Notice and Certification of Conferral has been filed contemporaneously with this Motion.

Background

The U.S. Constitution provides that "[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors" for the Office of the President. U.S. Const. Art. II § 1. The Arizona Legislature has established such procedures. *See* A.R.S. § 16-212. In addition, the Legislature has established a comprehensive election system, based on checks and balances, that is largely organized and conducted by the Secretary of State, independent county boards of supervisors, and other local election officials. *E.g.*, A.R.S. §§ 16-442(A) (requiring the Secretary of State to approve the "types, make, model, or models" of vote tabulating equipment); 16-411(B) (requiring Board of Supervisors to establish polling locations); 16-531(A) (requiring Board of Supervisors to appoint requisite poll workers twenty days before a primary or general election).

After an election for a president, or any other federal, statewide, or legislative office, the county board of supervisors canvass their results and report those results to the Secretary of State. A.R.S §§ 16-642(A); 16-645(B). The Secretary of State must then canvass those county results "[o]n the fourth Monday following" the general election. A.R.S. § 16-648(A). After the completion of the statewide canvass, the Secretary of State issues a "Certification of Election" to each legislative, statewide, and federal candidate who received the highest number of votes for each office. A.R.S. § 16-650. Furthermore, "after the secretary of state issues the statewide canvass containing the results of a presidential election, the presidential

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electors of this state shall cast their electoral college votes for the candidate for present…[who] received the highest number of votes in this state…" A.R.S. § 16-212(B).

By statute, the Governor performs two non-discretionary, ministerial tasks in this process. *First*, he (along with the Attorney General and the Chief Justice of the Arizona Supreme Court) is required by state law to be "in the presence of" the Secretary of State when she conducts the official statewide canvass. A.R.S. § 16-648. *Second*, he is required by federal law to send a Certificate of Ascertainment ("Certificate") that identifies the names of Arizona's electoral college electors to the Archivist of the United States. 3 U.S.C. § 6.[2] These statutes do not confer discretion to the Governor.

On November 30, 2020, the Secretary of State conducted the statewide canvass and certified the election in the presence of Governor Ducey. (Ex. A (excerpts from the statewide canvass)). That same day, Governor Ducey transmitted the Certificate to the National Archivist. (Ex. B (copy of the Certificate of Ascertainment)).[3]

Argument

This Court may grant a motion to dismiss under Rule 12(b) where a complaint does not demonstrate that the plaintiff is entitled to relief against a particular defendant. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Those "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

[2] In addition, for initiated and referred ballot measures (which are not at issue in this case), the Governor must issue a proclamation "declaring the amendments or measures which are approved by a majority of those voting thereon to be law." A.R.S. § 16-651.

[3] Governor Ducey's attendance of the statewide canvass and his issuance of the Certificate are all facts appropriate for judicial notice because they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b); *see also Santa Monica Food Not Bombs v. Santa Monica*, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006) (taking judicial notice of public records that "can be accessed at Santa Monica's official website"). Courts may consider judicially noticeable facts in ruling on motions to dismiss. *Lee v. City of L.A.*, 250 F.3d 668, 688-89 (9th Cir. 2001).

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Additionally, a preliminary injunction[4] "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quotation omitted). A court may only grant a plaintiff this "extraordinary remedy" if it establishes, as to the particular defendant: (1) it is "likely to succeed on the merits" of its claims; (2) it is "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of the equities tips in [its] favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 24 (2008).

Here, Plaintiffs' claims against Governor Ducey cannot survive the Rule 12(b)(1) or 12(b)(6) standard, let alone satisfy all four *Winter* factors. Even if the factual allegations in the Complaint are accepted as true, their claims against Governor Ducey fail as a matter of law due to: (1) mootness; (2) Eleventh Amendment immunity; (3) an inability to state any plausible claim against Governor Ducey because their Complaint identifies no acts performed by the Governor other than the two ministerial acts described above; and (4) a lack of Article III standing. For these same reasons, Plaintiffs are highly unlikely to succeed on the merits against Governor Ducey, and the Court should deny Plaintiffs' requested preliminary relief as to him.

I. Plaintiffs' Claims Against Governor Ducey Are Moot.

Plaintiffs' claims against Governor Ducey are moot because the action they seek to enjoin has already occurred and cannot be undone. A case must be dismissed as moot against a particular defendant when "the issues presented are no longer 'live.'" *L.A. Cty. v. Davis*, 440 U.S. 625, 631 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969)). In the context of election matters, courts have consistently held that a case is moot when the challenged procedure has already been performed. For example, in *Jones v. Montague*, the plaintiffs sued the Virginia governor and the Secretary of the Commonwealth,

[4] The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977).

requesting an injunction of an election canvass. 194 U.S. 147, 153 (1904). The Court rejected their challenge, holding that the case was moot because "the thing sought to be prohibited has been done…" *Id.*

Here, after Governor Ducey attended the Secretary of State's statewide canvass and issued the Certificate to the National Archivist (both of which occurred on November 30), his ministerial duties related to the General Election concluded.[5] Plaintiffs unfortunately filed this lawsuit on December 2, 2020—two days *after* Governor Ducey observed the canvass and issued the Certificate—and asked this Court to order Governor Ducey to "de-certify" the election results and enjoin him "from transmitting the currently certified election results to the Electoral College." (Doc. 1 at ¶ 145). Governor Ducey does not have the authority to do either of these things, and Plaintiffs cite no authority otherwise. Because Governor Ducey's statutory duties related to the General Election have already been performed, Plaintiffs' claims against the Governor must be dismissed as moot. *See Montague*, 194 U.S. at 153.

II. Plaintiffs' Claims Against Governor Ducey Are Barred by the Eleventh Amendment.

The Eleventh Amendment prevents a state from being sued in federal court without its consent. *Alabama v. Pugh*, 438 U.S. 781, 782 (1978). This bar applies "regardless of whether [the suit] seeks damages or injunctive relief." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 102 (1984). The Eleventh Amendment's protections are at their apex where, as here, a plaintiff asks a federal court to "order state actors to comply with state law." *Hale v. Arizona*, 967 F.2d 1356, 1369 (9th Cir. 1992); *see also Pennhurst*, 465 U.S. at 106 (noting that "[i]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law").

[5] The National Archivist has already received and publicly posted the Certificate. *2020 Electoral College Results*, National Archives, https://www.archives.gov/electoral-college/2020 (last visited Dec. 4, 2020).

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To avoid the Eleventh Amendment, Plaintiffs here sued the Governor in his official capacity, in an attempt to take advantage of the *Ex Parte Young* exception to the State's sovereign immunity. (Doc. 1). But, in order to use this exception, the state officer "must have some connection with the enforcement of the act." *Ex Parte Young*, 209 U.S. 123, 157 (1908); *see also Pennhurst*, 465 U.S. at 101 (noting that the Eleventh Amendment also "bars a suit against state officials when 'the state is the real, substantial party in interest.'") (quoting *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 464 (1945)). Here, the Governor has no connection to the factual allegations in the Complaint, much less a connection strong enough to invoke the *Ex Parte Young* exception.

Indeed, while the Complaint makes various allegations about the General Election—including that the vote tabulation machines used in Arizona are susceptible to manipulation or are otherwise deficient, (Doc. 1 at ¶¶ 5-18, 67-102), that there were certain procedural errors related to poll watching and vote counting, (*id.* at ¶¶ 48-62), and that there were irregular voter turnout levels, (*id.* at ¶¶ 63-66)—the Complaint does *not* contain any allegation that the Governor had any involvement in these alleged improprieties or had any authority to oversee, correct, or prevent these issues. Instead, the Complaint only alleges wrongdoing or errors by local county elections officials, poll workers, or the Secretary of State.

Put simply, the Governor's ministerial duties under A.R.S. § 16-648(A) and 3 U.S.C. § 6 do not encompass investigating or rectifying assertions of election irregularities or fraud. And, even if the Governor did have some generalized role in overseeing Arizona elections (he does not), mere "[a]llegations of general oversight of State laws are insufficient to establish the required nexus" under *Ex Parte Young*. *Young v. Hawaii*, 548 F. Supp. 2d 1151, 1164 (D. Haw. 2008), *overruled on other grounds by Dist. of Columbia v. Heller*, 554 U.S. 570 (2008); *see also* A.R.S. § 16-142(A)(1) ("The secretary of state or the secretary's designee is [t]he chief state election officer . . ."). As such, Plaintiffs' claims against the Governor must be dismissed.

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III. Plaintiffs Fail to Plead any Plausible Claim for Relief Against Governor Ducey under the *Iqbal/Twombly* Pleading Standard.

The claims against Governor Ducey should also be dismissed because Plaintiffs' Complaint is devoid of any "factual content that allows the court to draw the reasonable inference that the defendant" at issue—Governor Ducey—"is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678; *see also Twombly*, 550 U.S. at 556, 570. Indeed, the Complaint does not contain *any* specific factual allegations against the Governor. The *only* allegations in the Complaint that specifically reference Governor Ducey are Paragraphs 34 and 35, which simply identify him as a Defendant to this action, and Paragraph 145, which asks this Court to direct an order requiring the Governor to "de-certify" the election (there is no provision in Arizona law that allows this or federal authority that supports this remedy) and an injunction prohibiting him from "transmitting the currently certified election results to the electoral college" (the results have already been "transmit[ed]" to the electoral college).

Given this, the Complaint has failed to make any allegation that would support a reasonable inference that the Governor violated Arizona law, deprived Plaintiffs of their equal protection or due process rights, or violated some other constitutional provision. Because the Complaint fails to state any claim against Governor Ducey that is "plausible on its face," all claims against the Governor should be dismissed. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570).

IV. Plaintiffs Lack Standing to Bring Their Claims Against Governor Ducey.

Finally, Plaintiffs cannot establish two of the three elements of Article III standing for purposes of their claims against Governor Ducey. To establish standing, Plaintiffs must demonstrate (1) injury in fact; (2) that is "fairly traceable" to the conduct complained of; and (3) that a favorable decision is "likely" to redress the injury-in-fact. *Barnum Timber Co. v. U.S. E.P.A.*, 633 F.3d 894, 897 (9th Cir. 2011); *see also Maya*, 658 F.3d at 1067 (motion to dismiss for lack of standing proper under Fed. R. Civ. P. 12(b)(1)). An injury is

not fairly traceable to a defendant's conduct when that defendant did not cause the plaintiff's injury. *See Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *6-7 (M.D. Penn. Nov. 21, 2020).

Here, even assuming *arguendo* that Plaintiffs have met the injury-in-fact requirement, they cannot establish that their injury is traceable to Governor Ducey or redressable by any action he could take. With respect to traceability, Plaintiffs do not (and cannot) claim that Governor Ducey played any part in the alleged election fraud that forms the basis of their Complaint. Indeed, Plaintiffs barely mention Governor Ducey's actions at all, claiming only (and erroneously) that he and the Secretary of State "certified" the results of the General Election. (*See* Doc. 1 at ¶ 33). As discussed above, election certification is not one of Governor Ducey's statutory duties. For all these reasons, Plaintiffs cannot establish that their injury is "fairly traceable" to Governor Ducey. *See Barnum*, 633 F.3d at 897; *Boockvar*, 2020 WL 6821992, at *6.

Plaintiffs also cannot establish that their alleged injury is redressable by Governor Ducey. Plaintiffs ask this Court to order Governor Ducey to "de-certify" the election results and enjoin him "from transmitting the currently certified election results to the Electoral College." (Doc. 1 at ¶ 145). Governor Ducey has already fulfilled his statutory duties related to the General Election by attending the canvass, *see* A.R.S. § 16-648(A), and issuing the Certificate to the Archivist of the United States, *see* 3 U.S.C. § 6. Governor Ducey does not have the power to certify (or de-certify) election results. Tellingly, Plaintiffs do not cite any authority explaining how (or under what authority) Governor Ducey would do take such action. Accordingly, Plaintiffs' claims should be dismissed because they lack Article III standing as to Governor Ducey.[6]

[6] For the other *Winter* factors that balance the impact of the relief requested against the merits of the claims, Governor Ducey defers to Defendant Secretary Hobbs and Intervenor-Defendant Maricopa County Board of Supervisors, since the administration of the general election at the State and local levels are within those parties' purview.

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Conclusion

Governor Ducey should be dismissed because the claims against him are moot, barred by the Eleventh Amendment, unsupported by factual allegations, and Plaintiffs lack standing to even bring them against the Governor. These defects are fatal and incurable as to Governor Ducey. Accordingly, Plaintiffs' claims against Governor Ducey should be dismissed with prejudice under Rules 12(b)(1) and 12(b)(6), and their Motion for Temporary Restraining Order and Preliminary Relief should be denied, as to Governor Ducey.

DATED this 4th day of December, 2020.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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CERTIFICATE OF SERVICE

I certify that on December 4, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Richard Schaan

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EXHIBIT A

STATE OF ARIZONA OFFICIAL CANVASS

Report Date/Time:11/24/2020 1:35:33 PM

2020 General Election - Nov 03, 2020

Compiled and Issued by the Arizona Secretary of State

	Apache	Cochise	Coconino	Gila	Graham	Greenlee	La Paz	Maricopa	Mohave	Navajo	Pima	Pinal	Santa Cruz	Yavapai	Yuma	TOTAL
Total Eligible Registration	51,906	82,018	90,716	34,068	19,851	4,866	10,909	2,595,272	135,231	70,650	638,355	248,874	29,951	165,361	103,273	4,281,301
Total Ballots Cast	35,776	60,963	73,968	28,057	15,113	3,723	7,522	2,089,563	105,440	52,490	526,319	186,319	19,807	144,911	70,594	3,420,565
Voter Turnout Percent	68.92%	74.33%	81.54%	82.36%	76.13%	76.51%	68.95%	80.51%	77.97%	74.30%	82.45%	74.86%	66.13%	87.63%	68.36%	79.90%
Precincts	44	49	71	39	22	8	11	743	24	14	249	102	24	45	44	1,489
President of the United States																
Republican																
Donald J. Trump, President	11,442	35,557	27,052	18,377	10,749	2,433	5,129	995,665	78,535	27,657	207,758	107,077	6,194	91,527	36,534	1,661,686
Michael R. Pence, Vice President																
Tyler Bowyer, Elector																
Nancy Cottle, Elector																
Jake Hoffman, Elector																
Anthony T Kern, Elector																
James Lamon, Elector																
Robert Montgomery, Elector																
Samuel I Moorhead, Elector																
Loraine B. Pellegrino, Elector																
Greg Safsten, Elector																
Kelli Ward, Elector																
Michael Ward, Elector																
Democratic*																
Joseph Biden, President	23,293	23,732	44,698	8,943	4,034	1,182	2,236	1,040,774	24,831	23,383	304,981	75,106	13,138	49,602	32,210	1,672,143
Kamala Harris, Vice President																
Steve Gallardo, Elector																
Luis Alberto Heredia, Elector																
Constance Jackson, Elector																
Sandra D. Kennedy, Elector																
Stephen Roe Lewis, Elector																
James McLaughlin, Elector																
Jonathan Nez, Elector																
Ned Norris, Elector																
Regina Romero, Elector																
Felecia Rotellini, Elector																
Fred Yamashita, Elector																

* Winner

STATE OF ARIZONA OFFICIAL CANVASS

2020 General Election - Nov 03, 2020

Compiled and Issued by the Arizona Secretary of State

2020 GENERAL ELECTION OFFICIAL CANVASS CERTIFICATION

I, Katie Hobbs, Arizona Secretary of State, do hereby certify that the foregoing canvass is a true, correct and complete tabulation of the votes cast at the 2020 General Election held in the State of Arizona on the 3rd day of November, 2020. This canvass displays the name of each person who appeared on the ballot for a federal and state office in the election and the number of votes received for each person, as shown by the tabulations received from the Boards of Supervisors of each county in the State of Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona, this 30th day of November, 2020, at the Capitol in Phoenix.

Katie Hobbs
Secretary of State

A.R.S. § 16-648 requires that this canvass be conducted in the presence of the Governor and Attorney General whose affirming signatures follow.

Doug Ducey
Governor

Mark Brnovich
Attorney General

2020 GENERAL ELECTION OFFICIAL CANVASS CERTIFICATION

I, Katie Hobbs, Arizona Secretary of State, do hereby certify that the foregoing canvass of election returns is a true, correct and complete tabulation of the votes cast for and against Propositions at the 2020 General Election held in the State of Arizona on the 3rd day of November, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona, this 30th day of November, 2020, at the Capitol in Phoenix.

Katie Hobbs
Secretary of State

A.R.S. § 16-648 requires that this canvass be conducted in the presence of the Governor and Chief Justice of the Supreme Court whose affirming signatures follow.

Doug Ducey
Governor

Robert M. Brutinel
Chief Justice
Arizona Supreme Court

EXHIBIT B

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

CERTIFICATE OF ASCERTAINMENT FOR PRESIDENTIAL ELECTORS

I, Douglas A. Ducey, Governor of the State of Arizona, do hereby certify that:

The Official Canvass of the General Election held on Tuesday, November 3, 2020, shows the following results for the office of Presidential Electors for President and Vice President of the United States, as certified by the boards of supervisors of the several counties of the state of Arizona. The Official Canvass indicates that the following group of eleven individuals:

DEMOCRATIC PARTY PRESIDENTIAL ELECTORS
Presidential Candidate Joseph Biden
Vice Presidential Candidate Kamala Harris

NAME	NUMBER OF VOTES
Gallardo, Steve	1,672,143
Heredia, Luis Alberto	1,672,143
Jackson, Constance	1,672,143
Kennedy, Sandra D.	1,672,143
Lewis, Stephen Roe	1,672,143
McLaughlin, James	1,672,143
Nez, Jonathan	1,672,143
Norris, Ned	1,672,143
Romero, Regina	1,672,143
Rotellini, Felecia	1,672,143
Yamashita, Fred	1,672,143

received the highest number of votes cast for any candidate for this office, and having complied with all provisions required by law for candidates in general elections, they are duly elected Presidential Electors.

I further certify that the following Presidential Electors received the number of votes indicated:

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

REPUBLICAN PARTY PRESIDENTIAL ELECTORS
Presidential Candidate Donald J. Trump
Vice Presidential Candidate Michael R. Pence

NAME	NUMBER OF VOTES
Bowyer, Tyler	1,661,686
Cottle, Nancy	1,661,686
Hoffman, Jake	1,661,686
Kern, Anthony T.	1,661,686
Lamon, James	1,661,686
Montgomery, Robert	1,661,686
Moorhead, Samuel I.	1,661,686
Pellegrino, Loraine B.	1,661,686
Safsten, Greg	1,661,686
Ward, Kelli	1,661,686
Ward, Michael	1,661,686

LIBERTARIAN PARTY PRESIDENTIAL ELECTORS
Presidential Candidate Jo Jorgensen
Vice Presidential Candidate Jeremy "Spike" Cohen

NAME	NUMBER OF VOTES
Benjamin, Timothy	51,465
Blitz, Howard	51,465
Daniels, Jeffery T. Daniels	51,465
Flores, Alejandro	51,465
Hess, Barry	51,465
Kielsky, Michael	51,465
Marks, Doug	51,465
Pepiton II, Robert A.	51,465
Slayton, Brandon	51,465
Stewart, Scott	51,465
Winder, Jonathan	51,465

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

GREEN PARTY PRESIDENTIAL ELECTORS
Presidential Candidate Howie Hawkins
Vice Presidential Candidate Angela Walker

NAME	NUMBER OF VOTES
Bissell, Cara	1,557
Castorena, Celeste M.	1,557
Castorena, Cesario C.	1,557
Dixon, Angela	1,557
Macías, Antonio	1,557
Macías, Linda	1,557
McMurrin, Betty J.	1,557
Olea, Elisa	1,557
Quintana, Eduardo	1,557
Scott, Richard	1,557
Torres, Angel	1,557

PRESIDENTIAL ELECTORS
Write-in Presidential Candidate Jade Simmons
Write-in Vice Presidential Candidate Claudeliah J. Roze

NAME	NUMBER OF VOTES
Boyer, Celeslie L.	236
Curtis, Sydney	236
Ehmann, Maryann	236
Grapentine, Valerie	236
Korth, Jared	236
Langston, JoAnna	236
Martin, Erica	236
McMurray, Kia	236
McMurray Jr., Dennis	236
Sanchez, Brittany	236
Scheier, Veronica	236

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

PARTY FOR SOCIALISM AND LIBERATION PRESIDENTIAL ELECTORS
Write-in Presidential Candidate Gloria La Riva
Write-in Vice Presidential Candidate Sunil Freeman

NAME	NUMBER OF VOTES
Felix, Jahaziel	190
Gomez, Pedro	190
Hartley, Kealy	190
Isais, Alexia	190
Jacobson, Dylan	190
Levin, Steven	190
Lopez, Daniel	190
Mueller, Joseph	190
Romo, Luzette	190
West, Madison	190
Wise, Skylar	190

CONSTITUTION PARTY PRESIDENTIAL ELECTORS
Write-in Presidential Candidate Daniel Clyde Cummings
Write-in Vice Presidential Candidate Ryan Huber

NAME	NUMBER OF VOTES
Beeson, Jake	36
Beeson, Jaymie	36
Hansen, Becca	36
Hansen, Jacob	36
Huber, Karen	36
Huber, Ryan	36
Powell, Deric	36
Powell, Kristin	36
Prior, Chad	36
Prior, Diana	36
Ruiz, Luis	36

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

PRESIDENTIAL ELECTORS
Write-in Presidential Candidate President R. Boddie
Write-in Vice Presidential Candidate Eric Stoneham

NAME	NUMBER OF VOTES
Black, La Deysha	13
Dukes, Donshadre	13
Froman, Travis	13
Guevara, Maria	13
Lechaga, Maria Elena	13
Leyva, Omar	13
Maldonado, Ema	13
Martinez, Rebecca	13
Tucci, Lynette	13
Valenzuela, Stephanie	13
Varela, Andrea	13

IN WITNESS WHEROF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

DOUGLAS A. DUCEY
GOVERNOR

DONE at the Capitol in Phoenix on this thirtieth day of November in the Year Two Thousand Twenty and of the Independence of the United States of America Two Hundred Forty-Fifth.

ATTEST:

KATIE HOBBS
SECRETARY OF STATE

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Notice and Certification of Conferral Regarding Motion to Dismiss

Assigned to: Hon. Diane Humetewa

In accordance with L.R.Civ. 12.1(c), Defendant Douglas A. Ducey, Governor of the State of Arizona, certifies that undersigned counsel gave written, advance notice to Plaintiffs of the issues asserted in his Combined Motion to Dismiss and Response to Plaintiffs' Motion for TRO and Preliminary Injunction. The parties have been unable to agree that the Complaint, (Doc. 1), is curable by a permissible amendment.

DATED this 4th day of December, 2020.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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CERTIFICATE OF SERVICE

I certify that on December 4, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Richard Schaan

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Attorneys for Defendant Arizona Secretary of State Katie Hobbs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE KATIE HOBBS' COMBINED MOTION TO DISMISS AND OPPOSITION TO MOTION FOR TRO/PRELIMINARY INJUNCTION

I. INTRODUCTION

This case is the latest in a series of baseless attacks on the results of the 2020 election. The complaint spins together—***in part, literally through what purports to be an anonymous witness referred to only as "Spider"***[1]—the broad outlines of a supposed conspiracy that spanned the globe. Plaintiffs allege that this plan somehow originated in Venezuela more than a decade ago, over the years enlisted "rogue actors" from various "countries such as Serbia" and "foreign interference by Iran and China" [*id.* ¶¶ 13, 70, 74, 78], compromised voting machines and software in states across the country in this election [*id.* ¶¶ 60, 63-102], and was ultimately executed with the assistance of thousands of Democratic, Republican, and non-partisan election officials despite the presence of observers for both parties in numerous states across the country, including Arizona [*id.* ¶¶ 65-66].

The object of the dystopian fiction set forth in plaintiffs' complaint is to overturn the election results determined by the will of nearly 3.5 million Arizona voters.

> At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election.

No. 2020AP1930-OA, *Wisconsin Voters Alliance v. Wisconsin Elections Commission* at *3 (Wis. Sup. Ct. Dec. 4, 2020) (Hagedorn, J.) (concurring and joined by a majority of Justices) (attached as Ex. A). Other courts have uniformly rejected similar baseless attacks.[2] This Court should do so as well.

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[1] [Doc. 1 (Compl.), Ex. 12].

[2] *See generally Donald J. Trump for President, Inc. v. Boockvar*, No 4:20-CV-02078, 2020 WL 6821992 (M.D. Pa. Nov. 21, 2020), *aff'd*, No. 20-3371, ECF No. 91 (3d Cir. Nov. 27, 2020); *Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120 (3d Cir. Nov. 13, 2020) (affirming denial of preliminary injunction against counting purported "illegal" absentee ballots on equal protection grounds); *Wood v. Raffensperger*, No. 1:20-cv-04561-SDG, ECF No. 54 (N.D. Ga. 2020) (rejecting motion to enjoin Georgia's certification of election results based on equal protection arguments similar to those made here).

First, plaintiffs' claims fall miles short of the standards under *Twombly* and *Iqbal*, let alone the heightened pleading standards of Fed. R. Civ. P. 9(b). *Second*, plaintiffs' claims must be brought in an ***election contest***—a matter reserved exclusively for the jurisdiction of the Arizona state courts. *Third*, as voters with a generalized grievance regarding the election, plaintiffs lack standing. Recently, courts have rejected similar claims for lack of standing in Pennsylvania and Georgia. *Bognet v. Sec'y of the Commonwealth of Pa.*, -- F.3d --, 2020 WL 6686120, at *19 (3d Cir. Nov. 13, 2020); *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020). *Fourth*, plaintiffs' claims are barred by laches. *Finally*, this Court should abstain from adjudicating this matter in deference to ongoing state proceedings and respect for the Secretary's Eleventh Amendment immunity.

Even if plaintiffs' claims could somehow overcome these many procedural defects, they would just as assuredly fail on the merits for the reasons described below.[3] Because plaintiffs' claims lack merit, their motion for a temporary restraining order and for preliminary injunctive relief also fail. Moreover, the balance of hardships tips strongly against plaintiffs. Plaintiffs sat on their hands not just while the election was but for more than a month afterwards. Plaintiffs' requested relief would imperil Arizona's participation in the Electoral College and potentially disenfranchise nearly 3.4 million Arizonans, thereby rendering it impossible for the Secretary to fulfill her primary responsibility of operating an election that fulfills the will of Arizona voters, as she did. The Secretary respectfully requests that the Court dismiss plaintiffs' complaint and deny their motion for a temporary restraining order and preliminary injunctive.

II. BACKGROUND

A. Arizona's election was fair and secure by any measure.

In the face of a once-in-a-century pandemic and unprecedented misinformation, Arizona election officials successfully administered a free, fair, and secure election on

[3] A certificate of consultation required by Local Rule 12.1(c) is attached as Exhibit C.

November 3. Over 3.4 million Arizonans—nearly 80% of eligible voters—exercised their right to vote. Turnout was at a record high across the state, and counties completed and passed post-election hand count audits and logic and accuracy testing.[4]

B. The Secretary of State and Governor canvassed the 2020 election and transmitted certificates of ascertainment.

Consistent with their obligations under Arizona law, the Secretary of State and Governor certified the statewide canvass for the 2020 General Election in the presence of Attorney General Mark Brnovich and Chief Justice Robert Brutinel, on November 30, 2020. Ariz. Sec'y of State, 2020 General Election Canvass, https://azsos.gov/sites/default/files/2020_General_State_Canvass.pdf; *see also* A.R.S. § 16-648(A) (ordering certification of the statewide canvass "[o]n the fourth Monday following a general election"). The same day, the Governor signed and the Secretary of State attested to the certificate of ascertainment for the Biden presidential electors. Consistent with the Electoral Count Act, the State transmitted the certificate to the United States Archivist (and is now publicly available), and certificates of election were issued to the individual presidential electors. 3 U.S.C. § 6; National Archives, 2020 Electoral College Results, Arizona, https://www.archives.gov/files/electoral-college/2020/ascertainment-arizona.pdf.

C. Plaintiffs' attorneys have filed near-identical cases in 3 other states.

Plaintiffs' complaint is the latest in a series of frivolous lawsuits with nearly identical allegations filed by Plaintiffs' counsel in states President-elect Biden won. *See Feehan v. Wis. Elections Comm'n*, No. 20-cv-1771-pp (E.D. Wis.); *King v. Whitmer*, No. 2:20-cv-13134 (E.D. Mich.); *Pearson v. Kemp*, No. 1:20-cv-04809-TCB (N.D. Ga.). All four lawsuits allege that thousands of elections officials somehow orchestrated a transnational conspiracy to steal an election by manufacturing votes and improperly

[4] Ariz. Sec'y of State, *State of Arizona Official Canvass*, at 1 (Nov. 24, 2020), https://azsos.gov/sites/default/files/2020_General_State_Canvass.pdf.; Ariz. Sec'y of State, *Summary of Hand Count Audits–2020 General Election* (Nov. 17, 2020), https://azsos.gov/election/2020-general-election-hand-count-results.

counting votes, supported by nary a shred of credible evidence. That these are little more than shotgun form lawsuits is evidenced by their apparent inability to keep their states straight. Here, for example, Plaintiffs' motion argues that the evidence shows "that Defendants failed to administer the November 3, 2020 election in compliance with the manner prescribed by the *Georgia* legislature." Doc. 2 (Pl.'s Mot. for TRO) at 6 (emphasis added).[5]

D. This case was filed on the heels of a strikingly similar election contest, brought mere days ago in state court by one of the named Plaintiffs.

Just two days before filing this complaint seeking to "set aside the 2020 General Election results," one of the named Plaintiffs—Dr. Kelli Ward, Chair of the Arizona Republican Party—brought an elections contest in Maricopa County Superior Court. *Ward v. Jackson, et al.*, CV 2020-015285 (filed Sup. Ct. Maricopa Cty. Nov. 24, 2020) (attached as Ex. B).

The similarities between the two cases are numerous. In her state-court elections contest, for example, Dr. Ward seeks to have the court (i) order "that the election [be] annulled and set aside," (ii) conclude "that the Trump Electors have the highest number of legal votes[,] and [(iii)] declare those persons elected." *See* Ward Complaint at 9 (Prayer for Relief). Similarly, Plaintiffs seek here that the election results be "annulled and set aside." Doc. 1, ¶ 16. The commonalities between these matters also extend to many specific factual allegations. In her state-court elections contest, for example, Dr. Ward contends that "election officials completely failed and/or refused to allow legal observers to fully observe" proceedings. *See Ward* Complaint ¶¶ 21-23, 26. This, she claims, amounts to statutory "misconduct" that warrants a declaration "that the election is annulled and set aside." Ward Complaint ¶ 37. Similarly, here, Plaintiffs (including Dr. Ward) claim that election officials committed misconduct because they "acted and will

[5] *See also* Zach Montellaro and Kyle Cheney, *Pro-Trump Legal Crusade Peppered With Bizarre Blunders*, Politico, Dec. 3, 2020, https://www.politico.com/news/2020/12/03/sidney-powell-trump-election-lawsuit-442472.

continue to act under color of state law to violate Plaintiffs' right to be present and have actual observation and access to the electoral process." Doc. 1 ¶¶ 15, 118, 120. And similarly, here, Plaintiffs seek as their first request "[a]n order directing Governor Ducey and Secretary Hobbs to de-certify the election results." *Id.* ¶¶ 145.1.

Earlier today, the Superior Court denied all relief requested by Dr. Ward. Prior to today's ruling, the Superior Court partially dismissed Dr. Ward's case on the record based on laches, to the extent she sought to raise an election contest on the basis of official misconduct for failure to permit observers to view election proceedings. In addition to this action, various other challenges to Arizona's General Election have failed in state court. *See, e.g., Aguilera, et al v. Fontes, et al.,* No. 2020-014083, (Maricopa Sup. Ct.); *Trump, et al. v. Hobbs, et al.,* No. 2020-014248, (Maricopa Sup. Ct); *Arizona Republican Party v. Fontes, et al.,* No. 2020-014553, Maricopa Sup. Ct.); *Aguilera, et al. v. Fontes, et al.,* No. 2020-014562 (Maricopa Sup. Ct.); *Ward v. Jackson, et al.,* No. 2020-015285, Maricopa Sup. Ct.).

III. ARGUMENT

A. Legal Standard

This Court must first assure itself that it has jurisdiction to hear the present controversy, by determining that Plaintiffs have standing. A case "brought by a plaintiff without … standing is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit." *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004) (citing *Steel Co. v. Citizens for a Better Env't,* 523 U.S. 83, 101 (1998)). In addition, the Court must determine whether Plaintiffs have "prudential standing"—that is, whether their claims "'fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Yakima Valley Mem'l Hosp. v. Washington State Dep't of Health*, 654 F.3d 919, 932 (9th Cir. 2011) (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.,* 454 U.S. 464, 474 (1982)).

If the Court is satisfied that it has the power to hear the dispute, it may then evaluate whether the factual allegations, taken as true, "nudge" the complaint "across the line from conceivable," *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014), to "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2008); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Allegations are not plausible, however, where there exists an "obvious alternative explanation" for alleged misconduct, *Capp v. Cty. of San Diego*, 940 F.3d 1046, 1055 (9th Cir. 2019) (quoting *Iqbal*, 556 U.S. at 682; *Twombly*, 550 U.S. at 567), based on "judicial experience and common sense." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1056 (9th Cir. 2011) (quoting *Iqbal*, 556 U.S. at 679). And where, as here, Plaintiffs state claims sounding in fraud, a court must additionally find that the allegations meet the "heightened" pleading standard" for fraud claims required by Rule 9(b), and that they have been raised "with particularity." *Cafasso*, 637 F.3d at 1054-1055.

As discussed below, Plaintiffs fail to satisfy these standards.

B. The claims brought in this case must be brought in state court as part of an elections contest.

Plaintiffs' suit advances claims that, at bottom, must be brought in an elections contest. And an elections contest in Arizona must be brought in state court, not federal court. Indeed, Plaintiffs themselves acknowledge that the grounds for this lawsuit are among the same grounds specifically envisioned by the Arizona elections contest statute: alleged misconduct, illegal votes, offenses against the franchise, and erroneous counting. Doc. 1, ¶ 15 (citing A.R.S. § 16-672). And Plaintiffs rely on both the remedies *and* the timeline provided by the Arizona contest statute. *Id.* ¶¶ 16, 18; *see also id.* ¶ 123. Plaintiffs' attempt to have it both ways—relying on Arizona's contest statute to their benefit while simultaneously admitting that this is not actually an election contest (in order to avoid state court)—should not be condoned by this Court.

Because of the "strong public policy favoring stability and finality of election results," the Arizona Supreme Court requires that election contests be made in "strict

compliance" with the statutory requirements. *Donaghey v. Ariz. Attorney Gen.*, 584 P.2d 557, 559 (Ariz. 1978). Those requirements include A.R.S. § 16-672(B)'s mandate that contests be brought in state court.

To be clear: Plaintiffs are absolutely correct that this lawsuit is *not* an elections contest under Arizona law. But that does not save them. Plaintiffs are not allowed to circumvent Arizona's strict rules for bringing challenges to election results by filing a federal court lawsuit and calling it something different. They must follow the law. Plaintiffs are forum shopping. That one Plaintiff here brought a state elections contest and lost is not an excuse to bring an action in federal court seeking the same remedy.

C. Plaintiffs lack Article III and prudential standing.

Plaintiffs' claims also fail for a further procedural reason that does not even require the Court to reach the merits: they lack standing, under both Article III of the U.S. Constitution and as a prudential matter. "The doctrine of standing asks whether a litigant is entitled to have a federal court resolve his grievance. This inquiry involves 'both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.'" *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). To establish standing, plaintiffs must show: (1) injury in fact; (2) a causal connection between their claim and the alleged injury; and (3) redressability of the claimed harm. *Barnum Timber Co. v. U.S. Env'l Prot. Agency*, 633 F.3d 894, 897 (9th Cir. 2011). As electors who voted in the recent election who can offer nothing but speculation and conjecture as to how the scheme they implausibly allege might have affected the outcome of the election, plaintiffs have no right to pursue a "generalized grievance" regarding the procedures or outcome of the recent election.

1. Plaintiffs lack standing to pursue their Electors and Elections Clause Claim (Count 1).

Plaintiffs claim that defendants failed to follow Arizona law in certifying voting machines, verifying signatures, and restricting access to poll observers. Doc. 1, ¶¶ 43-53, 103-11. This is "precisely the kind of undifferentiated, generalized grievance about the

conduct of government that [courts] have refused to countenance in the past." *Lance v. Coffman*, 549 U.S. 437, 442 (2007).

Plaintiffs do not gain standing by virtue of their roles as presidential electors. The role of a presidential elector under Arizona law is purely ministerial: electors "shall cast their electoral college votes for the candidate for president and the candidate for vice president who jointly received the highest number of votes in this state as prescribed in the canvass." A.R.S. § 16-221(B). The Arizona legislature has further determined that any elector who does not cast their vote in accordance with the results certified by the Secretary "is no longer eligible to hold the office of presidential elector and that office is deemed and declared vacant by operation of law." *Id.* § 16-221.C. Thus, there can be no claim that the State is depriving Plaintiffs of any individual right under the Electors and Elections Clause by failing to administer the election in the manner plaintiffs desire. Indeed, the Third Circuit recently held that plaintiffs—whether voters or candidates—have no private right of action at all under the Electors and Elections Clause. *Bognet*, 2020 WL 6686120, at *19 (3d Cir. Nov. 13, 2020).

Prudential standing leads to the same result. Under the prudential standing doctrine, even plaintiffs who can show some individual injury in fact—which Plaintiffs here cannot—may nonetheless "assert only a violation of [their] own rights." *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 392 (1988). Here, Plaintiffs' claims rest entirely on the rights of *third parties*—the rights of non-parties whose votes allegedly were not counted, and the right of the presidential candidates to have Arizona's electors awarded to the candidate who received the highest number of votes. Plaintiffs themselves have not alleged and cannot claim to have suffered any individualized harm or violation of their own rights, and thus lack standing to pursue their claim.

2. Plaintiffs' Equal Protection, Due Process, and "Widespread Fraud" Claims Likewise Fail for a Lack of Article III Standing (Counts II-IV).

The standing principles that doom Plaintiffs' lead claim for violations of the Elections and Electors Clause also foreclose their claims in Counts II-IV for violations of the Equal

Protection Clause, the Due Process Clause, and "Widespread Fraud" (presumably in violation of Arizona common law, although the complaint is unclear on that point, among others). The common thread in each of these claims is that Plaintiffs' votes were diluted because Arizona counties counted some votes Plaintiffs contend were "illegal" and failed to count some votes Plaintiffs contend were "legal." But courts have rejected the notion that the generalized grievance of alleged vote dilution provides private plaintiffs like those here with a right of action. *Bognet*, 2020 WL 6686120, at *11 ("This conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment."); *Nolles v. State Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (voters lacked standing to allege substantive due process claim regarding implementation of new election law where they failed to allege particularized injury); *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020) ("This is a textbook generalized grievance."); *Moore v. Cicosta*, No. 1:20-cv-911, 2020 WL 6063332, at *14 (M.D.N.C. Oct. 14, 2020) ("[T]he notion that a single person's vote will be less valuable as a result of unlawful or illegal ballots being cast is not a concrete and particularized injury in fact necessary for Article III standing.").

There is a good reason for this standing principle that precludes private plaintiffs from challenging governmental action or inaction that impacts the public generally: otherwise, any enterprising conspiracy theorist with a Twitter following could run a GoFundMe campaign to challenge the results of an election. Basic principles of standing foreclose the notion that private plaintiffs such as those here can unilaterally choose to pursue the extraordinary measure of putting the results of a presidential election in the hands of the jury that would be responsible for adjudicating these claims if they somehow were to proceed to a trial on the merits.

D. Laches bars Plaintiffs' claims.

Even if they have standing (they don't), the doctrine of laches bars Plaintiffs' claims because they have unreasonably delayed bringing their claims to the detriment of

not only the defendants, but also the millions of voters in Arizona who voted in this last election. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001) ("To demonstrate laches, the 'defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself.'").

In the election context, the Ninth Circuit has regularly dismissed claims brought after elections based on laches, "lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs." *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988). This is because of "the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity." *Id.* Thus, "if aggrieved parties, without adequate explanation, do not come forward *before* the election, they will be barred from the equitable relief of overturning the results of the election." *Id.* (emphasis added).

Even when plaintiffs bring *pre*-election claims, they must do so sufficiently before the election. This Court has repeatedly dismissed pre-election claims based on laches when plaintiffs did not promptly bring their claims upon discovery of those claims. *See, e.g.*, *League of Women Voters of Arizona v. Reagan*, No. CV-18-02620-PHX-JAT, 2018 WL 4467891, at *8 (D. Ariz. Sept. 18, 2018) (dismissing a claim brought "less than three months" before the election); *Arizona Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 921 (D. Ariz. 2016) (dismissing an election claim brought 18 days before the relevant deadline); *Arizona Pub. Integrity All. Inc. v. Bennett*, No. CV-14-01044-PHX-NVW, 2014 WL 3715130, at *2 (D. Ariz. June 23, 2014) (dismissing an election claim brought two weeks before the relevant deadline); *Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887, 909 (D. Ariz. 2005) (dismissing claim when plaintiffs had "ample opportunity" to bring the claim sooner).

Plaintiffs unreasonably delayed bringing their claims not only until after the election, but almost a month after Election Day. This delay is manifestly unreasonable and ample grounds for dismissal under Ninth Circuit precedent.

In Count II, which purports to state a claim under the Equal Protection Clause and 28 U.S.C. § 1983, Plaintiffs argue that Arizona election officials improperly violated their "right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution and Arizona law." Doc. 1, ¶¶ 118, 120. Paragraphs 43-53 of Plaintiffs' complaint also parade through a laundry list of grievances regarding alleged "Violations of Arizona Election Law," Doc. 1, ¶¶ 43-53, all of which are incorporated by reference in each of plaintiffs' claims. *Id.* ¶ 103, 112, 124, 135. The allegations focus on the process used to match signatures on absentee ballots during the election, *id.* ¶¶ 46-48, the role of poll watchers and poll referees during the election, *id.* ¶¶ 48-49, alleged "irregularities" in the operation of Dominion Voting Machines during the election, *id.* ¶¶ 50-52, and the certification of the Dominion machines, *id.* ¶ 53. As Plaintiffs acknowledge, nearly all of these practices were in place on or before Election Day, and even the one post-election practice Plaintiffs challenge, the recent recertification of post-election logic and accuracy test of Maricopa County's Dominion machines on November 18, *id.* ¶ 53, occurred almost three weeks ago.

Plaintiffs do not claim knowledge that *any* of these practices led to counting a single illegal vote or discounting a single legal vote in Arizona. And they provide no explanation why they are raising these issues now, ***more than a month after the election was completed***, when their own complaint reveals they were aware of their grievances on or before Election Day.

Specifically, Plaintiffs have known about Dominion voting machines for months. *See Jarrow Formulas, Inc. v. Nutrition Now, Inc.*, 304 F.3d 829, 838 (9th Cir. 2002) (the delay is "measured from the time the plaintiff knew or should have known about its potential cause of action"). Throughout their Complaint, Plaintiffs allege that the Dominion machines perpetuated errors and fraud based on "publicly available evidence," (Doc. 1, ¶ 21), including that (1) in 2018, an expert witness testified about Dominion's vulnerabilities, (*see id.* ¶ 72-73); (2) on January 24, 2020, Texas opted not to use

Dominion due to the possibility of fraud, (*see id.* ¶ 67, Ex. 11); and (3) on October 22, 2020, the Northern District of Georgia issued an order as to Dominion voting machines, (*see id.* ¶ 69). By Plaintiffs' own repeated admission, they have long been on notice of these alleged irregularities.

Similarly, regarding any issues Plaintiffs take with their "right to be present and have actual observation and access to the electoral process as secured by the Equal Protection Clause of the United States Constitution and Arizona law," Doc. 1, ¶ 118, the opportunity to observe the electoral process arose in October—when counties began to tabulate early ballots—and continued through the canvass. *See, e.g.*, A.R.S. § 16-550(B); Jessica Suerth, "Arizona Early Ballots in [the] 2020 Election Are Being Counted", *KGW8* (Oct. 20, 2020).[6]

In sum, Plaintiffs have offered no justifiable explanation for their delay in pursuing their claims. Nor could they. From the face of the Complaint, it is clear they were well aware of many of these issues well before Election Day, and all the rest of them no later than Election Day. Indeed, plaintiff Ward is the *Chair* of the Arizona Republican Party and the *Plaintiff* in the separate, ongoing election contest proceeding in Arizona State Court. Apart from their apparent tactical interest in scuttling the certified results of the election in Arizona, plaintiffs simply have no defensible basis for their delay.

Nor can there be any doubt that plaintiffs' delay—if it somehow resulted in their desired relief of decertifying the Arizona election results and awarding Arizona's electors to the losing candidate instead of the winning candidate, as their proposed order asserts it should—would prejudice both defendants and the nearly 3.4 million Arizonans who cast their votes in the election. In assessing prejudice, courts in election cases consider "prejudice to the courts, candidates, citizens who signed petitions, election officials, and voters." *Reagan*, 189 F. Supp. 3d at 923 (*Sotomayor v. Burns*, 199 Ariz. 81, 13 P.3d 1198, 1200 (2000); *Mathieu v. Mahoney*, 174 Ariz. 456, 851 P.2d 81, 85 (1993)). As the

[6] https://www.kgw.com/article/news/politics/elections/arizona-ballots-counted-2020-election-biden-trump-kelly-mcsally/75-96f7a64f-18d8-425d-91b0-c721f96fe6bb.

State's primary elections official, it is the Secretary's duty to ensure that elections are conducted in a manner that fulfills the will of Arizona voters. She did so, and plaintiffs should not be permitted to challenge that reality by asserting these bogus claims well after the election was completed. The Electoral College meets less than one week after the hearing on this motion, on December 14, 2020. Because of plaintiffs' delays, it is no longer feasible that this case could proceed through a trial on the merits and any related appeals before electors must cast their votes. Granting Plaintiffs' requested preliminary relief would thus effectively deprive defendants and Arizona voters of their right to defend against these claims on the merits, while rewarding plaintiffs for their tactical delay. Such a result would be untenable and cannot be squared with any conception of the doctrine of laches.

E. Plaintiffs' conspiracy theories fail to meet basic pleading standards.

Because Plaintiffs' claims fail on procedural grounds for lack of jurisdiction, based on the application of the doctrine of laches, and for lack of standing, the Court need not reach the merits to dismiss the case with prejudice and deny the TRO application and request for preliminary injunctive relief as moot. Nonetheless, should the Court address the merits, the substance of Plaintiffs' allegations provides even more reasons for dismissing all their claims with prejudice. Distilled to their essence, Plaintiffs' allegations underlying each of their claims are grounded on the following theories, each of which has fundamental and insurmountable flaws:

1. There Are No Plausible Allegations That Dominion Voting Systems Machines Were Hacked in Arizona.

Plaintiffs offer the affidavit of an anonymous witness who claims to have had ties to long-dead Venezuelan dictator Hugo Chavez,[7] and involvement in rigging elections in that country. Doc. 1, Ex. 1. Plaintiffs' lead (albeit anonymous) witness acknowledges

[7] Hugo Chavez died on March 5, 2013. William Neuman, *Chavez Dies, Leaving Sharp Divisions in Venezuela*, N.Y. Times Mar. 6, 2013, *available at* https://www.nytimes.com/2013/03/06/world/americas/hugo-chavez-of-venezuela-dies.html.

having little knowledge of the electoral process in the United States: "I have not participated in any political process in the United States, have not supported any candidate for office in the United States, am not legally permitted to vote in the United States, and have never attempted to vote in the United States." *Id.* ¶ 3. The witness claims to have witnessed the creation and operation of a voting systems company called "Smartmatic," and claims this system was used to manipulate elections in favor of Chavez and his successor, Nicolas Maduro. *Id.* ¶¶ 7-19. The witness also claims this system was used to rig elections throughout Latin America. *Id.* ¶ 20. This witness further claims that descendants of this "Smartmatic" system are now "in the DNA" of voting software systems used in the United States, including Dominion Voting Systems, such that they could be exploited by unscrupulous persons seeking to manipulate election results. *Id.* ¶¶ 21-22.

According to this supposed anonymous witness, on Election Day, "vote counting was abruptly stopped in five states using Dominion software" when "Donald Trump was significantly ahead in the votes." *Id.* ¶ 26. Plaintiffs' anonymous lead witness continues by asserting that "during the wee hours of the morning … something significantly changed," such that "[w]hen the vote reporting resumed the very next morning there was a very pronounced change in favor of the opposing candidate, Joe Biden." *Id.*

This is a preposterous claim even in states where large batches of votes for President-Elect Biden were reported in the days after Election Day. ***But plaintiffs have no plausible basis for alleging this transpired in Arizona***. On election night, President-Elect Biden had a relatively substantial lead due to favorable results in early voting, and was declared the victor in the state by Fox News and the Associated Press. Erik Wemple, *Arizona Calls Vindicate Fox Decision Desk*, Wash. Post, Nov. 13, 2020, *available at* https://www.washingtonpost.com/opinions/2020/11/13/arizona-calls-vindicate-fox-news-decision-desk/. His lead *narrowed* in subsequent days due to President Trump's relatively favorable results among votes cast on Election Day, before the remaining networks called the election in President-Elect Biden's favor once it became clear the

margin exceeded 10,000 votes and was not subject to reasonable dispute. *Id.* The professed "alarm[]" plaintiffs' anonymous lead witness claims to have experienced with respect to the Arizona election results, Cmplt. Exh. 1 ¶ 26, is utterly nonsensical.

With that, Plaintiffs' allegations regarding Dominion Voting Systems machines in Arizona fall apart. While Plaintiffs allege that such machines (like all computers) *could be* hacked and manipulated, they make no plausible allegation that Dominion machines in Arizona *were* hacked and manipulated. And while Plaintiffs devote twenty-three pages of their complaint to allegations of *potential* vulnerabilities of Dominion machines and software, *id.* ¶¶ 63-101, and six pages to the antipathy of a single Dominion employee towards President Trump, *id.* ¶¶ 94-101, they offer no plausible connection whatsoever between these allegations and any impact on the results of the election in Arizona.

2. Plaintiffs' Allegations Regarding "Unreturned Absentee Ballots" and Out-of-State Voters Provide No Basis for Overturning the Election Results.

The primary statistical theory underlying Plaintiffs' claim that there were a sufficient number of illegal votes counted and legal votes uncounted to overturn the results of the election is based on the analysis of two so-called experts, Dr. William M. Briggs (a self-proclaimed "Statistician to the Stars!," Cmplt. Exh. 2), who in turn states that his opinions are ***based entirely on survey data provided by someone named Matt Braynard***. Compl. Ex. 2, at 1.

But who is Matt Braynard? Exhibit 3 to the complaint consists of a series of ***printouts of Twitter posts*** from *someone* named Matt Braynard. Otherwise, neither plaintiffs nor Dr. Briggs offer anything whatsoever about Braynard's identify, qualifications, the methodologies used in his surveys, whether those methodologies comported with the standards required for considering a survey reliable, the steps taken to ensure his samples were random and representative of the underlying population, or the steps taken to account for possible inaccuracies or falsehoods provided in survey responses. Dr. Briggs does not even cite any basis for his assumption that there were 518,860 "unreturned absentee ballots" in Arizona. *Id.* at 1.

The single-page printout of Arizona-specific data appended to Dr. Briggs' report (which, presumably, was among the "data provided by Matt Braynard") further undermines the plausibility of Dr. Briggs' assertions. Cmplt, Exh. 2A. This page indicates that survey respondents were asked whether they requested an absentee ballot "***in Arizona***," and that the 35.56% of respondents who answered "no" were deemed to have received a ballot without requesting one—even though an Arizona voter who requested an absentee ballot while attending school out-of-state or living on a military base abroad would have properly answered "no" to the question as posed. From the results of this fatally poorly drafted survey, Dr. Briggs even more inexplicably leaps to the conclusion that 35.56% of the "unreturned absentee ballots" in Arizona should be invalidated, that more than 208,333-229,937 ballots were "troublesome," and that the results of the election should be overturned. Exh. 1 at 1; Cmplt. ¶¶ 54-55. Simply describing Briggs' "analysis" demonstrates its utter nonsense and implausibility.

Dr. Briggs' so-called "Error 2," upon which he asserts that somewhere between 78,714 and 94,975 votes of Arizonans should be invalidated, bears no closer relationship to plausible reality. Cmplt. ¶ 56 & Exh. 2. These figures are based on respondents to Mr. Braynard's surveys who were listed (in some undisclosed data set derived from some undisclosed data source, but put that aside) as having an "unreturned absentee ballot," but who responded "yes" when asked whether they had mailed their ballot. Dr. Briggs does nothing to account for various reasons a person may have answered "yes"—perhaps they dropped their ballot in drop box or voted in-person absentee, and answered "yes" even though such ballots were not counted in whatever database Mr. Braynard used as "returned by mail"; maybe they answered "yes" because they mailed back their ballot, but did not do it in a timely fashion such that it would be properly counted; or conceivably some of these respondents to this survey conducted on November 15-17, 2002, *two weeks after the election*, lied or misremembered. Nor does Dr. Briggs even suggest there is any reason to believe these ballots predominantly favored Trump rather than Biden. Yet, plaintiffs implausibly assert this "analysis" serves as a basis for overturning the election.

Plaintiffs' assertion that the Court could plausibly conclude that 5,790 absentee votes were "illegal" based on voters filing notices of change of address in advance of the election is equally ridiculous. Again, this assertion is based solely on a ***Twitter post*** by someone named Matt Braynard—for whom Plaintiffs offer no evidence of any qualifications or methodologies or anything else. Plaintiffs completely disregard the fact that voters may change their mailing address for reasons wholly consistent with their right to continue voting in Arizona—*e.g.,* a 19 year old from Pima County attending college out of state may have elected to retain their Arizona residence in voting status, while receiving their personal mail at school; similarly, a service member from Maricopa County may have been transferred from one deployment to another, while properly remaining an Arizona voter throughout. Plaintiffs make no allegation that could provide a plausible basis for concluding ***a single one*** of the address changes they characterize as "illegal votes" was in fact "illegal."

3. Plaintiffs' Allegations Regarding "Statistical Impossibilities" Provide No Basis for Overturning the Election Results.

Plaintiffs further ask the Court to cast aside ***more than 160,000 votes*** of Arizonans, and thereby reverse the results of the election as determined by the will of nearly 3.4 million voters, based on what they describe as "historically unprecedented" turnout levels and "statistically significant" results favoring President-Elect Biden in unspecified counties using Dominion Voting Machines. Cmplt. ¶ 19 D-E. One of plaintiffs' so-called experts, Russell Ramsland, asserts there was "an improbable, and possibly impossible spike in processed votes" in Maricopa and Pima Counties at 8:46 p.m. on November 3, 2020. Cmplt. ¶ 60 & Exh. 17. Mr. Ramsland's affidavit indicates he has a business and technical background that includes experience with election systems, but he does not profess to have any expertise in political science, election operations and logistics, the timing of election returns, or the manner in which ballots are processed in the State of Arizona. *Id.* Ex. 17. He apparently was wholly ignorant of (or omitted) the fact that Arizona begins processing early ballots before the election, such that the results of early

ballots in Pima and Maricopa Counties shortly after the polls closed was unsurprising. Mr. Ramsland's speculation that these results were the product of a multi-national conspiracy, rather than the counting of validly cast ballots, is utterly implausible. And while Plaintiffs submit affidavits from other witnesses who profess their surprise at the election results, none of them offers any plausible basis for questioning the election results.

4. Plaintiffs' Allegations Regarding Alleged Violations of Arizona Election Laws Provide No Basis for Overturning the Election.

Finally, plaintiffs allege various violations of Arizona election law at the county level in connection with the administration of the Arizona election. Cmplt. ¶¶ 46-52. Plaintiffs do not allege that the *Secretary* was responsible for any of these alleged violations, as would be required to hold her responsible for "widespread fraud" (Count IV), or as individually responsible for the constitutional violations alleged in counts I-III. Nor do Plaintiffs allege any of these alleged violations resulted in counting a sufficient number of illegal votes or discounting a sufficient number of legal votes to call into question the results of the election.

In short, even if accepted as true solely for purposes of considering a motion to dismiss, the allegations of Plaintiffs' complaint do not provide any plausible basis for the relief they seek, *i.e.,* overturning the results of the 2020 presidential election in Arizona.

F. The Court Should Dismiss This Case on Preclusion Principles.

Plaintiffs are barred from re-adjudicating their issues here under the doctrine of collateral estoppel, or issue preclusion. Issue preclusion "applies when an issue was [1] actually litigated in a previous proceeding, there was [2] a full and fair opportunity to litigate the issue, [3] resolution of the issue was essential to the decision, a [4] valid and final decision on the merits was entered, and there is [5] common identity of the parties." *Ludwig v. Arizona by & through Brnovich*, 790 F. App'x 849, 851 (9th Cir. 2019) (quoting *Hullett v. Cousin*, 63 P.3d 1029, 1034 (Ariz. 2003)).

All of these requirements are satisfied here. As discussed, at issue in the Maricopa County Superior Court elections contest was whether election officials engaged in misconduct warranting that the election be annulled and set aside for failure to allow legal observers to "fully observe" proceedings. *See* Ward Complaint ¶¶ 21-23, 26, 37; *see also Ward v. Jackson*, Proposed Findings of Fact and Conclusions of Law ¶ 11. Plaintiffs raise this same issue in their complaint. Compl. ¶¶ 15, 118, 120. The Maricopa County Superior Court clearly denied relief on this theory on the record during an evidentiary hearing, after briefing and argument. Under Arizona law, "a party precluded from litigating an issue … is also precluded from doing so with another, provided there was full and fair opportunity to litigate the issue in the first action." *Gilbert v. Ben-Asher,* 900 F.2d 1407, 1410 (9th Cir. 1990); see also *Campbell v. SZL Properties, Ltd.*, 62 P.3d 966, 968 (Ariz. Ct. App. 2003) (holding that if "the first four elements of collateral estoppel are present, Arizona permits defensive … use of the doctrine"). Having fully availed herself of the opportunity to litigate her "misconduct" claim in state court—and lost—Dr. Ward cannot join with her fellow presidential electors in this suit to obtain a second bite at the apple.[8]

G. The Eleventh Amendment Bars Plaintiffs' claims.

Plaintiffs' claims face yet another insurmountable hurdle: the Eleventh Amendment. As the Supreme Court held in *Pennhurst State School & Hospital v. Halderman*, the Eleventh Amendment bars federal courts from granting "relief against state officials on the basis of state law, whether prospective or retroactive." 465 U.S. 89, 106 (1984). This bar applies even where plaintiffs disguise their state law claims as federal causes of action. *See, e.g.*, *Massey v. Coon*, No. 87-

[8] If the Court declines to dismiss the case outright on the grounds that the claims raised by Plaintiffs can only be brought in state court in an election contest it should, at the very least, abstain from hearing the case on federalism and comity grounds and dismiss on that basis. *See Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727–30 (1996) (affirming the power of federal courts to dismiss under abstention doctrines absent a mandatory duty to award relief). Plaintiffs ask for an unprecedented intrusion into state sovereignty by a federal court. Under the *Burford, Colorado River*, and *Pullman* doctrines of abstention, Plaintiffs' claims should be resolved in a state forum.

3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law"); *Balsam v. Sec'y of New Jersey*, 607 F. App'x 177, 183 (3d Cir. 2015) (applying bar to state law claims "premised on violations of the federal Constitution"); *Thompson v. Alabama*, No. 2:16-CV-783-WKW, 2017 WL 3223915, at *8 (M.D. Ala. July 28, 2017) (bar applies where federal constitutional claims rest on failure to enforce state law, as "[t]he true nature of this 'remedy' sounds in state law").

Try though they might to disguise their claims as federal causes of action, Plaintiffs cannot escape the Eleventh Amendment. Count IV, for example, is captioned merely as "Wide-Spread Ballot Fraud." But even a cursory review of Count IV's allegations makes clear that this count stems from violations of *Arizona* law, not federal constitutional or statutory law. Plaintiffs allege that certification must be enjoined because "there were intentional violations of multiple provisions of *Arizona* law," Cmplt. ¶ 141, and (mis)cite to an Arizona Supreme Court decision about *Arizona* remedies for violations of *Arizona* election statutes, Cmplt. ¶ 138. Plaintiffs' other counts fare little better. Count II claims violations of the Equal Protection Clause—but those violations are premised on a failure to comply with *state* elections law, such as the right to observe. Cmplt. ¶ 118. And, perplexingly, Count II again relies on the ability to contest elections under Arizona law. Compl. ¶ 123. Count I alleges that Defendants violated the Elections and Electors Clauses by somehow exercising their powers in a way that "conflict[s] with existing legislation" enacted by the Arizona legislature—again hinging on whether *state* law was violated. Compl. ¶ 106.[9] And Count III alleges a Due Process Clause violation premised on a failure to comply with Arizona law on ballot security and transport and the resulting "dilution" of Plaintiffs' votes. Cmplt. ¶ 132 (citing A.R.S. § 16-608). The relief Plaintiffs

[9] Count I, in what appears to be a botched cut-and-paste job, also cites to several provisions of the VRA and HAVA, but does not allege violations of either statute. *See* Cmplt. ¶ 106(i–iv).

seek thus "conflicts directly with the principles of federalism that underlie the Eleventh Amendment." *Pennhurst*, 465 U.S. at 106.

H. Plaintiffs' Requested TRO and Preliminary Injunction Should be Denied as Moot and In Any Event Are Without Merit.

Plaintiffs' requested TRO and motion for preliminary injunctive relief should be denied for the same reasons the motion to dismiss should be granted, as well as on separate and independent grounds that the Court need only consider if the motion to dismiss is denied. As this Court has ruled, "'the standard for issuing a temporary restraining order is identical to that for issuing a preliminary injunction.'" *Compass Bank v. Lovell,* No. CV-16-00538-PHX-DJH, 2016 WL 8738244, at *4 (D. Ariz. Apr. 8, 2016) (quoting *Taylor-Failor v. Cty. of Hawaii*, 90 F. Supp. 3d 1095, 1098 (D. Haw. 2015)). In *any* case, a TRO and request for preliminary injunction is "'an extraordinary remedy never awarded as a matter of right.'" *Id.* (quoting *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008)). That is all the more so here, where Plaintiffs seek this to employ this always-extraordinary remedy to obtain sweeping and unprecedented relief that would overturn the results of the Arizona election, award the state's electors to the certified loser of the election instead of the winner, and thereby disenfranchise nearly 3.4 million Arizona voters.

"'To obtain a preliminary injunction, a party must show that 'he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Id.* (*quoting Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014)). *Id.* Plaintiffs fail to make any of the required showings.

1. Plaintiffs' Claims Have No Likelihood of Success.

Here, Plaintiffs have *no* likelihood of success on their claims—as discussed above, the claims should be dismissed. But even if any of Plaintiffs' claims were adequately alleged, Plaintiffs have not put forward any evidence to suggest they could ever prove (let alone *likely* prove) their claim that the election results in Arizona were the product of a

multi-national and multi-state conspiracy—rather than the validly cast votes of Arizonans.

The legal deficiencies in and facial implausibility of Plaintiffs' claims is further compounded by their evidentiary failures. Plaintiffs ask the Court to grant their requested relief based on ***anonymous*** affidavits. But anonymous affidavits are inadmissible and may not be considered by the Court, as 28 U.S.C § 1746 requires a statement verified "***by the person"*** making it. Having not even identified any persons who may have provided several of the affidavits supporting their claims, Plaintiffs cannot rely on their purported testimony. *See* Cmplt, Exhs. 1 (anonymous declaration relating to Smartmatic voting machines and Venezuela), 4 (anonymous declaration from purported statistician), and 12 (anonymous affidavit from someone identified only as "Spider").

Plaintiffs also have submitted a series of purported "expert reports" that, their complaint alleges, serve as "conclusive evidence" that the results of the presidential election in the State of Arizona should be overturned. Cmplt., Exhs. 2-2.F (Briggs), 3 (Braynard),[10] 4 (anonymous statistician), 9 (Keshel), 12 (Spider) and 17 (Ramsland). *None* of these purported "reports" meets the minimal requirements for an expert report that may be considered under Fed. R. Civ. P. 26(a)(2). Plaintiffs have not provided the data and information considered in forming their opinions as required by Rule 26, or disclosed the terms of any funding they may be receiving in connection with their opinions as required by Rule 26.

This evidentiary failure is starkly illustrated by Dr. Briggs, who has submitted a four-page report that Plaintiffs offer in support of their challenge to more than 300,000 Arizona votes. But Dr. Briggs simply makes calculations that, he states, are based entirely on "survey data" that "was provided by Matt Braynard." Cmplt, Exh. 2 at 1. Mr. Braynard,

[10] The disclosure regarding purported expert Matt Braynard consists entirely of a printout of four Tweets, accompanied with what appears to be a typewritten transcription of a fifth Tweet. Cmplt, Exh. 3. There is no disclosure of Mr. Braynard's curriculum vitae, qualifications, experience, opinions, methodologies, data and materials considered, sources of any funding received in connection with his expert services.

however, has not offered his own expert report, and Dr. Briggs has disclosed nothing whatsoever about Mr. Braynard's survey—he has not identified the methodologies that were used, shown that he and other persons who conducted his survey had the qualifications and experience required to conduct a survey in accordance with those methodologies, or disclosed the data that was used in and produced by this supposed survey. The report plaintiffs have submitted from Dr. Briggs thus, on its face, has no conceivable evidentiary value. And Plaintiffs' other experts likewise have failed to provide the basic data and information needed to assess their opinions and whether they are of any potential evidentiary value.

2. Plaintiffs' Requested Relief Would Result in Enormous Prejudice to Arizona Voters.

Any consideration of the relative harm and prejudice that would result from Plaintiffs' requested relief also must lead to denial of their motion. Because Plaintiffs waited until more than a month after the November election to pursue their claims their proclaimed emergency is of their own making. Moreover, denial of their requested relief would, at most, result in the potential dilution of these Plaintiffs' votes. As discussed above, a claimed generalized grievance of "vote dilution" is not even a cognizable individual injury that confers standing. *Bognet*, 2020 WL 668120, at *11-14 *Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *5 (N.D. Ga. Nov. 20, 2020). By contrast, the requested relief would cause enormous harm to Arizonans, supplanting the will of nearly 3.4 million voters reflected in the certified election results and potentially imperiling Arizona's participation in the Electoral College. It would be difficult to envision a case in which the balance of hardships would tip more strongly against a plaintiff.

IV. CONCLUSION

Plaintiffs seek unprecedented relief: ***overturning a presidential election and disenfranchising nearly 3.4 million Arizona voters***—and doing so through a proposed TRO and preliminary injunction no less. They do so based on anonymous affiants, facially

unqualified so-called experts, and an implausible claimed conspiracy. For the reasons stated herein, the Court should dismiss plaintiffs' application for TRO and motion for preliminary injunctive relief, and award the Secretary her attorneys' fees and other appropriate relief.

Respectfully submitted this 4th day of December, 2020.

SUSMAN GODFREY L.L.P.

By *s/ Justin A. Nelson*
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Stephen E. Morrissey
Stephen Shackelford
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INDEX OF EXHIBITS

Exhibit	Description	Date
A	Order of the Supreme Court of Wisconsin in *Wisconsin Voters Alliance v. Wisconsin Elections Commission*, Case No. 2020AP1930-OA	12/04/2020
B	Verified Petition for Rule 27 Discovery in *Kelli Ward vs. Constance Jackson, et al.,* Case No. CV 2020-015282, Superior Court of the State of Arizona, County of Maricopa	11/24/2020
C	Certificate of Consultation	12/04/2020

EXHIBIT A

OFFICE OF THE CLERK

Supreme Court of Wisconsin

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December 4, 2020

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You are hereby notified that the Court has entered the following order:

No. 2020AP1930-OA Wisconsin Voters Alliance v. Wisconsin Elections Commission

A petition for leave to commence an original action under Wis. Stat. § (Rule) 809.70 and a supplement thereto, a supporting legal memorandum, and supporting expert reports have been filed on behalf of petitioners, Wisconsin Voters Alliance, et al. A response to the petition has been filed by respondents, Wisconsin Elections Commission, Ann S. Jacobs, Mark L. Thomsen, Marge Bostelman, Julie M. Glancey, Dean Knudsen, and Robert F. Spindell, and a separate response has been filed by respondent Governor Tony Evers. Amicus briefs regarding the issue of whether to grant leave to commence an original action have been filed by (1) Christine Todd Whitman, et al; (2) the City of Milwaukee; (3) Wisconsin State Conference NAACP, et al.; and (4) the Center for Tech and Civic Life. In addition, a motion to intervene has been filed by proposed intervenor-respondent, Democratic National Committee.

After considering all of the filings, we conclude that this petition does not satisfy our standards for granting leave to commence an original action. Although the petition raises time-

sensitive questions of statewide significance, "issues of material fact [would] prevent the court from addressing the legal issues presented." State ex rel. Ozanne v. Fitzgerald, 2011 WI 43, ¶19, 334 Wis. 2d 70, 798 N.W.2d 436 (Prosser, J., concurring). It is therefore not an appropriate case in which to exercise our original jurisdiction. Accordingly,

IT IS ORDERED that the petition for leave to commence an original action is denied; and

IT IS FURTHER ORDERED that the motion to intervene is denied as moot.

BRIAN HAGEDORN, J., (*concurring*). The Wisconsin Voters Alliance and a group of Wisconsin voters bring a petition for an original action raising a variety of questions about the operation of the November 3, 2020 presidential election. Some of these legal issues may, under other circumstances, be subject to further judicial consideration. But the real stunner here is the sought-after remedy. We are invited to invalidate the entire presidential election in Wisconsin by declaring it "null"—yes, the whole thing. And there's more. We should, we are told, enjoin the Wisconsin Elections Commission from certifying the election so that Wisconsin's presidential electors can be chosen by the legislature instead, and then compel the Governor to certify those electors. At least no one can accuse the petitioners of timidity.

Such a move would appear to be unprecedented in American history. One might expect that this solemn request would be paired with evidence of serious errors tied to a substantial and demonstrated set of illegal votes. Instead, the evidentiary support rests almost entirely on the unsworn expert report[1] of a former campaign employee that offers statistical estimates based on call center samples and social media research.

This petition falls far short of the kind of compelling evidence and legal support we would undoubtedly need to countenance the court-ordered disenfranchisement of every Wisconsin voter. The petition does not even justify the exercise of our original jurisdiction.

As an initial matter, the Wisconsin Supreme Court is not a fact-finding tribunal. Yet the petition depends upon disputed factual claims. In other words, we couldn't just accept one side's description of the facts or one side's expert report even if we were inclined to believe them.[2] That alone means this case is not well-suited for an original action. The petition's legal support is no less wanting. For example, it does not explain why its challenge to various election processes

[1] After filing their petition for original action, the Petitioners submitted a second expert report. But the second report only provides additional computations based on the assumptions and calculations in the initial expert report.

[2] The Attorney General and Governor offer legitimate arguments that this report would not even be admissible evidence under Wis. Stat. § 907.02 (2017-18).

All subsequent references to the Wisconsin Statutes are to the 2017-18 version.

comes after the election, and not before. Nor does it grapple with how voiding the presidential election results would impact every other race on the ballot, or consider the import of election statutes that may provide the "exclusive remedy."[3] These are just a few of the glaring flaws that render the petition woefully deficient. I therefore join the court's order denying the original action.

Nonetheless, I feel compelled to share a further observation. Something far more fundamental than the winner of Wisconsin's electoral votes is implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once the door is opened to judicial invalidation of presidential election results, it will be awfully hard to close that door again. This is a dangerous path we are being asked to tread. The loss of public trust in our constitutional order resulting from the exercise of this kind of judicial power would be incalculable.

I do not mean to suggest this court should look the other way no matter what. But if there is a sufficient basis to invalidate an election, it must be established with evidence and arguments commensurate with the scale of the claims and the relief sought. These petitioners have come nowhere close. While the rough and tumble world of electoral politics may be the prism through which many view this litigation, it cannot be so for us. In these hallowed halls, the law must rule.

Our disposal of this case should not be understood as a determination or comment on the merits of the underlying legal issues; judicial review of certain Wisconsin election practices may be appropriate. But this petition does not merit further consideration by this court, much less grant us a license to invalidate every single vote cast in Wisconsin's 2020 presidential election.

I am authorized to state that Justices ANN WALSH BRADLEY, REBECCA FRANK DALLET, and JILL J. KAROFSKY join this concurrence.

ROGGENSACK, C.J. (*dissenting*). It is critical that voting in Wisconsin elections not only be fair, but that the public also perceives voting as having been fairly conducted.

This is the third time that a case filed in this court raised allegations about purely legal questions that concern Wisconsin Elections Commission (WEC) conduct during the November 3,

[3] See Wis. Stat. § 9.01(11) (providing that § 9.01 "constitutes the exclusive judicial remedy for testing the right to hold an elective office as the result of an alleged irregularity, defect or mistake committed during the voting or canvassing process"); Wis. Stat. § 5.05(2m)(k) (describing "[t]he commission's power to initiate civil actions" under § 5.05(2m) as the "exclusive remedy for alleged civil violations of chs. 5 to 10 or 12").

2020, presidential election.[4] This is the third time that a majority of this court has turned its back on pleas from the public to address a matter of statewide concern that requires a declaration of what the statutes require for absentee voting. I dissent and write separately because I have concluded that the court has not meet its institutional responsibilities by repeatedly refusing to address legal issues presented in all three cases.

I agree with Justice Hagedorn that we are not a circuit court, and therefore, generally, we do not take cases for which fact-finding is required. Green for Wisconsin v. State Elections Bd., 2006 WI 120, 297 Wis. 2d 300, 301, 723 N.W.2d 418. However, when the legal issue that we wish to address requires it, we have taken cases that do require factual development, referring any necessary factual determinations to a referee or to a circuit court. State ex rel. LeFebre v. Israel, 109 Wis. 2d 337, 339, 325 N.W.2d 899 (1982); State ex rel White v. Gray, 58 Wis. 2d 285, 286, 206 N.W.163 (1973).

We also have taken cases where the issues we wish to address are purely legal questions for which no factual development is required in order to state what the law requires. Wisconsin Legislature v. Palm, 2020 WI 42, 391 Wis. 2d 497, 942 N.W.2d 900. The statutory authority of WEC is a purely legal question. There is no factual development required for us to declare what the law requires in absentee voting.

Justice Hagedorn is concerned about some of the relief that Petitioners request. He begins his concurrence saying, "the real stunner here is the sought after remedy." He next relates, "The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen." Then, he concludes with, "this petition does not merit further consideration by this court, much less grant us a license to invalidate every single vote cast in Wisconsin's 2020 presidential election."[5]

Those are scary thoughts, but Justice Hagedorn has the cart before the horse in regard to our consideration of this petition for an original action. We grant petitions to exercise our jurisdiction based on whether the legal issues presented are of state wide concern, not based on the remedies requested. Petition of Heil, 230 Wis. 428, 284 N.W.42 (1938).

Granting a petition does not carry with it the court's view that the remedy sought is appropriate for the legal issues raised. Historically, we often do not provide all the relief requested. Bartlett v. Evers, 2020 WI 68, ¶9, 393 Wis. 2d 172, 945 N.W.2d 685 (upholding some but not all partial vetoes). There have been occasions when we have provided none of the relief requested by the petitioner, but nevertheless declared the law. See Sands v. Menard, Inc., 2010 WI 96, ¶46, 328 Wis. 2d 647, 787 N.W.2d 384 (concluding that while reinstatement is the preferred remedy under

[4] Trump v. Evers, No. 2020AP1971-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020); Mueller v. WEC, No. 2020AP1958-OA, unpublished order (Wis. S. Ct. Dec. 3, 2020) and Wisconsin Voters Alliance v. WEC, No. 2020AP193-OA.

[5] Justice Hagedorn forgets to mention that one form of relief sought by Petitioners is, "Any other relief the Court deems appropriate."

Title VII, it is an equitable remedy that may or may not be appropriate); Coleman v. Percy, 96 Wis. 2d 578, 588-89, 292 N.W.2d 615 (1980) (concluding that the remedy Coleman sought was precluded).

We have broad subject matter jurisdiction that enables us to grant the petition for original action pending before us. Our jurisdiction is grounded in the Wisconsin Constitution. Wis. Const., art. VII, Section 3(2); City of Eau Claire v. Booth, 2016 WI 65, ¶7, 370 Wis. 2d 595, 882 N.W.2d 738.

I dissent because I would grant the petition and address the people of Wisconsin's concerns about whether WEC's conduct during the 2020 presidential election violated Wisconsin statutes. As I said as I began, it is critical that voting in Wisconsin elections not only be fair, but that the public also perceives voting as having been fairly conducted. The Wisconsin Supreme Court should not walk away from its constitutional obligation to the people of Wisconsin for a third time.

I am authorized to state that Justices ANNETTE KINGSLAND ZIEGLER and REBECCA GRASSL BRADLEY join this dissent.

Sheila T. Reiff
Clerk of Supreme Court

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EXHIBIT B

JEFF FINE
Clerk of the Superior Court
By Eufemia Vazquez-Fregoso, Deputy
Date 11/24/2020 Time 16:55:08
Description Amount
CASE# CV2020-015285
ELECTION CONTEST:NEW 333.00
TOTAL AMOUNT 333.00
Receipt# 28034632

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KELLI WARD,

Plaintiff;

vs.

CONSTANCE JACKSON; FELICIA ROTELLINI; FRED YAMASHITA; JAMES MCLAUGHLIN; JONATHAN NEZ; LUIS ALBERTO HEREDIA; NED NORRIS; REGINA ROMERO; SANDRA D. KENNEDY; STEPHEN ROE LEWIS; and STEVE GALLARDO;

Defendants.

Case No. CV 2020-015285

VERIFIED PETITION FOR RULE 27 DISCOVERY

(Elections Contest)

Petitioner/Plaintiff, for her Verified Petition for Rule 27 Discovery against the above-named Defendants (hereinafter referred to as the "Petition" or "Complaint"), allege as follows:

INTRODUCTION

1. Petitioner expects to be a party to an action cognizable in this Court but cannot presently bring it or cause it to be brought.

2. The subject matter of the action is an elections contest pursuant to A.R.S. § 16-672 *et seq.* (hereinafter referred to as the "Elections Contest"). Plaintiff is expected to be plaintiff in the Elections Contest.

3. The Elections Contest cannot be presently brought, because A.R.S. § 16-676 provides that "[t]he elector contesting a state election shall, within five days after completion of the canvass of the election and declaration of the result thereof by the secretary of state or by the governor, file in the court in which the contest is commenced a statement [of the election contest]..." *See also Nicol v. Superior Court, Maricopa Cty.*, 106 Ariz. 208, 211–12, 473 P.2d 455, 458–59 (1970)(finding that elections contest filed before statewide candidate is officially declared nominated is premature: "[t]he legislature, in its wisdom, has throughout these years evidently refrained from passing legislation permitting such actions as in the instant case....The machinery and the time for bringing such proceedings is plainly set forth in the statute. The action of the respondent is therefore premature, and proper procedure has not been followed.")

4. The statewide canvass and declaration of the result thereof has not occurred as of this filing and is not expected to occur until November 30th, 2020. Therefore, the Elections Contest cannot presently be brought.

5. The subject matter of the Elections Contest is set forth in the proposed Complaint attached as Exhibit "1" hereto, which is hereby incorporated as if set forth herein.

PARTIES, JURISDICTION AND VENUE

6. The name and residence of the person who expects to be party to the Elections Contest is as follows:

Kelli Ward
3619 Desert Rose Lane
Lake Havasu City, AZ 86404

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7. The expected adverse parties to the Elections Contest are:

Constance Jackson
Felicia Rotellini
Fred Yamashita
James McLaughlin
Jonathan Nez
Luis Alberto Heredia
Ned Norris
Regina Romero
Sandra D. Kennedy
Stephen Roe Lewis
Steve Gallardo[1]

8. The foregoing persons are hereinafter referred to as the "Biden Electors."

9. Jurisdiction and venue are appropriate pursuant to A.R.S. § 16-672(B) *inter alia*.

GENERAL ALLEGATIONS

10. The foregoing allegations are reincorporated as if set forth herein.

11. As set forth in the proposed Elections Contest, and in accordance with the Civil Rules and/or A.R.S. § 16-677, Plaintiff intends to seek the following items:

(a) An inspection of "mail-in" ballots including signed envelopes (and/or scans thereof). Given the large number of ballots and limited timeframes, Plaintiff requests a reasonable inspection (sampling) of the signatures that can be performed in the appropriate statutory timeframes (hereinafter referred to as the "inspection/discovery"), and to compare the mail-in ballot signatures to the signatures on file. By the proposed inspection/discovery, Plaintiff wishes to determine whether the failure by election officials to allow legal observation of the mail-in ballot signature-verification process – which is the only "check" that is performed by elections officials to ensure that mail-

[1] To the extent known or surmised, the addresses for the Defendant-electors are identified in the summonses, which are hereby incorporated as if set forth herein.

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in ballots were actually filled out by the voter – resulted in insufficiently or falsely verified ballots being approved and tabulated (as detailed in Exhibit 1, the proposed Complaint). Because the envelopes are not available for public inspection, legal inspection/discovery is the only means by which Plaintiff may seek this information. Such inspection is provided for by A.R.S. § 16-677 and is relevant to prove that as a result of misconduct by elections officials, the outcome of the election is fundamentally uncertain and therefore Defendants' election may be annulled and set aside pursuant to A.R.S. § 16-676(B). The names and addresses of each person from whom discovery is sought are Maricopa County Supervisors Clint Hickman, Jack Sellers, Steve Chucri, Bill Gates, and Steve Gallardo, as well as the officer(s) in charge of the Maricopa County Elections Department (the "Maricopa County Board and Elections Officials") located at 301 W. Jefferson St. #10, Phoenix AZ 85003.

(b) An inspection to compare "duplicate" ballots to the original ballots from which they were "duplicated," for Congressional District 5 inclusive of all Queen Creek vote centers/polling places in particular. As detailed in the proposed Elections Contest, legal observation of the process by which ballots were "duplicated" was also not allowed, since the process occurred off-site. Further, there was an unusually high number of duplicate ballots in Congressional District 5/Queen Creek; and the results there were strongly inconsistent with both voter registration data (for party affiliation) and historical voting data (voting in previous elections including the 2016 Presidential election). The names and addresses of each person from whom

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discovery is sought are given above (the Maricopa County Board and Elections Officials) at the address above, incorporated as if set forth herein.

12. The reasons for perpetuating the evidence in advance of the expected action are that (1) given the potential magnitude of the inspection/discovery, as well as the ten to fifteen day window in which a trial on the elections contest must be statutorily conducted (*see* A.R.S. § 16-676(A)), Plaintiff may not be able to conduct any much less all of the requested discovery in time for trial, unless they are able to start now. (2) Despite the express provisions in A.R.S. §§ 16-676, 16-677 that an Elections Contest may only be filed after certification of the vote, and that Plaintiff is entitled to have inspections made "before preparing for trial," Plaintiff wishes to avoid any argument (no matter how infirm or unfair) that inspection/discovery may be denied on grounds of laches of any kind.

13. The evidence Plaintiff expects to obtain from the discovery is a reasonable inspection (sampling) of mail-in ballots, specifically including their signed envelopes (and/or scans thereof) and to compare them to the signatures on file; as well as an inspection to compare "duplicate" ballots to the original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in particular.

14. Plaintiff therefore asks for an order directing the clerk to issue a subpoena under Rule 45 to obtain the foregoing inspection/discovery in order to perpetuate the evidence.

15. Plaintiff further asks for the Court to hold an immediate hearing on the relief that this Petition seeks, pursuant to Rule 27(a)(2).

16. Because Plaintiff believes that service on the Defendants/expected adverse parties cannot be made with reasonable diligence, Plaintiff asks the court to order service by publication.

17. Pursuant to Rule 27(a)(5)(A), "[i]f satisfied that perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, the court must enter an order

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that: (i) identifies each person who may be served with a subpoena under Rule 45 to obtain testimony or for the inspection of documents or premises and specifies the subject matter of the permitted examination…"

18. In order to prevent a failure or delay of justice, Plaintiff asks the Court to enter an order providing that the Maricopa County Board and Elections Officials may be served with a subpoena to obtain a reasonable inspection of mail-in ballots (including their signed envelopes and/or scans thereof) to compare them to the signatures on file; and that the Maricopa County Board and Elections Officials may be served with a subpoena to compare "duplicate" ballots to the original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in particular; either as discovery under the Civil Rules and/or in accordance with A.R.S. § 16-677.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That the Court enter an order providing that the Maricopa County Board and Elections Officials may be served with a subpoena to obtain a reasonable inspection of mail-in ballots (including their signed envelopes and/or scans thereof) to compare them to the signatures on file; and that the Maricopa County Board and Elections Officials may be served with a subpoena to compare "duplicate" ballots to the original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in particular; either as discovery under the Civil Rules and/or in accordance with A.R.S. § 16-677.

B. For such injunctive, declaratory, mandamus (special action) or other relief as may be proper or necessary to effect these ends;

C. For Plaintiff's taxable costs under A.R.S. § 12-341;

D. For such other and further relief that the Court may deem proper in the circumstances.

RESPECTFULLY SUBMITTED this 24th day November, 2020.

WILENCHIK & BARTNESS, P.C.

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Lee Miller, Esq.
John "Jack" D. Wilenchik, Esq.
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Attorneys for Plaintiff

ORIGINAL of the foregoing filed this 24th day of November, 2020, with:

The Clerk of the Superior Court
Maricopa County Superior Court
201/101 West Jefferson Street
Phoenix, Arizona 85003

By _____

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DocuSign Envelope ID: BC65BEDD-7749-4071-8BC7-AB8BAF7AB132

VERIFICATION

(Rule 80(i), Ariz.R.Civ.P.)

I, Kelli Ward, declare as follows:

I have read the foregoing Verified Petition for Rule 27 Discovery, and the statements made therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATED 11/24/2020.

DocuSigned by:
By: 388CCBD35CF046D...
Kelli Ward

WILENCHIK & BARTNESS

EXHIBIT 1

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Attorneys for Plaintiff/Contestant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KELLI WARD, **Contestant;** **vs.** **CONSTANCE JACKSON; FELICIA ROTELLINI; FRED YAMASHITA; JAMES MCLAUGHLIN; JONATHAN NEZ; LUIS ALBERTO HEREDIA; NED NORRIS; REGINA ROMERO; SANDRA D. KENNEDY; STEPHEN ROE LEWIS; and, STEVE GALLARDO;** **Contestees.**	**Case No.** _____ **[PROPOSED] VERIFIED STATEMENT OF ELECTIONS CONTEST PURSUANT TO A.R.S. § 16-673** **(Elections Matter)** **(Expedited Relief Requested)**

Plaintiff/Contestant ("Plaintiff"), for her Verified Statement of Elections Contest against the above-named Contestees/Defendants ("Defendants"), alleges as follows:

INTRODUCTION

1. This is an elections contest pursuant to A.R.S. § 16-672 *et seq.*

PARTIES, JURISDICTION AND VENUE

2. The name and residence of the party contesting the election is as follows:

Kelli Ward
3619 Desert Rose Lane
Lake Havasu City, AZ 86404

3. The foregoing person is referred to herein as the "Plaintiff."

4. Plaintiff is an elector of the state and county in which she resides.

5. The name of the persons whose right to office is contested, as they appeared upon the official ballot, are:

Constance Jackson
Felicia Rotellini
Fred Yamashita
James McLaughlin
Jonathan Nez
Luis Alberto Heredia
Ned Norris
Regina Romero
Sandra D. Kennedy
Stephen Roe Lewis
Steve Gallardo

6. The foregoing persons are hereinafter referred to as the "Biden Electors."

7. Anthony Kern, Greg Safsten, Jake Hoffman, James Lamon, Kelli Ward, Lorraine Pelligrino, Michael Ward, Nancy Cottle, Robert Montgomery, Samuel Moorhead, and Tyler Bowyer are the presidential electors for Donald J. Trump (the "Trump Electors").

8. Jurisdiction and venue are appropriate pursuant to A.R.S. § 16-672(B).

GENERAL ALLEGATIONS

9. The foregoing allegations are reincorporated as if set forth herein.

10. Presidential elector is the office to which election is contested.

Mail-in Ballot Signature Verification

11. While Arizona has been using mail-in voting since 1992, the process has comparatively few safeguards to ensure the integrity of mail-in ballots and to protect against mistake or fraud. In fact, as the EPM acknowledges, "Arizona's method of proving identity for

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mail-in early voters (signature comparison) is not expressly permitted" under federal law, which may require voters to provide more stringent proof of identity (e.g. for first time voters). *See* p. 25 of the EPM; 52 U.S.C. § 21083(b).

12. To vote in-person in the State of Arizona, voters must prove their identity at the voting location with a valid photo ID that matches their registered name and address, or with two forms of valid non-photo ID that match their registered address, or with one valid photo ID that does not match plus a non-photo valid ID that does. A.R.S. § 16-579(A)(1)(a)-(c); *see also* p. 181 of the EPM.

13. In contrast, for mail-in ballots, a county worker—who typically has fewer than six hours of training (and as little as two, for handwriting analysis)—decides only whether a signature that was scanned from the mail-in ballot envelope looks like the voter's scanned signature(s) on file. Further, in Arizona, copies of a registered voter's scanned signature are publicly available from the Department of Motor Vehicles, if they have a driver's license, among other places—making a voter's signature relatively easy to reproduce. County workers typically spend very little time evaluating a given signature, a matter of seconds.

14. Further, when a signature is questioned by elections officials, Arizona law provides for a fairly rigorous process by which a bipartisan team (of one Republican and/or one Democrat and/or one "Other") participates in an "adjudication" of whether the signature was actually valid. However, if a county worker does *not* question a signature, then there is no "adjudication" or further review, much less by a bipartisan team—which again makes it easier for false or otherwise insufficient signatures to escape detection.

15. Further, because when county workers review the signatures they are not reviewing original "wet" signatures but rather electronic scans, they cannot genuinely follow basic methodology for detecting false or copied signatures, such as analyzing pen pressure.

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16. Once the county worker is "satisfied" that the signature is a match, then the ballot is placed into a stack for tabulation, and upon information and belief it cannot be reconnected to the envelope again. EPM, pps. 68, 70.

17. Neither the signed envelopes, nor images of the signed envelopes, are available for public inspection.

18. As a result of all the foregoing, it is crucially important that independent legal observers be present and able to fully observe the process by which county workers review and approve signatures from the ballot envelopes.

19. During this general election, at least approximately one million six hundred two thousand eight hundred eight (1,602,808) mail-in ballots were processed at the central Maricopa County Tabulation Election Center (or "MCTEC").

20. The Defendants were named as candidates on all of them.

21. By multiple accounts, election officials completely failed and/or refused to allow legal observers to fully observe the verification of signatures at MCTEC.

22. Legal observers were told to remain at a card table which was at least ten to twelve feet away from the majority of the computer monitors and screens, and the computer monitors and screens were mostly turned away – with the few visible screens still being effectively unreadable, due to the distance.

23. After observers officially complained about being unable to observe, election officials allowed observers only to use binoculars; but the signatures on even the few screens that were not turned away remained almost completely unreadable, even with binoculars.

Duplicate Ballots

24. A number of ballots that were delivered to MCTEC were too damaged or illegible for the tabulation machines to read, or were otherwise rejected by the machines.

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25. To cure this, a "bipartisan" team of county workers (one Republican, one Democrat, and/or one "Other") would create a new "duplicate" ballot by (1) reading/interpreting the votes on the original; (2) filling in an "electronic" ballot; and then (3) sending the "electronic" ballot to an offsite printing company to print the new "duplicate" ballot, so that it could be run again through the tabulation machine.

26. However, official observers were neither present nor invited to be present for the activities of the offsite company. As a result, official observers were unable to observe, for example, whether the "electronic" ballots were being accurately and properly received by the print company, that the company was printing the correct ballots, or that it was delivering the correct ballots back to MCTEC.

27. Further, when county workers filled in the "electronic" ballot, they used software called "Novus 6.0.0.0" which would try to "prefill" the ballot, by "reading" an optical scan of the original rejected ballot. However, the software was highly inaccurate, and it often flipped the vote—leaving it up to county workers or on-site observers to "catch it" or else effectively reverse the person's vote. It was also observed that, for whatever reason, the software would erroneously prefill "Biden" much more often (apparently twice as often) as it did "Trump."

28. There was an unusually high number of "duplicate" ballots in Congressional District 5 ("CD5"), inclusive of the vote centers/polling places in Queen Creek. Further, the results in CD5/Queen Creek were strongly inconsistent with voter registration data (party affiliation) and with historical voting data (voting in previous elections including the 2016 Presidential election).

COUNT ONE – ELECTIONS CONTEST

(A.R.S. § 16-673)

29. The foregoing allegations are incorporated as if set forth herein.

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30. A.R.S. § 16-672 provides that "[a]ny elector of the state may contest the election of any person declared elected to a state office…upon any of the following grounds:" "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election..."

31. The statute also provides other grounds for an elections contest, including but not limited to "[o]n account of illegal votes," or "[t]hat by reason of erroneous count of votes the person declared elected…did not in fact receive the highest number of votes for the office…."

32. A.R.S. § 16-621 provides that "[a]ll proceedings at the counting center shall be under the direction of the board of supervisors or other officer in charge of elections and shall be conducted in accordance with the approved instructions and procedures manual issued pursuant to § 16-452 under the observation of representatives of each political party and the public." (Emphasis added.)

33. A.R.S. § 16-552 also provides that "[p]arty representatives and alternates may be appointed…to be present" when election officials count early ballots, "and to challenge the verification of questioned ballots pursuant to § 16-584…"

34. The Secretary of State's Elections Procedures Manual ("EPM"), which carries the force of law pursuant to A.R.S. § 16-452, further provides:

> Political party representatives are permitted to observe at voting locations and central counting places for partisan elections….Such observation (and observation at early voting locations, emergency voting centers, and County Recorder processing procedures, where permitted by the County Recorder or other officer in charge of elections) are subject to the procedures described below…
>
> The County Recorder or other officer in charge of elections may develop additional local procedures governing political party observation. Additional procedures shall allow political party observers to effectively observe the election process....

EPM, page 139.

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35. The EPM also provides:

> Political party representatives may observe at a central counting place and at each point where ballots are handled or transferred from one election official to another, including areas where the following activities take place: [r]eceiving the ballots at the County Recorder's office or central counting place; [i]nspecting the ballots; [r]eviewing ballots by the Write-in Tally Board; [d]uplicating ballots by the Ballot Duplication Board; [a]djudicating ballots by the Electronic Vote Adjudication Board; [r]eceiving electronic media or processing voting results by the Accuracy Certification Board; [t]abulation of ballots; and/or [a]ny other significant tabulation or processing activities at a central counting place provided that it does not interfere with or impede the election procedures or staff.

EPM, page 141.

36. The language in A.R.S. § 16-672 (the elections contest statute) is similar to a California statute, Cal. Elec. Code § 16100. *See Henderson v. Carter*, 34 Ariz. 528, 533, 273 P. 10, 11 (1928)(noting similarity of Arizona elections-contest statute to California code, and analogizing to California caselaw interpreting it). While there is no authority in Arizona squarely interpreting the meaning of "misconduct" in A.R.S. § 16-672(A)(1), the California courts have interpreted their statute (which uses even harsher words, "guilty of misconduct") as being intended "to broadly include erroneous conduct without wrongful intention."

37. Election officials' failure and/or refusal to allow legal observers to observe signature-verification constitutes "misconduct on the part of…officer[s] making or participating in a canvass for a state election," pursuant to A.R.S. § 16-672(A)(1).

38. Because Arizona's method of proving identity for mail-in early voters relies entirely on signature verification, and because election officials did not allow legal observation of signature verification to occur—potentially allowing falsely or insufficiently verified ballots to be counted—then the result of the election is fundamentally uncertain.

39. Further, because the signed envelopes (or scans thereof) are not available for public inspection, Plaintiff has no way of knowing without a court-ordered inspection pursuant to A.R.S. § 16-677 and/or the Civil Rules whether falsely or insufficiently verified ballots were

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counted, and therefore Plaintiff cannot properly prepare for trial without such inspection, in satisfaction of the foregoing statute and/or court rules.

40. Given the large number of ballots and limited timeframes, Plaintiff requests a reasonable inspection (sampling) of the signatures that can be performed in the appropriate statutory timeframes.

41. Plaintiff also request to inspect "duplicate" ballots and compare them to the original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in particular.

42. Pursuant to A.R.S. § 16-677 and/or court rules, Plaintiff is entitled to have the inspection/discovery done before preparing for trial. If and as the Court deems it appropriate, Plaintiff ask to file a bond, approved by the clerk, with two sureties, in the principal amount of three hundred dollars, conditioned that they will pay the costs and expenses of the inspection if they fail to maintain the contest. Thereupon the Court shall appoint three persons, one selected by each of the parties and one by the Court, by whom the inspection shall be made. If either party fails to name a person to act in making the inspection, the Court shall make the appointment. The inspection of the ballots shall be made in the presence of the legal custodian of the ballots, and the compensation of the inspectors shall be fixed by the court and taxed as costs against the losing party.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That the Court order a reasonable inspection (sampling) of mail-in ballots (including their signed envelopes and/or scans thereof) in order to compare them to the signatures on file; and to compare "duplicate" ballots to the original ballots from which they were "duplicated," for Congressional District 5/Queen Creek in particular; as discovery under the Civil Rules and/or in accordance with A.R.S. § 16-677;

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B. That the Court declare that the certificate of election of the Biden Electors is of no further legal force or effect, and that the election is annulled and set aside in accordance with A.R.S. § 16-676(B);

C. That, if an inspection of the ballots should so prove, the Court declare that the Trump Electors have the highest number of legal votes and declare those persons elected;

D. For such injunctive, declaratory, mandamus (special action) or other relief as may be proper or necessary to effect these ends;

E. For Plaintiff's taxable costs under A.R.S. § 12-341 and fees under any applicable authority;

F. For such other and further relief that the Court may deem proper in the circumstances.

RESPECTFULLY SUBMITTED this 24th day November, 2020.

WILENCHIK & BARTNESS, P.C.

_____

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Attorneys for Plaintiff

ORIGINAL of the foregoing filed this __ day of November, 2020, with:

The Clerk of the Superior Court
Maricopa County Superior Court
201/101 West Jefferson Street
Phoenix, Arizona 85003

By_____

WILENCHIK & BARTNESS
A PROFESSIONAL CORPORATION

VERIFICATION

(Rule 80(i), Ariz.R.Civ.P.)

I, Kelli Ward, declare as follows:

I have read the foregoing Verified Complaint, and the statements made therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATED _____.

By: _____
Kelli Ward

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EXHIBIT C

CERTIFICATION OF CONSULTATION

Pursuant to Local Rule 12.1(c), undersigned counsel certifies that counsel for Defendant Secretary of State Katie Hobbs conferred with Plaintiffs' counsel via email on December 4, 2020 regarding the deficiencies in Plaintiffs' complaint. Counsel for the Secretary notified Plaintiffs' counsel regarding the grounds for the Secretary's motion to dismiss the complaint, but Plaintiffs' counsel did not indicate that Plaintiffs would be willing to amend the complaint.

s/_____

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Attorneys for Defendant Arizona Secretary of State Katie Hobbs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE KATIE HOBBS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendant Secretary of State Katie Hobbs respectfully submits this Notice of Supplemental Authority to provide notice of today's decision by the Eleventh Circuit Court of Appeals that plaintiff, who brought identical claims as those asserted in this case and is among plaintiffs' counsel of record in this case, lacks standing to pursue a "generalized grievance" regarding the outcome of the election because he could not "explain how his interest in compliance with state election laws is different from that of any other person." The Eleventh Circuit in *L. Lin Wood, Jr. v. Brad Raffensperger, et al.*, -- F.3d --, No. 20-14418 (11th Cir. Dec. 5, 2020), at 10-13. The Eleventh Circuit also held that federal courts are courts of limited jurisdiction and, therefore, may not entertain post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state courts. The ruling also held that, like here, plaintiff's claims were moot because the State already had certified.

A copy of the Decision is attached as Exhibit A.

Respectfully submitted this 5th day of December, 2020.

COPPERSMITH BROCKELMAN PLC

By s/ Roopali H. Desai
Roopali H. Desai
D. Andrew Gaona
Kristen Yost

SUSMAN GODFREY L.L.P.

Justin A. Nelson
Stephen E. Morrissey
Stephen Shackelford
Davida Brook

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

Exhibit A

Exhibit A

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-14418

D.C. Docket No. 1:20-cv-04651-SDG

L. LIN WOOD, JR.,

Plaintiff-Appellant,

versus

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,
REBECCA N. SULLIVAN, in her official capacity as Vice Chair of the Georgia State Election Board, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(December 5, 2020)

Before WILLIAM PRYOR, Chief Judge, JILL PRYOR and LAGOA, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether we have jurisdiction over an appeal from the denial of a request for emergency relief in a post-election lawsuit. Ten days after the presidential election, L. Lin Wood Jr., a Georgia voter, sued state election officials to enjoin certification of the general election results, to secure a new recount under different rules, and to establish new rules for an upcoming runoff election. Wood alleged that the extant absentee-ballot and recount procedures violated Georgia law and, as a result, his federal constitutional rights. After Wood moved for emergency relief, the district court denied his motion. We agree with the district court that Wood lacks standing to sue because he fails to allege a particularized injury. And because Georgia has already certified its election results and its slate of presidential electors, Wood's requests for emergency relief are moot to the extent they concern the 2020 election. The Constitution makes clear that federal courts are courts of limited jurisdiction, U.S. Const. art. III; we may not entertain post-election contests about garden-variety issues of vote counting and misconduct that may properly be filed in state courts. We affirm.

I. BACKGROUND

Secretary of State Brad Raffensperger is the "chief election official" of Georgia. Ga. Code Ann. § 21-2-50(b). He manages the state system of elections and chairs the State Election Board. *Id.* § 21-2-30(a), (d). The Board has the

authority to promulgate rules and regulations to ensure uniformity in the practices of county election officials and, "consistent with law," to aid "the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(1)–(2). The Board may also publish and distribute to county election officials a compilation of Georgia's election laws and regulations. *Id.* § 21-2-31(3). Many of these laws and regulations govern absentee voting.

Any voter in Georgia may vote by absentee ballot. *Id.* § 21-2-380(b). State law prescribes the procedures by which a voter may request and submit an absentee ballot. *Id.* §§ 21-2-381; 21-2-384; 21-2-385. The ballot comes with an oath, which the voter must sign and return with his ballot. *Id.* § 21-2-385(a). State law also prescribes the procedures for how county election officials must certify and count absentee ballots. *Id.* § 21-2-386(a). It directs the official to "compare the identifying information on the oath with the information on file" and "compare the signature or mark on the oath with the signature or mark" on file. *Id.* § 21-2-386(a)(1)(B). If everything appears correct, the official certifies the ballot. *Id.* But if there is a problem, such as a signature that does not match, the official is to "write across the face of the envelope 'Rejected.'" *Id.* § 21-2-386(a)(1)(C). The government must then notify the voter of this rejection, and the voter may cure the problem. *Id.*

In November 2019, the Democratic Party of Georgia, the Democratic Senatorial Campaign Committee, and the Democratic Congressional Campaign Committee challenged Georgia's absentee ballot procedures as unconstitutional under the First and Fourteenth Amendments. They sued Secretary Raffensperger and members of the Board for declaratory and injunctive relief. Secretary Raffensperger and the Board maintained that the procedures were constitutional, but they agreed to promulgate regulations to ensure uniform practices across counties. In March 2020, the parties entered into a settlement agreement and dismissed the suit.

In the settlement agreement, Secretary Raffensperger and the Board agreed to issue an Official Election Bulletin regarding the review of signatures on absentee ballots. The Bulletin instructed officials to review the voter's signature with the following process:

> If the registrar or absentee ballot clerk determines that the voter's signature on the mail-in absentee ballot envelope does not match any of the voter's signatures on file . . . , the registrar or absentee ballot clerk must seek review from two other registrars, deputy registrars, or absentee ballot clerks. A mail-in absentee ballot shall not be rejected unless a majority of the registrars, deputy registrars, or absentee ballot clerks reviewing the signature agree that the signature does not match any of the voter's signatures on file . . . .

Secretary Raffensperger and the Board also agreed to train county election officials to follow this process.

This procedure has been in place for at least three elections since March, including the general election on November 3, 2020. Over one million Georgians voted by absentee ballot in the general election. No one challenged the settlement agreement until the filing of this action. By then, the general election returns had been tallied and a statewide hand recount of the presidential election results was underway.

On November 13, L. Lin Wood Jr. sued Secretary Raffensperger and the members of the Board in the district court. Wood alleged that he sued "in his capacity as a private citizen." He is a registered voter in Fulton County, Georgia, and a donor to various 2020 Republican candidates. His amended complaint alleged that the settlement agreement violates state law. As a result, he contends, it violates the Election Clause of Article I; the Electors Clause of Article II; and the Equal Protection Clause of the Fourteenth Amendment. *See* U.S. Const. art. I, § 4, cl. 1; *id.* art. II, § 1, cl. 2; *id.* amend. XIV, § 1. Wood also alleged that irregularities in the hand recount violated his rights under the Due Process Clause of the Fourteenth Amendment. *Id.* amend. XIV, § 1.

State law requires that such recounts be done in public view, and it permits the Board to promulgate policies that facilitate recounting. Ga. Code Ann. § 21-2-498(c)(4), (d). Secretary Raffensperger directed county election officials to designate viewing areas for members of the public and the news media to observe

the recount. He also permitted the Democratic and Republican Parties to designate special recount monitors.

Wood alleged that officials ignored their own rules and denied Wood and President Donald Trump's campaign "meaningful access to observe and monitor the electoral process." Although Wood did not personally attempt to observe or monitor the recount, he alleged that Secretary Raffensperger and the Board violated his "vested interest in being present and having meaningful access to observe and monitor the electoral process to ensure that it is properly administered . . . and . . . otherwise free, fair, and transparent."

Wood submitted two affidavits from volunteer monitors. One monitor stated that she was not allowed to enter the counting area because there were too many monitors already present, and she could not be sure from a distance whether the recount was accurate. The other explained that the counting was hard for her to follow and described what she thought were possible tabulation errors.

Wood moved for extraordinary relief. He asked that the district court take one of three steps: prohibit Georgia from certifying the results of the November election; prevent it from certifying results that include "defective absentee ballots, regardless of whether said ballots were cured"; or declare the entire election defective and order the state to fix the problems caused by the settlement agreement. He also sought greater access for Republican election monitors, both at

a new hand recount of the November election and in a runoff election scheduled for January 5, 2021.

Wood's lawsuit faced a quickly approaching obstacle: Georgia law requires the Secretary of State to certify its general election results by 5:00 p.m. on the seventeenth day after Election Day. Ga. Code Ann. § 21-2-499(b). And it requires the Governor to certify Georgia's slate of presidential electors by 5:00 p.m. on the eighteenth day after Election Day. *Id.* Secretary Raffensperger's deadline was November 20, and Governor Brian Kemp had a deadline of November 21.

To avoid these deadlines, Wood moved to bar officials from certifying the election results until a court could consider his lawsuit. His emergency motion reiterated many of the requests from his amended complaint, including requests for changes to the procedures for the January runoff. He also submitted additional affidavits and declarations in support of his motion.

The district court held a hearing on November 19 to consider whether it should issue a temporary restraining order. It heard from Wood, state officials, and two groups of intervenors. Wood also introduced testimony from Susan Voyles, a poll manager who participated in the hand recount. Voyles described her experience during the recount. She recalled that one batch of absentee ballots felt different from the rest, and that that batch favored Joe Biden to an unusual extent. At the end of the hearing, the district court orally denied Wood's motion.

On November 20, the district court issued a written opinion and order that explained its denial. It first ruled that Wood lacked standing because he had alleged only generalized grievances, instead of injuries that affected him in a personal and individual way. It next explained that, even if Wood had standing, the doctrine of laches prevented him from challenging the settlement agreement now: he could have sued eight months earlier, yet he waited until two weeks after the election. Finally, it explained why Wood would not be entitled to a temporary restraining order even if the district court could reach the merits of his claims. On the same day, Secretary Raffensperger certified the results of the general election and Governor Kemp certified a slate of presidential electors.

II. STANDARD OF REVIEW

"We are required to examine our jurisdiction *sua sponte*, and we review jurisdictional issues *de novo*." *United States v. Lopez*, 562 F.3d 1309, 1311 (11th Cir. 2009) (citation omitted).

III. DISCUSSION

This appeal turns on one of the most fundamental principles of the federal courts: our limited jurisdiction. Federal courts are not "constituted as free-wheeling enforcers of the Constitution and laws." *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1087 (10th Cir. 2006) (en banc). As the Supreme Court "ha[s] often explained," we are instead "courts of limited jurisdiction." *Home Depot*

U.S.A., Inc. v. Jackson, 139 S. Ct. 1743, 1746 (2019) (internal quotation marks omitted). Article III of the Constitution establishes that our jurisdiction—that is, our judicial power—reaches only "Cases" and "Controversies." U.S. Const. art. III, § 2. Absent a justiciable case or controversy between interested parties, we lack the "power to declare the law." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

When someone sues in federal court, he bears the burden of proving that his suit falls within our jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Wood had the choice to sue in state or federal court. Georgia law makes clear that post-election litigation may proceed in a state court. Ga. Code Ann. §§ 21-2-499(b), 21-2-524(a). But Wood chose to sue in federal court. In doing so, he had to prove that his suit presents a justiciable controversy under Article III of the Constitution. *See Flast v. Cohen*, 392 U.S. 83, 95 (1968) (listing examples of problems that preclude our jurisdiction). He failed to satisfy this burden.

We divide our discussion in two parts. We first explain why Wood lacks standing to sue. We then explain that, even if he had standing, his requests to recount and delay certification of the November election results are moot. Because this case is not justiciable, we lack jurisdiction. *Id.* And because we lack the power to entertain this appeal, we will not address the other issues the parties raise.

A. Wood Lacks Standing Because He Has Not Been Injured in a Particularized Way.

Standing is a threshold jurisdictional inquiry: the elements of standing are "an indispensable part of the plaintiff's case." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). To prove standing, Wood "must prove (1) an injury in fact that (2) is fairly traceable to the challenged action of the defendant and (3) is likely to be redressed by a favorable decision." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1245 (11th Cir. 2020). If he cannot satisfy these requirements, then we may not decide the merits of his appeal. *Steel Co.*, 523 U.S. at 94.

Wood lacks standing because he fails to allege the "first and foremost of standing's three elements": an injury in fact. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (alteration adopted) (internal quotation marks omitted). An injury in fact is "an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical." *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (internal quotation marks omitted). Wood's injury is not particularized.

Wood asserts only a generalized grievance. A particularized injury is one that "affect[s] the plaintiff in a personal and individual way." *Spokeo*, 136 S. Ct. at 1548 (internal quotation marks omitted). For example, if Wood were a political candidate harmed by the recount, he would satisfy this requirement because he could assert a personal, distinct injury. *Cf. Roe v. Alabama ex rel. Evans*, 43 F.3d

574, 579 (11th Cir. 1995). But Wood bases his standing on his interest in "ensur[ing that] . . . only lawful ballots are counted." An injury to the right "to require that the government be administered according to the law" is a generalized grievance. *Chiles v. Thornburgh*, 865 F.2d 1197, 1205–06 (11th Cir. 1989) (alteration adopted) (internal quotation marks omitted). And the Supreme Court has made clear that a generalized grievance, "no matter how sincere," cannot support standing. *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013).

A generalized grievance is "undifferentiated and common to all members of the public." *Lujan*, 504 U.S. at 575 (internal quotation marks omitted). Wood cannot explain how his interest in compliance with state election laws is different from that of any other person. Indeed, he admits that any Georgia voter could bring an identical suit. But the logic of his argument sweeps past even that boundary. All Americans, whether they voted in this election or whether they reside in Georgia, could be said to share Wood's interest in "ensur[ing] that [a presidential election] is properly administered."

Wood argues that he has two bases for standing, but neither satisfies the requirement of a distinct, personal injury. He first asserts that the inclusion of unlawfully processed absentee ballots diluted the weight of his vote. To be sure, vote dilution can be a basis for standing. *Cf. Jacobson*, 974 F.3d at 1247–48. But it requires a point of comparison. For example, in the racial gerrymandering and

malapportionment contexts, vote dilution occurs when voters are harmed compared to "irrationally favored" voters from other districts. *See Baker v. Carr*, 369 U.S. 186, 207–08 (1962). By contrast, "no single voter is specifically disadvantaged" if a vote is counted improperly, even if the error might have a "mathematical impact on the final tally and thus on the proportional effect of every vote." *Bognet v. Sec'y Commonwealth of Pa.*, __ F.3d __, 2020 WL 6686120, at *12 (3d Cir. Nov. 13, 2020) (internal quotation marks omitted). Vote dilution in this context is a "paradigmatic generalized grievance that cannot support standing." *Id.* (internal quotation marks omitted).

Wood's second theory—that Georgia "value[d] one person's vote over that of another" through "arbitrary and disparate treatment"—fares no better. He argues that Georgia treats absentee voters as a "preferred class" compared to those who vote in person, both by the terms of the settlement agreement and in practice. In his view, all voters were bound by law before the settlement agreement, but the rules for absentee voting now run afoul of the law, while in-person voters remain bound by the law. And he asserts that in practice Georgia has favored absentee voters because there were "numerous irregularities" in the processing and recounting of absentee ballots. Setting aside the fact that "[i]t is an individual voter's *choice* whether to vote by mail or in person," *Bognet*, 2020 WL 6686120, at *15, these complaints are generalized grievances. Even if we assume that absentee voters are

favored over in-person voters, that harm does not affect Wood as an individual—it is instead shared identically by the four million or so Georgians who voted in person this November. "[W]hen the asserted harm is . . . shared in substantially equal measure by . . . a large class of citizens," it is not a particularized injury. *Warth v. Seldin*, 422 U.S. 490, 499 (1975). And irregularities in the tabulation of election results do not affect Wood differently from any other person. His allegation, at bottom, remains "that the law . . . has not been followed." *Dillard v. Chilton Cnty. Comm'n*, 495 F.3d 1324, 1332 (11th Cir. 2007) (quoting *Lance v. Coffman*, 549 U.S. 437, 442 (2007)).

Wood's attempts to liken his injury to those we have found sufficient in other appeals fall short. In *Common Cause/Georgia v. Billups*, we ruled that "[r]equiring a registered voter either to produce photo identification to vote in person or to cast an absentee or provisional ballot is an injury sufficient for standing." 554 F.3d 1340, 1351–52 (11th Cir. 2009). But the injury there was the burden of producing photo identification, not the existence of separate rules for in-person and absentee voters. *Id.* And the burden to produce photo identification affected each voter in a personal way. For example, some plaintiffs in *Common Cause* alleged that they "would be required to make a special trip" to obtain valid identification "that is not required of voters who have driver's licenses or passports." *Id.* at 1351 (internal quotation marks omitted). By contrast, even Wood

agrees that he is affected by Georgia's alleged violations of the law in the same way as every other Georgia voter. "This injury is precisely the kind of undifferentiated, generalized grievance that the Supreme Court has warned must not be countenanced." *Dillard*, 495 F.3d at 1335 (internal quotation marks omitted).

Roe v. Alabama ex rel. Evans, 43 F.3d 574, also does not support Wood's argument for standing. In *Roe*, we ruled that the post-election inclusion of previously excluded absentee ballots would violate the substantive-due-process rights of Alabama voters and two political candidates. *Id.* at 579–81. But no party raised and we did not address standing in *Roe*, so that precedent provides no basis for Wood to establish standing. *Cf. Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) (noting that in cases where "standing was neither challenged nor discussed . . . the existence of unaddressed jurisdictional defects has no precedential effect"). And Wood's purported injury is far more general than the voters' injury in *Roe*. The voters in *Roe* bore individual burdens—to obtain notarization or witness signatures if they wanted to vote absentee—that state courts post-election retroactively permitted other voters to ignore. *Roe*, 43 F.3d at 580–81. In contrast, Georgia applied uniform rules, established before the election, to all voters, who could choose between voting in person or by absentee ballot, and Wood asserts that the

effect of those rules harmed the electorate collectively. That alleged harm is not a particularized injury.

Wood suggested in his amended complaint that his status as a donor contributed to standing and aligned his interests with those of the Georgia Republican Party. But he forfeited this argument when he failed to raise it in his opening brief. *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1335 (11th Cir. 2004); *see also Nat'l All. for the Mentally Ill v. Bd. of Cnty. Comm'rs*, 376 F.3d 1292, 1296 (11th Cir. 2004) (ruling standing claims forfeited for failure to comply with the Federal Rules of Appellate Procedure). And the donor argument fails on its own terms. True, a donor can establish standing based on injuries that flow from his status as a donor. *See, e.g.*, *Wilding v. DNC Servs. Corp.*, 941 F.3d 1116, 1125 (11th Cir. 2019). But donors, like voters, "have no judicially enforceable interest in the *outcome* of an election." *Jacobson*, 974 F.3d at 1246. Nor does a donation give the donor a legally cognizable interest in the proper administration of elections. Any injury to Wood based on election irregularities must flow from his status as a voter, unrelated to his donations. And that fact returns him to the stumbling block of particularization.

"[T]he 'injury in fact' test requires . . . that the party seeking review be himself among the injured." *Lujan*, 504 U.S. at 563 (internal quotation marks omitted). Wood's allegations suggest that various nonparties might have a

particularized injury. For example, perhaps a candidate or political party would have standing to challenge the settlement agreement or other alleged irregularities. Or perhaps election monitors would have standing to sue if they were denied access to the recount. But Wood cannot place himself in the stead of these groups, even if he supports them. *Cf. Glanton ex rel. ALCOA Prescription Drug Plan v. AdvancePCS Inc.*, 465 F.3d 1123, 1127 (9th Cir. 2006) (explaining that "associational standing . . . does not operate in reverse," so a member cannot represent an association). He is at most a "concerned bystander." *Koziara v. City of Casselberry*, 392 F.3d 1302, 1305 (11th Cir. 2004) (internal quotation marks omitted). So he is not "entitled to have the court[s] decide the merits of [his] dispute." *Warth*, 422 U.S. at 498.

B. Wood's Requested Relief Concerning the 2020 General Election Is Moot.

Even if Wood had standing, several of his requests for relief are barred by another jurisdictional defect: mootness. We are "not empowered to decide moot questions." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (internal quotation marks omitted). "An issue is moot when it no longer presents a live controversy with respect to which the court can give meaningful relief." *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (alteration rejected) (internal quotation marks omitted). And an issue can become moot at any

stage of litigation, even if there was a live case or controversy when the lawsuit began. *Id.* at 1189–90.

Wood asked for several kinds of relief in his emergency motion, but most of his requests pertained to the 2020 election results. He moved the district court to prohibit either the certification of the election results or certification that included the disputed absentee ballots. He also asked the district court to order a new hand recount and to grant Republican election monitors greater access during both the recount and the January runoff election. But after the district court denied Wood's motion, Secretary Raffensperger certified the election results on November 20. And Governor Kemp certified the slate of presidential electors later that day.

Because Georgia has already certified its results, Wood's requests to delay certification and commence a new recount are moot. "We cannot turn back the clock and create a world in which" the 2020 election results are not certified. *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015). And it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified. *Cf. Tropicana Prods. Sales, Inc. v. Phillips Brokerage Co.*, 874 F.2d 1581, 1582 (11th Cir. 1989) ("[A]n appeal from the denial of a motion for preliminary injunction is mooted when the requested effective end-date for the preliminary injunction has passed."). Nor can we reconstrue Wood's previous request that we temporarily prohibit certification into a new request that

we undo the certification. A district court "must first have the opportunity to pass upon [every] issue," so we may not consider requests for relief made for the first time on appeal. *S.F. Residence Club, Inc. v. 7027 Old Madison Pike, LLC*, 583 F.3d 750, 755 (11th Cir. 2009).

Wood's arguments reflect a basic misunderstanding of what mootness is. He argues that the certification does not moot anything "because this litigation is ongoing" and he remains injured. But mootness concerns the availability of relief, not the existence of a lawsuit or an injury. *Fla. Wildlife Fed'n, Inc. v. S. Fla. Water Mgmt. Dist.*, 647 F.3d 1296, 1304 (11th Cir. 2011). So even if post-election litigation is not always mooted by certification, *see, e.g.*, *Siegel v. LePore*, 234 F.3d 1163, 1172–73 (11th Cir. 2000) (en banc), Wood's particular requests are moot. Wood is right that certification does not moot his requests for relief concerning the 2021 runoff—although Wood's lack of standing still forecloses our consideration of those requests—but the pendency of other claims for relief cannot rescue the otherwise moot claims. *See, e.g.*, *Adler v. Duval Cnty. Sch. Bd.*, 112 F.3d 1475, 1478–79, 1481 (11th Cir. 1997) (instructing the district court to dismiss moot claims but resolving other claims on the merits). Wood finally tells us that President Trump has also requested a recount, but that fact is irrelevant to whether Wood's requests remain live.

Nor does any exception to mootness apply. True, we often review otherwise-moot election appeals because they are "capable of repetition yet evading review." *ACLU v. The Fla. Bar*, 999 F.2d 1486, 1496 (11th Cir. 1993) (internal quotation marks omitted). We may apply this exception when "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Nat'l Broad. Co. v. Commc'ns Workers of Am.*, 860 F.2d 1022, 1023 (11th Cir. 1988) (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). But we will not apply this exception if there is "some alternative vehicle through which a particular policy may effectively be subject to" complete review. *Bourgeois v. Peters*, 387 F.3d 1303, 1308 (11th Cir. 2004).

The "capable of repetition yet evading review" exception does not save Wood's appeal because there is no "reasonable expectation" that Wood will again face the issues in this appeal. Based on the posture of this appeal, the challenged action is the denial of an emergency injunction against the certification of election results. *See Fleming*, 785 F.3d at 446 (explaining that whether the issues in an interlocutory appeal are "capable of repetition, yet evading review" is a separate question from whether the issues in the overall lawsuit are capable of doing so). That denial is the decision we would review but for the jurisdictional problems. But Wood cannot satisfy the requirement that there be a "reasonable expectation"

that he will again seek to delay certification. Wood does not suggest that this situation might recur. *Cf. FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463–64 (2007). And we have no reason to think it would: he is a private citizen, so the possibility of a recurrence is purely theoretical. *Cf. Hall v. Sec'y, Ala.*, 902 F.3d 1294, 1305 (11th Cir. 2018).

IV. CONCLUSION

We **AFFIRM** the denial of Wood's motion for emergency relief.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Case No.: 2:20-cv-02321-DJH

NOTICE OF SERVICE OF PLAINTIFFS' EXPERT AND FACT WITNESS DISCLOSURE

[1] District of Arizona admission scheduled for 12/9/2020.

Pursuant to LRCiv 5.2, Plaintiffs hereby give notice that Plaintiffs' Initial Expert and Fact Witness Disclosure was served upon Defendant Doug Ducey, Defendant Katie Hobbs, Maricopa County Intervenors, and Proposed Intervenor Arizona Democratic Party's counsel of record via email on December 5, 2020 at 11:58 a.m.

Respectfully submitted this 5th day of December, 2020

/s Alexander Kolodin

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CERTIFICATE OF SERVICE

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

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IN THE UNITED STATES DISTRICT COURT

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Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' REPLY TO RESPONSES IN OPPOSITION TO MOTION FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF AND MEMORANDUM IN SUPPORT THEREOF

[1] District of Arizona admission scheduled for 12/9/2020.

COMES NOW Plaintiffs, Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward, by and through their undersigned counsel, and file this Response, and Memorandum of Law In Support Thereof, to Defendants' and Intervenor-Defendants Response in Plaintiffs' November 29, 2020 Motion for Declaratory, Emergency and Permanent Injunctive Relief ("TRO Motion"). ECF No. 7.

Arizona is in the midst of an election-integrity crisis. Earlier this year, the Arizona Supreme Court had to step in to prevent Intervenor Maricopa County from conducting its primary election in an illegal and unconstitutional manner. *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *13 (Nov. 5, 2020) ("Because Plaintiffs have shown that the Recorder has acted unlawfully and exceeded his constitutional and statutory authority, they need not satisfy the standard for injunctive relief."). In another such matter, *Arizona v Fontes*, Intervenor Maricopa County's chief elections official had to be restrained from unlawfully mailing every registered voter a ballot, whether they had requested one or not.[2] Before Defendants feign indignation at Plaintiffs' claims that they certified an election tainted by illegality, unconstitutionality, and illegal ballots as a fever-dream, they should soberly consider that our courts have already found such things to be all too real a problem in our state this election cycle. This Court can help Arizona do better, not by dismissing the problem, but by confronting it.

Despite this procedural history, Defendants seek to have Plaintiffs' claims dismissed out-of-hand as nothing more than a conspiracy theory. Hobbs' Motion to Dismiss and Opposition to TRO ("Hobbs Motion"), ECF No. 40 at 1:1-5. Plaintiffs, and those who share their concerns, know that their claims are bold. That is why two members of Arizona's

[2] *See State of Arizona ex rel Brnovich v. Fontes*, CV-20-0253-AP/EL, Temporary Restraining Order (Sup. Ct. Ariz. Mar. 13, 2020) ("*Fontes* TRO Order"), available at: https://www.azag.gov/sites/default/files/docs/press-releases/2020/motions/State_v_Fontes_TRO_Certified_Signed.pdf.

delegation to the United States Congress, Congressman Gossar and Congressman Biggs, have taken the unusual step of putting out statements urging this Court to give Plaintiffs' claims serious consideration and laying out their reasons for making that request. Congressman Gosar, in his formal letter writes, in part:

> Currently pending before the Court is Bowyer v. Ducey. We have seen various reports of irregularities, variances, statistical improbabilities, and unorthodox measures occurring in the general election for 2020. To date, in response to the numerous reports, we have received platitudes and condescension "assuring" us, and Arizona voters, that there was no fraud, or now they say that there was not enough fraud to matter. Indeed, those making the assurances, including the Secretary of State, the Maricopa County Board of Supervisors and others, have proffered no evidence that the election tabulation was not manipulated.
>
> There has been no thorough investigation, no forensic audit, no signature verification and really no substantive effort to rebut the many deficiencies reported on. There are the objective indicia of manipulation that include: down ballot races all going in favor of the Republicans (with the notable and expected loss of McSally). In counties that did not use Dominion software, the President easily won. There is no voter registration imbalance that would make Maricopa County the outlier.
>
> . . .
>
> If every vote counts, and if the right to free and fair elections is as important as we always say, then any such vote manipulation must be investigated thoroughly and remedied.
>
> . . .
>
> In a recent legislative hearing, evidence was presented of voter anomalies that supposedly occurred notwithstanding the mathematical improbability of such an occurrence.

Exhibit 1.[3] Six additional members of Arizona's legislature, including the Arizona House of Representatives' Majority Leader and the Chair of its Elections Committee, have issued similar letters or declarations echoing these concerns and outlining their own investigative steps which led to them. **Exhibit 2**.

[3] This letter may be considered under FRE 803(8) and other applicable law.

Few could be more knowledgeable about the poor state of election integrity in Arizona than the members of Arizona's congressional delegation and state legislature who must operate in that system every day. Their concerns reflect the concerns of the scores of average Arizona voters who are their constituents. Plaintiffs' moving papers and supporting documentation, including the evidence submitted with this reply, show that over 400,000 votes counted in the presidential election must be set aside. This compels the conclusion that defendants' certification of the 2020 election which finding plurality of 10,457 was wrong. Those results must be de-certified.

STATEMENT OF FACTS

The facts relevant to this Response are set forth in the December 1, 2020 Complaint ("Complaint"), ECF No. 1, filed in the above-captioned proceeding, and its accompanying exhibits, and the TRO Motion.

DISCUSSION

Defendants and Defendant Intervenor's filings fail altogether to respond to Plaintiffs' fact and expert witness testimony presented in the Complaint. Instead, they have chosen to simply dismiss Plaintiffs' evidence and arguments as a piece of "dystopian fiction." ECF No. 40 at 1. Nor have they presented any facts or witness testimony that could rebut Plaintiffs' factual allegations and witnesses.[4] Accordingly, Plaintiffs' allegation and witness testimony remains unrebutted and unchallenged.

This brief will respond to, and dispose of, Defendants and Defendant-Intervenor Maricopa County's specious legal arguments for denial of Plaintiffs' TRO Motion on grounds of: (1) standing, (2) laches, (3) mootness, (4) Secretary Hobbs notice of supplemental authority, (5) the Eleventh Amendment, (6) exclusive state jurisdiction, (7)

[4] The closest that Defendants come to engaging the Plaintiffs' factual allegations or witnesses is Defendant Secretary Hobbs' claim that Plaintiffs have provided "***anonymous***" witness affidavits. ECF No. 40 at 22 n.10. This is incorrect. Plaintiffs filed redacted affidavits for these witnesses, and have submitted the unredacted versions under seal to this Court. *See* ECF Nos. 14-18.

state proceedings and issue preclusion, (8) abstention, and (9) applicable pleading standards for election fraud.

Plaintiffs will also respond to Defendant and Defendant Intervenor's claims that Plaintiffs have not met the requirements for injunctive relief, which are: (1) substantial likelihood of success on the merits, and in particular that Plaintiffs have adequately pled their Constitutional and statutory claims; (2) irreparable injury, (3) the balance of equities tips in their favor, and (4) the requested relief is in the public interest.

I. PRELIMINARY MATTERS

A. Plaintiffs Have Standing

Each Plaintiff is a registered Arizona voter, and Plaintiffs include all nominees of the Republican Party to be a Presidential Elector on behalf of the State of Arizona. See ECF No. 1, "Parties".

1. Plaintiff Electors Have Standing under Electors and Elections Clause.

Defendant Secretary Hobbs' arguments on standing rely on the Third Circuit's decision in *Bognet v. Sec'y of Commonwealth*, No. 20-2314, 2020 WL 6686120 (3d Cir. Nov. 13, 2020). *See* ECF No. 40 at 1 & 9; see also ECF No. 37 at 6-9. There the court found that electors lacked standing based on the particularities of a Pennsylvania law that are not present here, but did not discuss the significance of State law provisions pursuant to which Presidential Electors are candidates for office.

Plaintiff Arizona Electors have standing for the same reason that the Eighth Circuit held that Minnesota Electors had standing in *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020). The *Carson* court affirmed that Presidential Electors have both Article III and Prudential standing under the Electors and Elections Clauses, "was rooted heavily in the court's interpretation of Minnesota law." Defendants neglect to mention that the *Carson* court relied on provisions of Minnesota law treating electors as candidates for office are just like the corresponding provision of A.R.S. Title 16 because in both States an elector is a candidate for office nominated by a political party, and a vote cast for a party's candidate

for President and Vice-President is cast for that party's Electors. A.R.S. § 16-212(A)[5] The Carson court concluded that, "[b]ecause Minnesota law plainly treats presidential electors as candidate, we do, too." *Carson*, 978 F.3d at 1057.

In other words, a vote for President Trump and Vice-President Pence in Arizona is a vote for each of Plaintiff Republican electors, and just as in Minnesota, illegal conduct aimed at harming candidates for President similarly injures Presidential Electors. As such, Plaintiff Elector candidates "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and particularized injury to candidates such as the Electors." *See also McPherson v. Blacker*, 146 U.S. 1, 27 (1892); *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) (per curiam). Notably, Defendant and Defendant Intervenors have cited no Ninth Circuit or Arizona precedent in support of their position, nor have they shown any relevant similarity between Pennsylvania and Michigan law on election of electors.

2. Plaintiffs Have Standing for Equal Protection and Due Process Claims as Registered Voters on their Own Behalf and on Behalf Similarly Situated Voters for Republican Candidates.

Defendant and Defendant-Intervenors misrepresent Plaintiffs' Equal Protection and Due Process claims, both in terms of substance and for standing purposes, insofar as they claim that Plaintiffs' claims are based solely on a theory of vote dilution, and therefore is

[5] *See also* A.R.S. § 16-344(A) ("The chairman of the state committee of a political party that is qualified for representation on an official party ballot at the primary election and accorded a column on the general election ballot shall appoint candidates for the office of presidential elector equal to the number of United States senators and representatives in Congress from this state"); A.R.S. § 16-212(A) ("On the first Tuesday after the first Monday in November, 1956, and quadrennially thereafter, **there shall be elected a number of presidential electors** equal to the number of United States senators and representatives in Congress from this state"); A.R.S. § 16-212(B) ("the presidential electors of this state shall cast their electoral college votes for the candidate for president and the candidate for vice president who jointly received the highest number of votes in this state as prescribed in the canvass.").

a "generalized grievance," rather than the concrete and particularized injury required for Article III standing. *See* ECF No. 40 at 8-9.[6] This is incorrect.

Plaintiffs', on behalf of themselves and other similarly situated voters, allege, first, and with great particularity, that Defendants have both violated Arizona law and applied Arizona law to dilute the votes of Arizona Republican voters (or voters for Republican candidates) with illegal, ineligible, duplicate or fictitious that Defendants, in collaboration with public employees, Dominion and Democratic poll watchers and activists, have caused to be counted as votes for Democratic candidates. The fact and expert witness testimony describes and quantifies the myriad means by which the vote tally for Biden and other Democrats was illegally inflated in districts that were predominantly Democratic, including: double voting, dead voting, double counting of same vote, forgery of ballot and voter information, illegally completing or modifying ineligible ballots, ballot switching (Trump to Biden), changing dates or backdating absentee ballots, failure to match signatures, etc. *See* ECF No. 1, Section II and III. Thus, the vote dilution resulting from this systemic and illegal conduct did not affect all Arizona voters equally; it had the intent and effect of inflating the number of votes for Democratic candidates and reducing the number of votes for Trump and Republican candidates.

Further, Plaintiffs have presented evidence that, not were the votes of Plaintiffs and similarly-situated voters for Republican candidates diluted, but attempts were made to actively disenfranchise such voters to reduce their voting power, in clear violation of "one person, one vote." *See generally Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964). There were several schemes to devalue Republican votes as detailed in the Complaint, including Republican ballots being destroyed or discarded, or "1 person,

[6] Defendant Governor Ducey also cites *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, 2020 WL 6821992 (M.D. Penn. Nov. 21, 2020). *See* ECF at 8. This case addressed a number of theories for standing – associational, organizational, and standing of a political party based on harm to that party's candidates – that are not present here because each Plaintiff brings suit in their personal capacity as registered Arizona voters and 11 of the Plaintiffs as Presidential Electors.

0 votes," vote switching "1 person, -1 votes," (Dominion and election workers switching votes from Trump/Republican to Biden/Democrat), and Dominion algorithmic manipulation, or for Republicans, "1 person, 1/2 votes," and for Democrats, "1 person, 1.5 votes." *See e.g.*, ECF No. 1, Section II.C (ballot destruction/discarding) Ex. 2 (Dr. Briggs Testimony regarding potential ballot destruction), Ex. 17 (Ramsland testimony regarding additive algorithm), Section IV (multiple witnesses regarding Dominion vote manipulation).

Plaintiffs' injury is that the relative values of their particular votes were devalued, or eliminated altogether, and as such, it is not a "generalized grievance," ECF No. 40 at 7, as Defendant claims. Federal district courts have held that Arizona voters have standing in cases involving constitutional challenges to Arizona's absentee voting laws and implementation thereof that invalidated their votes. *See, e.g. Raetzel v. Parks/Bellemont Absentee Election Bd*, 762 F.Supp. 1354, 1356 (D. Az. 1990) ("plaintiffs suffered an actual, legally cognizable injury, in that they were not afforded notice or the opportunity to contest the loss of their vote."). *See also Ariz. Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR, 2020 WL 5423898, at *5 (D. Az. Sept. 10, 2020) (political organization had standing to sue on behalf of its members, who had standing in individual capacity to challenge law that could invalidate their absentee ballots); *Mi Familia v. Hobbs*, No. CV-20-01903-PHX-SPL, 2020 WL 5904952 (D. Az. Oct. 5, 2020) (holding plaintiffs had standing in challenge to Arizona's voter registration deadline). Plaintiffs have thus met the requirements for standing: (1) the injuries of their rights under the Equal Protection and Due Process clauses that concrete and particularized for themselves, and similarly situated voters, whose votes have been devalued or disregarded altogether (2) that are actual or imminent and (3) are causally connected to Defendants conduct because the debasement of their votes is a direct and intended result of the conducts of the Defendants in certifying an election tainted by fraud and the public employee election workers they supervise. *See generally Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

B. Laches

Defendant Secretary Hobbs asserts that Plaintiffs' claims are barred by laches. *See* ECF No. 40 at 9-13. To establish laches a defendant must prove both an unreasonable delay by the plaintiff and prejudice to itself. Because the application of laches depends on a close evaluation of all the particular facts in a case, it is seldom susceptible to resolution by summary judgment." *Cassirer v. Thyssen-Bornemisza Collection Found.*, 862 F.3d 951, 976, (9th Cir. 2017) (*citing Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000) (per curiam) (citations omitted)(held that "[t]here is at least a genuine dispute of material fact as to whether any delay was unreasonable. Id. at 976).

Defendant Secretary instead relies on *Soules v. Kauians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988), ECF No. 40 at 10, a case with entirely different facts. There, the Ninth Circuit held that plaintiff Equal Protection claim was barred by laches because they "knew the basis of their equal claim well in advance" of the election, months in advance in fact, *Soules*, 849 F.2d at 1181, and failed to provide any explanation for their failure to press their claim before the election. *Id*. at 1182. Yet the standard is that "[b]oth before and after the merger of law and equity in 1938, this Court has cautioned against invoking laches to bar legal relief. *Petrella v. MGM*, 572 U.S. 663, 667 (2014) (*citing e.g., Holmberg v. Armbrecht*, 327 U.S. 392, 395-396 (1946)).

Here, by contrast to Defendants' assertions, all of the unlawful conduct occurred during the course of the election and in the post-election vote counting, manipulation, and even fabrication. Plaintiffs could not have known the basis of their claim, or presented evidence substantiating their claim, until after the election. Further, because Arizona election officials and other third parties involved did not announce or publicize their misconduct, and in fact prevented Republican poll watchers from observing the ballot counting and handling, it took Plaintiffs additional time post-election to gather the fact and expert witness testimony presented in the Complaint. Had they filed before the election, as the Defendant Secretary asserts, it would have been dismissed as speculative--because the injuries asserted had not occurred--and on ripeness grounds.

Any "delay" in filing after Election Day is almost entirely due to Defendants failure to promptly complete counting until weeks after November 3, 2020. Arizona did not complete counting at the same time it certified results, which was not until November 30, 2020, a mere two days before Plaintiffs filed their initial complaint on December 2, 2020. Defendants cannot now assert the equitable affirmative defense of laches when there is no unreasonable delay nor is there any genuine prejudice to the Defendants.

Finally, it is instructive that Arizona law provides that similar challenges in state court are not ripe until an election has been certified and are timely if brought within 5 days thereafter. A.R.S. § 16-673. This suit was brought during the early portion of this period. Although Arizona law is not dispositive in this Court on the issue of latches, this Court may look to it as persuasive authority as to the reasonableness of the date of filing.

C. Mootness

Defendants' mootness argument is similarly without merit. *See* ECF No. 38 at 4-5; ECF No. 40 at 21. This argument is based on the false premise that this Court cannot order any of the relief requested in the Complaint or the TRO Motion. Article III mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1244, (9th Cir. 1999) (*citing Arizonans For Official English v. Arizona*, 520 U.S. 43, 68, 117 S. Ct. 1055, 1069, 137 L. Ed. 2d 170 (1997) (*quoting Henry Monaghan, Constitutional Adjudication: The Who and When*, 82 Yale L.J. 1363, 1384 (1973)).

Without an immediate temporary injunction, electoral votes will be cast, electors will be appointed, and this Court will lose any authority to provide relief to Plaintiffs. There is no harm to Respondents by the potential relief fashioned by this Court. As recently held by a court considering claims similar to those asserted here:

> 3 U.S.C §5 makes clear that the Safe Harbor does not expire until December 8, 2020, and the Electoral College does not vote for president and vice

> president until December 14, 2020. According to an October 22, 2020 white paper from the Congressional Research Service titled "The Electoral College: A 2020 Presidential Election Timeline," the electors will meet and vote on December 14, 2020. https://crsreports.congress.gov/product/pdf/IF/IF11641. December 8, 2020—six days prior to the date the College of Electors is scheduled to meet—is the "safe harbor" deadline under 3 U.S.C. §5. That statute provides that if a state has provided, "by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State," and that final determination has been made "at least six days before the time fixed for the meeting of the electors," that determination—if it is made *under the state's law* at least six days prior to the day the electors meet— "shall be conclusive, and shall govern in the counting of the electoral votes as provided in the Constitution . . . ." It appears, therefore, that December 8 is a critical date for resolution of any state court litigation involving an aggrieved candidate who is contesting the outcome of an election.

Feehan v. Wisconsin Board of Elections, (Case No. 20-cv-1771) (E.D. Wis. 12/4/20) (December 4, 2020, Doc-29).

This Court can grant the primary relief requested by Plaintiffs – de-certification of Arizona's election results and an injunction prohibiting State Defendants from transmitting the results – as discussed in Section I.E. on abstention below. There is also no question that this Court can order other types of declaratory and injunctive relief requested by Plaintiffs, in particular, impounding Dominion voting machines and software for inspection, nor have State Defendants claimed otherwise.

In any case, the Ninth Circuit has recognized that election cases fall within the "capable of repetition, yet evading review" exception to the mootness doctrine "because the inherently brief duration of an election is almost invariably too short to enable full

litigation on the merits." *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003) (citations omitted). "If such cases were rendered moot by the occurrence of an election," then the unconstitutional actions of state officials like Secretary Hobbs "could never reach appellate review." *Id*.

D. Defendant Secretary Hobbs' Notice of Supplemental Authority

Defendant Secretary Hobbs attempts to salvage her standing argument with today's notice of supplemental authority regarding the Eleventh Circuit's decision in *Wood v. Raffensperger*, No. 20-14418 (D.C. Cir. Dec. 5, 2020), *see* ECF No. 40 & 40-1, but fails to acknowledge three crucial distinctions between these cases. First, she conflates Plaintiffs with one of their attorneys, who is not a plaintiff or party to this case. ECF No. 40 at 2.

Second, she fails to recognize that the Eleventh Circuit's decision in Wood supports Plaintiffs' standing argument and refutes hers. The court dismissed Plaintiff Wood's claim because he was not a candidate. "[I]f Wood were a political candidate," like the Plaintiffs here, "harmed by the recount, he would satisfy this requirement because he could assert a personal, distinct injury." ECF No. 40-1 at 10 (citations omitted).

Third, there are important differences between the particular relief sought in *Wood* and those requested by Plaintiffs in the Complaint, and in the claims made. Unlike Plaintiffs, Mr. Wood did not ask the district court to de-certify the election (instead asking for a delay in certification), nor did he assert claims under the Elections and Electors Clause. The *Wood* court held that Georgia's certification of results mooted Mr. Wood's request to delay certification, so the court could not consider a request for de-certification "made for the first time on appeal." *Id*. at 18. Plaintiffs made their request for de-certification and other injunctive relief in the Complaint, Compl. at PP 142-145, and this request is not mooted by Defendants' certification of the results. While the *Wood* court found that the mootness exception for "capable of repetition yet evading review," discussed above with respect to the Ninth Circuit opinion in *Porter*, was not applicable, their denial

was based on the specific "posture of [his] appeal" and the specific relief requested (delay of certification), which are not applicable to Plaintiffs' claims.

Further, Plaintiffs are not asserting a "garden variety" claim about election issues as the court found was the case in *Wood*. The Complaint describes a massive and widespread voting fraud scheme that affected hundreds of thousands of votes in Arizona, as well as additional hundreds of thousands of votes in several other states. The *Wood* court addressed a closed record of what had been submitted in the district court proceeding that did not consider all of the evidence that has been gathered and submitted to date by Plaintiffs in Arizona and separate Republican Elector candidates in other affected states.

In addition, unlike in *Wood*, Plaintiffs here are seeking declaratory relief.

E. Eleventh Amendment

Defendants assert that Plaintiffs' claims are barred by the Eleventh Amendment, but the cases address circumstances that are not present here. *See* ECF No. 38 at 5-6; ECF No. 40 at 19-21. While Governor Ducey's Eleventh Amendment defense appears to be limited to dismissal of the claims against the Governor himself, based on the purported "ministerial" nature of his duties, he acknowledges that under A.R.S. § 16-142(A)(1), Secretary Hobbs, "or the secretary's designee is [the] chief state election officer …" ECF No. 40 at 6. Governor Ducey argues that in order to take advantage of the *Ex Parte Young* exception to the state's sovereign immunity, the state officer must have some connection to the enforcement of the act. Of course, the Governor is expressly given such a connection under federal law. Under 3 USC § 6, the Governor is required to communicate to the Archivist of the United States "under the seal of the State" the results of the final determination of any election "controversy of contest" "as soon as practicable after such determination." This is to be thereafter transmitted to Congress. *Id*. Complete relief therefore cannot be had without the Governor being subject to this Court's order. If, as the Governor claims, his act in transmitting the original certified results "cannot be undone" Ducey Resp. 4:19-20, there would be no reason for 3 USC § 6 to contain a provision allowing it to be undone.

Secretary Hobbs' argument is broader -- claiming that it bars Plaintiffs requested relief altogether -- but without merit. The Eleventh Amendment bars claims for retrospective relief such as damages, but it permits claims for prospective and injunctive relief. In *Porter*, The Ninth Circuit squarely addressed the scope of this Eleventh Amendment bar with respect to a state's Secretary of State enforcement of state election laws, holding that the federal court can provide prospective injunctive relief and that it can "adjudicate the legality of past conduct," *i.e.,* it can provide a prospective remedy for past violations of state law. *Porter*, 319 F.3d at 491.

This is precisely what the Plaintiffs request in the Complaint, namely, equitable and injunctive relief to prospectively enjoin the Defendants to take or not take actions that are within the scope of their statutory authority. The Complaint requests that this Court de-certify the election results; grant a permanent injunction "enjoining Secretary Hobbs and Governor Ducey from transmitting the currently certified election results to the Electoral College[,]" (See ECF No. 1 ¶1); declare the election results unconstitutional, as well as to provide access to voting machines, software and other election-related records and materials. ECF No. 1. PP 142-145. Under *Porter*, the Eleventh Amendment is no bar to this Court granting the requested relief.

F. Exclusive State Jurisdiction

Defendant Secretary argues that "[s]econd, plaintiffs' claims must be brought in an election contest—a matter reserved exclusively for the jurisdiction of the Arizona state courts." (See p. 3 of Doc-40). This completely ignores the fact that the states' authority to conduct federal elections in the first place derives from U.S. Constitution and Article I, § 4 and Article II, § 1 of the U.S. Constitution which grants plenary authority to state legislatures to enact laws that govern the conduct of elections.

This Court has subject matter jurisdiction under 28 U.S.C. § 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." This Court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for

President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley v. Holm*, 285 U.S. 355, 365 (1932). The jurisdiction of the Court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P. "The right to vote is protected in more than the initial allocation of the franchise. As the Supreme Court has made clear, it has jurisdiction to address the right to vote, "Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another." *See, e.g., Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, 16 L. Ed. 2d 169, 86 S. Ct. 1079 (1966) ("Once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment"). It must be remembered that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." (*Bush v. Gore*, 531 U.S. 98, 104-105, 121 S. Ct. 525, 530, 148 L. Ed. 2d 388, 398, (2000) (*citing Reynolds v. Sims*, 377 U.S. 533, 555, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964)).

To the extent the Complaint implicates Arizona statutory or constitutional law, jurisdiction remains appropriate under 28 U.S.C. § 1367. As a threshold matter, the supplemental jurisdiction statute, section 1367, says that district courts "shall have" jurisdiction over the non-federal claims forming part of the same case or controversy, ... if state law claims are asserted as part of the same case or controversy with a federal claim, the district court has discretion to exercise supplemental jurisdiction over the remaining state law claims and the mandatory remand provision of the procedure after removal statute does not apply. Under the plain language of the statutes, logically it cannot "appear[] that the district court lacks jurisdiction" under 1447(c) if it "shall have" jurisdiction under 1367. *Albingia Versicherungs A.G. v. Schenker Int'l Inc.*, 344 F.3d 931, 937-938, (9th Cir. 2003).

Even in removal cases, the court explained, "Section 1447(c) does not mean that if a facially valid claim giving rise to federal jurisdiction is dismissed, then supplemental

jurisdiction is vitiated, and the case must be remanded. Once supplemental jurisdiction exists, it remains, subject to the discretionary provision for remand in section 1441. *Id*. at 938. Moreover, the Voting Rights Act, 52 U.S.C. §10101(e), further highlights federal jurisdiction to govern federal elections, which provides, in relevant part:

> … When used in the subsection, the word "vote" includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election.

Id.

Federal law also requires the states to maintain uniform voting standards. *See* Section 301 of the Help America Vote Act of 2002 [HAVA], (Pub. L. 107–252, 116 Stat. 1704, codified at 42 U.S.C. § 15481. Unlike the situation where a court is situated in diversity jurisdiction and deciding an entirely state-law matter, as presented in *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945), in this action this Court has "no duty … to approximate as closely as may be State law in order to vindicate without discrimination a right derived solely from a State." *Holmberg*, 327 U.S. at 395. Rather, the duty here is that "of federal courts, sitting as national courts throughout the country, to apply their own principles in enforcing an equitable right" created under the U.S. Constitution. *Id*.

G. State Proceedings & Issue Preclusion

Defendant Secretary Hobbs erroneously claims that the "Plaintiffs are barred from re-adjudicating their issues here under the doctrine of collateral estoppel, or issue preclusion," ECF No. 40 at 18, because, in her view, the issues in the Complaint were fully litigated in *Ward v Jackson, et al.*, CV 2020-015285 (filed Sup. Ct. Maricopa Cty. Nov. 24, 2020). ECF No. 40-2. As an initial matter: "Some litigants -- those who never appeared in a prior action -- may not be collaterally estopped without litigating the issue. They have

never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them despite one or more existing adjudications of the identical issue which stand squarely against their position." *Blonder-Tongue Labs. v. Univ. of Ill. Found.*, 402 U.S. 313, 329, 91 S. Ct. 1434, 1443, 28 L.Ed.2d 788, 800 (1971). There are fourteen plaintiffs in this action, only one of whom was a Plaintiff in Ward v Jackson (and there not in her capacity as nominee for presidential elector). At most, then, any preclusion argument would result merely in the dismissal of Plaintiff Ward but would not otherwise impact the adjudication of this case.

Further, issue preclusion applies "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 135 S.Ct 1293, 1303 (2015) (*quoting* Restatement (Second) of Judgments § 27, p. 250 (1980)). Parsing this definition, a party asserting issue preclusion must show that each of the following four requirements have been met: (1) the disputed issue is identical to that in the previous action, (2) the issue was actually litigated in the previous action, (3) resolution of the issue was necessary to support a final judgment in the prior action, and (4) the party against whom issue preclusion is sought had a full and fair opportunity to litigate the issue in the prior proceeding. *See Louisville Bedding Co. v. Perfect Fit Indus.*, 186 F. Supp. 2d 752, 753-754, 2001 U.S. Dist. LEXIS 9599 (*citing Graco Children's Products, Inc. v. Regalo International, LLC*, 77 F. Supp. 2d 660, 662 (E.D. Pa. 1999). None of these elements are satisfied with respect to *Ward v. Jackson* and the instant Complaint.

Elections challenges under Arizona state law may not be brought before the canvas is completed, after which they must be brought within five days. A.R.S. § 16-673. Arizona completed its canvas on November 30, 2020. *Id*. To Counsel's knowledge, *Ward v Jackson* is the only Contest that had been brought in state court to challenge the results of

the presidential election as of the date and time this suit was filed.[7] Other election-related matters this cycle such as *Aguilera v. Fontes* and *Trump v. Hobbs* were brought prior to the challenge period and Plaintiffs in those matters expressly acknowledged that the outcome would not impact the results of the presidential election.[8]

1. There is No Identity of Parties Between this Case and Ward v Jackson.

This case is brought by fourteen distinct Plaintiffs representing the Arizona Republican Party's entire slate of nominees for Presidential Elector and three county party chairs. The sole Plaintiff in *Ward v Jackson* was Keli Ward, who filed it in her capacity as a voter and not in her capacity as a presidential elector. Statement of Elections Contest ¶ 4.[9] No other Plaintiffs in this case were Plaintiffs in *Ward v Jackson* in any capacity. *Id*. p 1 [caption]. No Defendants in this case were Defendants in *Ward v Jackson* in any capacity. *Id*.

To this point, the Ninth Circuit has determined that, a private defendant was also precluded from using collateral estoppel to bar a claim involving nonmutual collateral estoppel, and the court explained that, "[n]onmutual collateral estoppel refers to use of collateral estoppel by a nonparty to a previous action to preclude a party to that action from relitigating a previously determined issue in a subsequent lawsuit against the nonparty. *Blonder-Tongue Lab. v. University of Illinois Found.*, 402 U.S. 313, 320-30, 28 L. Ed. 2d 788, 91 S. Ct. 1434 (1971). "Offensive" use of nonmutual collateral estoppel occurs when a plaintiff seeks to prevent a defendant from relitigating an issue that the defendant

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[7] This Court may take judicial notice, based on the records of the Clerk of the Maricopa County Superior Court, that *Ward v. Jackson* is the only case brough within the statutory time period for an election challenge in Maricopa County as of the date and time this suit was file. https://www.clerkofcourt.maricopa.gov/records/election-2020. FRE 201(b)(2). *Ward v. Jackson* was assigned a case number prior to the commencement of Arizona's challenge period because Plaintiff made a request for pre-litigation discovery.

[8] *See e.g.*, Verified Complaint for a Special Action ¶ 1.4 https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1654 (*Aguilera v. Fontes*); Notice of Partial Mootness (*Trump v. Hobbs*).

[9] https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1836.

previously litigated unsuccessfully against a different party. *Mendoza*, 464 U.S. at 159 n.4. "Defensive" use of nonmutual collateral estoppel involves a defendant attempting to preclude a plaintiff from relitigating an issue that the plaintiff previously litigated unsuccessfully against a different party. *Id*.

The Ninth Circuit, therefore, found that "Mendoza's rationale applies with equal force to G&T's attempt to assert nonmutual defensive collateral estoppel against IPC (a state agency). *Idaho Potato Comm'n v. G&T Terminal Packaging, Inc.*, 425 F.3d 708, 714, (9th Cir. 2005) (citing *See Coeur D'Alene Tribe of Idaho v. Hammond*, 384 F.3d 674, 689-90 (9th Cir. 2004) (relying on *Mendoza's* reasoning to conclude, under Idaho state law preclusion principles, that nonmutual offensive collateral estoppel did not preclude a state agency from relitigating a legal issue that had previously been determined against the agency by a state court); *Hercules Carriers, Inc. v. Claimant State of Fla.*, 768 F.2d 1558, 1578-79 (11th Cir. 1985) (applying *Mendoza* to hold that nonmutual defensive collateral estoppel did not operate against a state government). We therefore hold that issue preclusion does not prevent IPC from challenging the district court's determination that the no-challenge clause of IPC's licensing agreement is unenforceable." *Id*. Similarly, the Plaintiffs, who are all elected electors, should not be barred from challenging the issues herein, especially where they were also not the same identical issues.

2. This Case Pleads Entirely Different Causes of Action from Ward v. Jackson.

Ward v. Jackson raises only one cause of action, an elections contest under A.R.S. § 16-673. Statement of Elections Contest 5:22-23. This case raises causes of action for violations of 42 U.S.C. § 1983, the Fourteenth Amendment to the US Constitution, and Election Fraud. Complaint 41:14-50:26.

3. Unlike Ward v Jackson, this Case is Part of National Litigation Concerning a Pattern of Similar Problems Nationwide and Raises Far Broader Factual Questions.

The Statement of Elections Contest (i.e. Complaint) filed in *Ward v. Jackson* was only nine pages long, including the caption. Statement of Elections Contest *passim*. As such, it necessarily concerned a much narrower universe of facts than the Complaint in this matter, which is over five-times as long. The trial court summarized Plaintiff's claims as follows:

> Plaintiff alleges misconduct in three respects. First is that insufficient opportunity was given to observe the actions of election officials.
> . . .
> Second, Plaintiff alleges that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file.
> . . .Third, Plaintiff alleges errors in the duplication of ballots.[10]

December 4, 2020 Minute Entry Order (*Ward v Jackson*) p 6-8.[11]

Furthermore, the factual universe in *Ward v. Jackson* seems to have been constrained to Maricopa County and to not involve issues from anywhere else in the state, let alone on a national level. Statement of Elections Contest 2:22-5:21.

Here, in contrast, Plaintiffs' primary factual contention is that the results of the election that Defendants certified are tainted by the two categories of fraud which, taken together, would be sufficient to change the result of the presidential election in Arizona. Complaint ¶ 20.

The first is that the electronic voting systems used in both Maricopa and Pima county were intentionally manipulated to give false totals. See e.g. Complaint ¶¶ 19(D, E), 66. The second is that various categories of illegal votes appear to have been counted and various categories of legal votes appear to be left uncounted. Particularly:

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[10] Plaintiffs' counsel briefly mentioned reports of "vote flipping" within the context of this factual contention but chalked up reports of it to the software being "highly inaccurate[,]" Statement of Elections Contest ¶ 27, not to it being part of a larger pattern of election fraud as Plaintiffs here have claimed.

[11] https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1930.

- Unreturned mail ballots unlawfully ordered by third parties (average for Dr. Briggs Error #1): 219,135.
- Returned ballots that were deemed unreturned by the state (average for Dr. Briggs Error #2): 86,845.
- Votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 5,790.

Complaint ¶ 19.

Further, Plaintiffs here have alleged that this is a part of a wider, national, pattern. *See e.g.* Complaint ¶¶ 67-75. As Defendants have correctly noted, similar suits have been brought in federal court in other states by Plaintiffs' national counsel. Once these cases have worked their way through various circuit courts, a petition for review can be expected to be made to the US Supreme Court. A federal court is the right venue to adjudicate such claims due to both the national scope of the claims as well as for the sake of consistency. *See also* A.R.S. § 16-672(B) (election challenge "may" (not must) be brought in Superior Court).

4. A third-party seeking to raise similar issues to the ones before this court was denied leave to intervene in Ward v Jackson.

Members of the Arizona Election Integrity Association ("AEIA") sought leave to intervene in *Ward v. Jackson*. [Proposed] Pleading in Intervention 2:2-5 (*Ward v. Jackson*).[12] As Plaintiffs do here, the AEIA sought to raise the issues of the unlawful ordering of ballots by third-parties, returned ballots not counted, and votes by out of state persons. *Id*. 3:21-4:18. However, the motion to intervene was denied as being filed too late in the litigation for its scope to be expended to this degree. December 3, 2020 Minute Entry Order p 3.[13]

Of equal importance is the fact that the isolated claims in State court do not appear to present evidence demonstrating that a sufficient number of illegal ballots were counted

[12] https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1890.
[13] https://www.clerkofcourt.maricopa.gov/Home/ShowDocument?id=1928.

to affect the result of the 2020 General Election. The fact and expert witnesses presented in the Complaint do. The Complaint alleges and provides supporting evidence that the number of illegal votes is potentially multiples of Biden's 10,457 margin in Arizona, particularly:

- Unreturned mail ballots unlawfully ordered by third parties (average for Dr. Briggs Error #1): 219,135
- Returned ballots that were deemed unreturned by the state (average for Dr. Briggs Error #2): 86,845
- Votes by persons that moved out of state or subsequently registered to vote in another state for the 2020 election: 5,790.
- "Excess votes" to historically unprecedented, and likely fraudulent turnout levels of 80% or more in over half of Maricopa and Pima County precincts: 100,724.
- And Plaintiffs can show Mr. Biden received a statistically significant Advantage, based on fraud, from the use of Dominion Machines in a nationwide Study, which conservatively estimates Biden's advantage at 62,282 Votes.

See generally Compl., Section II. No State case has been adjudicated with supporting documentary and testimonial evidence like what has been submitted here, which is more than sufficient to change the result of the election.

H. Abstention

Defendant Secretary Hobbs drops a footnote asserting that this Court "should abstain from hearing the case on federalism and comity grounds." ECF No. 40 at 19 n.8 (*citing Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 727-30 (1996)). The abstention request is cursory, so it is difficult for Plaintiffs to determine what Secretary Hobbs' argument is and to respond.

Accordingly, Plaintiffs would note that the case cited is inapposite. The standard for federal abstention in the voting rights and state election law context, *Harman v. Forssenius*, 380 U.S. 528, 534, (1965) is not favorable to their cause. In *Harman*, the Supreme Court rejected the Defendant state's argument that federal courts should dismiss

voting rights claims based on federal abstention, emphasizing that abstention may be appropriate where "the federal constitutional question is dependent upon, or may be materially altered by, the determination of an uncertain issue of state law," and "deference to state court adjudication only be made where the issue of state law is uncertain." *Harman*, 380 U.S. at 534 (citations omitted). But if state law in question "is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question," then "it is the duty of the federal court to exercise its properly invoked jurisdiction." *Id*. (citation omitted). Here, the complaint rests on federal constitutional claims based on the Electors Clause and the Equal Protection Clause. These claims are not dependent in any way on an interpretation of Arizona state law.

II. The Complaint Satisfies the Applicable Pleading Standard under Arizona Law and the Federal Rules of Civil Procedure

Defendant Intervenor's assertion that Plaintiffs' Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 9(b), ECF No. 36 at 2-6, is incorrect because it misstates the standard for ballot fraud under controlling Arizona Supreme Court precedent. In *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180, 877 P.2d 277, 279, (S. Ct.1994), the Supreme Court of Arizona explained that election fraud occurs where there are "non-technical" violations of election law that affected the result of the election: "We therefore hold that a showing of fraud is not a necessary condition to invalidate absentee balloting. It is sufficient that an express non-technical statute was violated, and ballots cast in violation of the statute affected the election." *Id*. The *Miller* Court went on to explain:

> If a statute expressly provides that non-compliance invalidates the vote, then the vote is invalid. If the statute does not have such a provision, non-compliance may or may not invalidate the vote depending on its effect. In the context of this case, affect the result, or at least render it uncertain, means ballots procured in violation of a non-technical statute in sufficient numbers to alter the outcome of the election.

Id. (internal citations and quotation omitted). Like the violations at issue in *Miller*, Plaintiffs' are not alleging "mere technical violations," *id.*, but rather "substantive irregularities" and systematic violations of procedural safeguards designed to prevent "fraud" and "ballot tampering," and like in *Miller*, "[t]hese tactics achieved the desired result--they turned the election around" for Biden. *Id*. Plaintiffs' Complaint alleges serious violations of Arizona state law, as well as the U.S. Constitution and federal laws, as part of a larger scheme of election fraud that affected the result. And, it sets forth these allegations in great detail with substantial expert and fact affidavit support (which would support a FRCP 9(b) analysis even if that standard were applied). As such, Plaintiffs' Complaint meets the applicable pleading requirements under Arizona law and the Federal Rules of Civil Procedure.

III. Plaintiffs are Entitled to Injunctive Relief

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Feldman v. Az. Sec. of State's Office*, 208 F.Supp.3d 1074, 1081 (D. Ariz. 2016) (*citing Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008)). Alternatively, "if a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor,' and the other two Winter factors are satisfied," *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013) (*quoting Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)), i.e., if the injunctive relief is in the public interest and failure to grant would result in irreparable harm to the plaintiff.

All elements are met here, under either standard. Defendant and Defendant Intervenor responses have not shown otherwise.

Of course, as an initial matter, "[w]hen the acts sought to be enjoined have been declared unlawful or clearly are against the public interest, plaintiff need show neither

irreparable injury nor a balance of hardship in his favor." *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *13-14 (Nov. 5, 2020) (quoting 11 Wright & Miller, Federal Practice & Proc. ¶ 2948 (3d ed. 1998)) (internal quotation marks omitted); *See also Current-Jacks Fork Canoe Rental Ass'n v. Clark*, 603 F. Supp. 421, 427 (E.D. Mo. 1985) (stating that "[i]n actions to enjoin continued violations of federal statutes, once a movant establishes the likelihood of prevailing on the merits, irreparable harm to the public is presumed."). Certifying election results tainted by election fraud and failing to retract such a certification is clearly unlawful and against the public interest. Hence, Plaintiffs discuss irreparable hardship and the public interest only in the alternative.

A. Plaintiffs have a substantial likelihood of success on the merits.

Through detailed fact and expert testimony including documentary evidence contained in the Complaint and its exhibits, Plaintiffs have made a compelling showing that Defendants' intentional actions jeopardized the rights of Arizona citizens to select their leaders under the process set out by the Arizona Legislature through the commission of election frauds that violated laws, including multiple provisions of the Arizona election laws. These acts also violated the Equal Protection and Due Process Clauses of the United States Constitution. U.S. Const. Amend XIV.

Defendants and Defendant-Intervenors misrepresent Plaintiffs' constitutional claims. Plaintiffs allege both vote dilution and voter disenfranchisement, both of which are claims under the Equal Protection and Due Process Clause, due to the actions of Defendants in collusion with public employees and voting systems like Dominion. The Complaint describes in great detail the actions taken to dilute the votes of Republican voters through counting and even manufacturing hundreds of thousands of illegal, ineligible, duplicative or outright fraudulent ballots.

While the U.S. Constitution itself accords no right to vote for presidential electors, "[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each

voter." *Bush v. Gore*, 531 U.S. 98, 104 (2000) (emphasis added). The evidence shows not only that Defendants failed to administer the November 3, 2020 election in compliance with the manner prescribed by the Arizona Legislature, but that those in collaboration with Dominion and other third parties fraudulently and illegally manipulated the vote count to make certain the election of Joe Biden as President of the United States. This conduct violated Plaintiffs' constitutional equal protection and due process rights as well their rights under the Arizona election laws. ARS §§ 16-101, et seq.

But Defendants' actions also disenfranchised Republican voters in violation of the U.S. Constitution's "one person, one vote" requirement by certifying an election where the following occurred:

- Republican Ballot Destruction: "1 Person, 0 Votes." Fact and witness expert testimony alleges and provides strong evidence that tens or even hundreds of thousands of Republican votes were destroyed, thus completely disenfranchising that voter.
- Republican Vote Switching: "1 Person, -1 Votes." Plaintiffs' fact and expert witnesses further alleged and provided supporting evidence that in many cases, Trump/Republican votes were switched or counted as Biden/Democrat votes. Here, the Republican voter was not only disenfranchised by not having his vote counted for his chosen candidates, but the constitutional injury is compounded by adding his or her vote to the candidates he or she opposes.
- Dominion Algorithmic Manipulation: For Republicans, "1 Person, 0.5 Votes," while for Democrats "1 Person, 1.5 Votes. Plaintiffs presented evidence in the Complaint regarding Dominion's algorithmic manipulation of ballot tabulation, such that Republican voters in a given geographic region, received less weight per person, than Democratic voters in the same or other geographic regions. See ECF No. 6, Ex. 104. This unequal treatment is the 21st century of the evil that the Supreme Court sought to remedy in the apportionment cases beginning with Baker v. Carr, 369 U.S. 186 (1962), and Reynolds v. Sims, 377 U.S. 533 (1964). Further, Dominion appears to have done so in collusion with State actors, so this form of discrimination is under color of law.

This Court should consider the totality of the circumstances in evaluating Plaintiffs' constitutional and voting rights claims, *see, e.g., Chisom v. Roemer*, 111 S.Ct 2354, 2368 (1991), and thus the cumulative effect of the Defendants' voter dilution, disenfranchisement, fraud and manipulation, in addition to the effects of specific practices. Taken together, these various forms of unlawful and unconstitutional conduct destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election, and effectively disenfranchising the majority of Arizona voters. And this is not the first time that Defendant and Defendant Intervenor have enabled attempts to "vote ballots that are not lawfully authorized." *See Fontes* TRO Order at 2 (enjoining Defendant Intervenor Maricopa County attempt to send absentee ballots to voters that have not requested them). Dr. Briggs' testimony demonstrates that Defendant and Defendant Intervenor likely violated Arizona law and the express terms of the *Fontes* TRO Order.

While Plaintiffs allege several categories of traditional "voting fraud", Plaintiffs have also alleged new forms of voting dilution and disenfranchisement made possible by new technology. The potential for voter fraud inherent in electronic voting was increased as a direct result of Defendants' and Defendant-Intervenors' decision to transform traditional in-person paper voting – for which there are significant protections from fraud in place – to near universal absentee voting with electronic tabulation – while at the same time eliminating through legislation or litigation – and when that failed by refusing to enforce – traditional protections against voting fraud (voter ID, signature matching, witness and address requirements, etc.).

Thus, while Plaintiffs' claims include novel elements due to changes in technology and voting practices, that does not nullify the Constitution or Plaintiffs' rights thereunder. Defendants and Defendant-Intervenors have certified an election tainted by likely the most wide-ranging and comprehensive mechanism to facilitate voting fraud yet devised, integrating new technology with old fashioned urban machine corruption and

skullduggery. The fact that this scheme is novel does not make it legal or prevent this Court from fashioning appropriate injunctive relief to protect Plaintiffs' rights.

William Briggs provides a rebuttal to Stephen Ansolabehere that fully defends and even strengthens his findings of widespread voter fraud regarding tens of thousands of mail in ballots that failed to arrive and others ordered by third parties. While specific matters are discussed in the rebuttal, what cannot be ignored is the added confidence that results when this pattern of this fraud is repeated across all five of the swing states where the analysis was performed, Georgia, Michigan, Pennsylvania, Arizona and Wisconsin. To see statistical significance found repeatedly -- in fact, five times in a row, should put any doubts to rest.

Teasley also provides a rebuttal to Jonathan Rodden, a PhD in political science, and fully defends his model that found statistical significance in the advantage that Biden gained from Dominion machines relative to all others in a nationwide analysis. This argument was soundly defended as Rodden failed to apply any meaningful evaluation and made numerous basic errors in terms of inferring cause from correlation.

Further, as set forth in the rebuttal report of Russell Ramsland, attached hereto, **Ex. 5**, none of Defendants criticisms have any merit.

B. The Plaintiffs will suffer Irreparable Harm.

Plaintiffs will suffer an irreparable harm due to the Defendants' myriad violations of Plaintiffs' rights under the U.S. Constitution, and Arizona Election Code, and Defendant and Defendant Intervenors have not shown otherwise.

In this Response, Plaintiffs have refuted and rebutted their arguments in detail, in particular, regarding standing, equitable defenses, and jurisdictional claims, as well as establishing their substantial likelihood of success. Having disposed of those arguments, and shown a substantial likelihood of success, this Court should presume that the requirement to show irreparable injury has been satisfied.

"It is well established that the deprivation of constitutional rights," such as violations of the Fourteenth Amendment rights to Equal Protection and Due Process,

"'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (where plaintiff had proven a probability of success on the merits, the threatened loss of First Amendment freedoms "unquestionably constitutes irreparable injury"); *see also Preston v. Thompson*, 589 F.2d 300, 303 n.4 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm."). Moreover, courts have specifically held that infringement on the fundamental right to vote constitutes irreparable injury. *See Ariz. Democratic Party v. Ariz. Republican Party*, 2016 WL 8669978, at *11 (D. Ariz. Nov. 4, 2016) (*citing Obama for Am. v. Husted*, 697 F.3d 423, 435 (6th Cir. 2012) ("A restriction on the fundamental right to vote ... constitutes irreparable injury."); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (holding that plaintiffs "would certainly suffer irreparable harm if their right to vote were impinged upon")."

C. The Balance of Equities & The Public Interest

Defendant and Defendant Intervenors make a few half-hearted attempts on this element but add nothing new or that merits a response.

The remaining two factors – the balance of the equities and the public interest – are frequently analyzed together, *see, e.g., Arizona Dream Act Coal. v. Brewer*, 818 F.3d 901, 920 (9th Cir. 2016), and both factors tip in favor Plaintiffs. Granting Plaintiffs' primary request for injunctive relief, enjoining certification of the 2020 General Election results, or requiring Defendants to de-certify the results, would not only not impose a burden on Defendants, but would instead relieve Defendants of the obligation to take any further affirmative action. The result would be to place the decision regarding certification and the selection of Presidential Electors back into the hands of the Arizona State Legislature, which is the ultimate decision maker under the Elections and Electors Clause of the U.S. Constitution.

Conversely, permitting Defendants' certification of an election so tainted by fraud and unlawful conduct would impose a certain and irreparable injury not only on Plaintiff,

but would also irreparably harm the public interest insofar as it would undermine "[c]onfidence in the integrity of our electoral processes," which "is essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 127 S.Ct. 5, 7 (2006) (per curiam).

In this regard, Plaintiffs would highlight a recent Eleventh Circuit decision addressed a claim in 2018 related to Georgia's voting system and Dominion Voting Systems that bears on the likelihood of Plaintiffs' success on the merits and the balance of harms in the absence of injunctive relief:

In summary, while further evidence will be necessary in the future, the Court finds that the combination of the statistical evidence and witness declarations in the record here (and the expert witness evidence in the related Curling case which the Court takes notice of) persuasively demonstrates the likelihood of Plaintiff succeeding on its claims. Plaintiff has shown a substantial likelihood of proving that the Secretary's failure to properly maintain a reliable and secure voter registration system has and will continue to result in the infringement of the rights of the voters to cast their vote and have their votes counted. *Common Cause Georgia v. Kemp*, 347 F. Supp. 3d 1270, 1294-1295, (11th Cir. 2018).

D. Plaintiffs Reiterate Their Request for Emergency Injunctive Relief Prior to December 14, 2020.

Plaintiffs urge this Court to grant the emergency injunctive relief requested in the TRO motion immediately, and in no event, later than December 10, 2020. In this regard, Plaintiffs bring to this Court's attention the December 4, 2020 order in *William Feehan v. Wisconsin Elections Commission, et al*., Case No. 20-cv-1771-pp (E.D. Wis. Dec. 4, 2020) ("Feehan"). The Plaintiffs in Feehan raised largely identical federal claims as those presented in the current in this Complaint, and they requested an expedited briefing schedule, as "time was of the essence because the College of Electors was schedule to meet December 8," which "is the 'safe harbor' deadline under 3 U.S.C. § 5." Id. at 7.

Of relevance here, the Feehan court held that, while December 8, 2020 is a critical date for resolution of any state court litigation," or state law claims, it is not the deadline

for federal courts. Feehan at 8. The applicable date for resolution of federal claims is December 14, 2020, the date on which the electors meet and vote. *Id.* The court then set a "less truncated" briefing schedule in light of the additional time. Accordingly, Plaintiffs request that this Court grant the TRO Motion not later than December 10, 2020.

IV. Relief Requested

Plaintiffs seek a de-certification of Arizona's election results. They also seek stay in the delivery of the certified results to the Electoral College to preserve the status quo while this case proceeds, as well that the voting machines be impounded and made available, and other equitable relief, on an emergency basis.

Respectfully submitted this 5th day of December, 2020

/s Sidney Powell
Sidney Powell PC
Texas Bar No. 16209700

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

Exhibit 1

U.S. Congress Letters of Support Bowyer v Ducey

PAUL A. GOSAR, D.D.S.
FOURTH DISTRICT, ARIZONA

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WASHINGTON, D.C. 20515
(202) 225-2315

122 N. CORTEZ STREET, SUITE #104
PRESCOTT, AZ 86301
(928) 445-1683

6499 SOUTH KINGS RANCH ROAD, SUITE #4
GOLD CANYON, AZ 85118
(480) 882-2697

220 N. 4TH STREET
KINGMAN, AZ 86401
(928) 445-1683

WWW.GOSAR.HOUSE.GOV

COMMITTEE ON
NATURAL RESOURCES
SUBCOMMITTEES
CHAIRMAN, ENERGY AND MINERAL RESOURCES
WATER, POWER AND OCEANS

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
SUBCOMMITTEES
VICE CHAIRMAN, INTERIOR
NATIONAL SECURITY

CONGRESSIONAL WESTERN CAUCUS
CHAIRMAN

Congress of the United States
House of Representatives
Washington, DC 20515-0301

December 5, 2020

Arizona Letter of Support

Phoenix, Arizona—

On behalf of the millions of concerned citizens and Arizonans who have lost confidence in the integrity of our election system, and on behalf of candidates for public office who campaign hard with the expectation that every lawful vote will count—and every illegal ballot will be thrown out—we write to share our support for the pending litigation.

Currently pending before the Court is Bowyer v. Ducey. We have seen various reports of irregularities, variances, statistical improbabilities, and unorthodox measures occurring in the general election for 2020. To date, in response to the numerous reports, we have received platitudes and condescension "assuring" us, and Arizona voters, that there was no fraud, or now they say that there was not enough fraud to matter. Indeed, those making the assurances, including the Secretary of State, the Maricopa County Board of Supervisors and others, have proffered no evidence that the election tabulation was not manipulated.

There has been no thorough investigation, no forensic audit, no signature verification and really no substantive effort to rebut the many deficiencies reported on. There are the objective indicia of manipulation that include: down ballot races all going in favor of the Republicans (with the notable and expected loss of McSally). In counties that did not use Dominion software, the president easily won. There is no voter registration imbalance that would make Maricopa County the outlier.

Immediately prior to the election, voters in Chandler and Mesa were solicited by community organizers to turn over their ballots so they could "turn it in for them." This is illegal ballot harvesting yet it occurred and was reported on October 23, 2020. The eyewitness testimony of actual voters is available for public review.

If every vote counts, and if the right to free and fair elections is as important as we always say, then any such vote manipulation must be vetted thoroughly.

The massive fraud people are concerned about is the data shifting. Why trifle with hundreds of ballots if you can change tens of thousands effortlessly? One insider whistleblower states that 35,000 votes were manipulated in Pima County. In a recent legislative hearing, evidence was presented of voter anomalies that supposedly occurred notwithstanding the mathematical improbability of such an occurrence.

All this is to say that we need to restore the faith of the people. Early ballots. Mass mailing of ballots. Computer algorithms. All have served to undermine voter confidence. When faced with these discrepancies, the people are simply told that everything is fine and not to look into it further.

In our view, elections need a zero tolerance for illegal balloting. This is not complicated. We are merely counting. Whether it's one to one hundred or one to four million, it is simple math.

We ask the court to support the request for fact finding, evidence gathering and any injunctive relief necessary to prove that the vote was indeed fair and accurate. Without such an undertaking, if Mr. Biden proceeds along, his presidency will be deemed illegitimate by millions. This is an intolerable result.

Sincerely,



Paul A. Gosar, D.D.S.
Member of Congress

U.S. House of Representatives Andy Biggs (from Arizona's 5th district)

"I write in support of Bowyer v Ducey. Arizonans deserve full clarity and complete transparency in the integrity of our elections. Faith in our institutions - especially our elections - is the bedrock of our constitutional republic. While Arizona did not experience allegations of voter fraud to the degree of other states, Arizonans have been left with significant questions about the integrity of our state's election system, apparatus, and software. It is important for all branches of our government to work in unison to ensure that these allegations are investigated and adjudicated. Only then, can Arizonans trust the results of every election."

- U.S. Congressman Andy Biggs (AZ-05)

Exhibit 2

Letters of Support Compilation Bowyer v Ducey

DocuSign Envelope ID: 6A42B733-8662-48C0-A465-4A17255DE3F6

STATEMENT OF SENATOR-ELECT KELLY TOWNSEND

As a current Arizona State Representative and Chairwoman of the Elections Committee, and now Senator-Elect and Vice Chair of the Government committee which oversees elections issues, I am writing this in an effort to further the sense of urgency to address elections irregularities and claims brought forward by elections workers and volunteers on November 30, 2020 regarding the recent General election. I have heard from this hearing, along with statements from individuals to my office, that there is reason to conclude a serious suspicion about fraud and irregularity in the election process. In particular, the most pressing issue is that the Dominion machines in Maricopa County are in need of a forensic audit. Beyond that, a close look at adherence to election law should be examined, and the voter rolls regarding Federal only voters needs to be audited. The issues presented are:

1. On November 30, 2020, a presentation by at least three individuals, to include cybersecurity expert Retired Col. Phil Waldron, an expert in his field included data that showed a statistical impossibility for one Presidential candidate to obtain the votes that he did. It was concluded that the only way for the vote totals to reach what they had was if the votes were set up to be weighted at 1.3 for one candidate, and .7 for the other. This, alone, is cause to do a forensic audit on the machines.
2. Testimony at the hearing was put forth concerning information regarding the Dominion Voting Systems operating manual that stated results could be manipulated from the administration level, that USB ports were available to insert thumb drives, and that the machines were clearly connected to the internet due to server traffic seen going to Frankfurt Germany at a statistically high level compared to other days. A review of the operating manual, along with the request for procurement (RFP) is in order to determine the security of the machines.
3. Ordinarily the Elections Assistance Commission (EAC) reviews and certifies the machines for use, however the Legislature of Texas rejected the Dominion

Voting Systems after a deep dive, having performed a security and technical analysis which caused them to draw the conclusion that the system was not secure. Because Arizona's Board of Supervisors did no such due diligence above and beyond the EAC review, there is no evidence that the concerns brought forward by Texas have been resolved. Such a review should be conducted to ensure that vulnerabilities no longer exist.

4. Each year the Def Con conference tests machines to see if they can be hacked. The Maricopa County Recorder sent staff to more than one of these conferences, and the resulting recommendation from their "voting village" was that due to the extraordinary ease that a person could hack into the system, a full and comprehensive audit should be performed after each election. Due to the hackers themselves recommending a forensic audit of these machines, would it not then be prudent to look closer at the vulnerabilities we have in our voting systems?
5. A Dominion employee had said to one of the witnesses that he was removing the machine's hard drives and taking them offsite, with no chain of custody and returning them the next day. This severely compromises the public's confidence in a secure election and should not have happened.
6. Arizona's Federal Only voters have grown exponentially from approximately 1100 persons who could not prove citizenship in 2017, to over 36,000 in 2020. At last check, in Maricopa over 4000 of those voters cast a ballot. An audit of those Federal only voters should take place, since a fictitious name could be used to obtain a ballot without any scrutiny.
7. We heard from many poll workers and volunteers who claimed that their ability to observe the election, namely signature verification and adjudication of ballots, was suppressed.
8. The Maricopa County Recorder sent instructions with ballots that directed the voter to cross out any mistakes and mark the candidate they intended on the ballot. The trial court stated that this was likely a violation of the law to state such an instruction, but that it was too late to intercede. On appeal, the Supreme Court overturned the state court decision and ordered the Maricopa County Recorder to remove the instruction. On election day, it was told to me that there were many ballots in the adjudication room that were a full Republican ballot, but that one candidate was crossed out and another candidate was voted for. A forensic check of the ink in these ballots would be time worthy due to the potential of malfeasance by the adjudicators.
9. We heard testimony that many machines rejected a large number of ballots due to extra marks caused by pens bleeding through to the other side on the day of the election. Those ballots went to either duplication or adjudication, where teams were attempting to revote the ballot based on what they thought the voter's

intention was. Testimony was given that there were not always a sufficient number of Republicans present to assure that voter intent was honored. A wider universe of ballots to be audited would be appropriate in this situation.

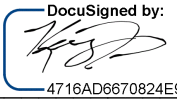
10. We were presented with an email by a person named Brian Watson, claiming that in Pima County, 35,000 votes were front-loaded into the machines for various democrat candidates. It is important to obtain the IP address of that individual and follow up to gather more information about this.
11. In years' past, the tabulation room was off-limits to anyone that did not have clearance, however this year the tabulation room was open to 25 adjudication teams, removing the security of the machines. If anyone with knowledge of the system and had access to the machines, would that not be reason alone to do a forensic audit of those machines?
12. Because the chain of custody of the SD results cards, hard drives, and the machines themselves, which were left unattended for a week in at least on Chandler voting center, it is incumbent to do a full forensic audit on the Dominion voting system.
13. It has been disclosed to me by a 3rd year law student, who is willing to testify under oath, that an acquaintance in Seattle contacted her to report that a shipment of ballots arrived at the airport from a South Korean plane. She also has a taped conversation of an individual admitting to being a part of the ballot operation here in Phoenix and can provide such recording. It is my understanding that this is currently under federal investigation.

CONCLUSION

Due to the many irregularities and serious allegations brought forward regarding the 2020 General Election in Arizona, I believe it is urgent that the Court find that a deep forensic audit is performed on the machinery and the ballots to determine if this election was compromised.

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

Executed on 12/5/2020, in County, State.

By 

Senator-Elect Kelly Townsend



Representative Mark Finchem, LD-11
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(520) 808-7340
MarkFinchem@me.com

Alexander Michael del Rey Kolodin
Kolodin Law Group PLLC
3443 North Central Avenue Suite 1009
Phoenix, AZ 85012

RE: Statement of support for the US District Court Action *Bowyer v. Ducey*

Dear Mr. Kolodin, December 5, 2020

Please transmit my remarks herein to The Court in the above mention matter. As the chairman of an public hearing panel on Arizona 2020 election integrity, which was convened on November 30, 2020, and after hearing over 10-hours of testimony and inspecting reams of evidence in the form of affidavits from those who testified, it is clear to me that the election of November 3, 2020 was plagued by pervasive voter and elections fraud and should be decertified.

The split between candidate Biden and Candidate Trump is less than 10,457 votes. The mathematical modeling that explains actual voting records confirms the tabulation fraud. It is interesting to note that but for the November 30th public hearing, virtually none of this testimony and evidence would have come to light in a transparent forum. It would have been covered up by inaction of the both the legislative and judicial branches in this state.

I know those who have brought this action personally, and I know how serious they are about supporting the rule of law and protection of the individual voting franchise of every citizen. This is not about one candidate or another, but rather stopping a fraud. Article IV, Section 4, known as the “Guarantee Clause” guarantees each state a, “republican form of government,” the foundation of which is self-governance through free and fair elections accurately reflecting the will of the people.

With the mountain of evidence that was presented during the November 30 hearing, which several of the complainants in this action were present to hear and observe, it is clear the "one person, one vote" principle that was invoked in a series of cases by the Warren Court in the 1960s —under the Equal Protection Clause— has been violated by this election to an extent sufficient to alter the outcome of the election if properly scrutinized.

Representative Mark Finchem, LD-11
P.O. Box 69344
Oro Valley, AZ 85737
(520) 808-7340
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I am personally shocked that the chief executive of this state knew or should have known of the mountain of evidence showing that our election was irredeemably compromised, and likely a fraud, and yet he signed the document. There was nothing magic about the 11:00 hour on November 30, he knew that the hearing was on-going and was likely to last into the evening. Furthermore, the document should have been held after nine more hours of evidence and testimony was presented supporting the assertion of illegitimacy.

Article I, Section 4, Clause 1 of the United States Constitution empowers state legislatures, including the Legislature of the State of Arizona, to prescribe the "Times, Places, and Manner" of conducting elections; and, Article II, Section 1, Clause 2 of the United States Constitution empowers state legislatures, including the Legislature of the State of Arizona, to direct the manner of appointing electors for President and Vice President of the United States. At one of the complainants in this case, Representative Anthony Kern, is currently a sitting member of the 54th Arizona Legislature. If this is not credibility enough and demonstrable evidence that the complainants are serious and dedicated, then I don't know what could be.

It is said when you cannot stand the message, kill the messenger. The proceedings that the Court is engaged in cannot be an exercise in politics but in law, an exercise to protect the individual franchise of voting that is the embodiment of the consent of the governed. Arizonans, indeed all Americans, have been subjected to a narrative that the complainants in this suit are somehow unserious, or worse western rubes. But I ask the Court to consider this, these people are determined, they are committed and they are serious about their stand for the guarantee that this state shall continue to enjoy a republican form of government, the foundation of free and fair elections accurately reflecting the will of the people.

Kindest regards,

//s Representative Mark Finchem, Chairman
House Federal Relations Committee

NB

NANCY K. BARTO
ARIZONA REPRESENTATIVE

CONTACT

5450 East. Deer Valley Dr.
#2196
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NBarto@azleg.gov
602-926-5766 (office)
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Alexander Kolodin, Attorney
Kolodin Law Group PLLC
3443 North Central Avenue Ste. 2985
Phoenix, Arizona 85012

Alexander,

It is imperative that the people of Arizona have confidence in our elections process – now and in the future. Considering the number of voting irregularities observed firsthand and reported to me by my constituents this election cycle, nothing short of a complete independent forensic audit will suffice to restore and preserve voters' confidence.

To that end, I wholeheartedly endorse Chairman Ward's legal efforts for such transparency and security on behalf of all Arizona voters.
Thank you.

Sincerely,

0BNancy K. Barto
Arizona Representative

Senator Sylvia Tenney Allen
District 6
PO Box 952, Snowflake, AZ 85937
1700 W. Washington, Phoenix, AZ 85007
928-241-3126
602-926-5409

To Whom It May Concern:

This is my statement in support of the federal court case, Bowyer v Ducey seeking a motion for temporary restraining order and preliminary injunction.

I was part of the Legislative panel that heard testimony on Monday, November 30th, in Phoenix, Arizona of the many irregularities that took place on the November 3rd General Election in the State of Arizona.

I will not list all the irregularities that I heard knowing that many are listed within this lawsuit, but I am firm in my mind that our election has been compromised and we cannot certify and state with certainty that that we know who the Presidential winner is.

I feel strongly that we must decertify our election and not award Arizona's eleven Electoral votes to any candidate due to the failure of the integrity of Arizona General election.

Most Sincerely,

Senator Sylvia Allen

A significant number of voters believe that fraud occurred, and, with the number of irregularities, it is easy to understand why. Especially concerning are the allegations made surrounding the vendor Dominion. It is imperative that the Court immediately allow a forensic audit on the Dominion software and equipment to make sure the results were accurate.

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

Executed on 12/5/2020, in County, State.

By DocuSigned by: C8165A3010834DC...

Warren Petersen Arizona House Majority Leader

December 5, 2020

"I find it imperative that we support Chairwoman Kelly Ward's work to keep our elections transparent and fair. The citizens of Arizona deserve the security of knowing that their voice is heard. I support Ward's efforts and will continue to do so".

Walter J. Blackman

Vice Chairman, Judiciary
Vice Chairman, State & International Affairs
Commissioner; Education Commission of the States
Member, Legislative District 6
1700 W. Washington
Phoenix, AZ 85007
Room 345
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Exhibit 3

Response to Stephen Ansolabehere's Comments Regarding Absentee Ballots in Arizona

William M. Briggs

December 5, 2020

1 Summary

The criticisms made by Stephen Ansolabehere in response to my original report on absentee ballots are not relevant, make simple errors in logic, and even, in part, work against him to show my original argument could be made even stronger.

Ansolabehere repeatedly charges that because I was brief in saying "I assume survey respondents are representative and the data is accurate" that therefore the respondents were not representative and the data not accurate. This is a silly error and a wholly unwarranted conclusion. Not only was this data entirely typical of phone surveys, and therefore the data having all the usual strengths and weaknesses of the genre, it was extraordinary in that calls with respondents were recorded. The designers of the survey evidently knew its quality would be attacked—and were prepared for it.

There were no fatal errors in the survey data or calculations, as the well-paid Ansolabehere falsely claims. (*Five hundred fifty* American dollars per hour for the many hours he spent on his comments? My work is entirely pro bono.) Instead, I took pains to put forward the most conservative case, interpreting the data in a way that actually reduced the number of troublesome ballots.

Although Ansolabehere made many mistakes, I thank him for the opportunity of allowing me to make a point I neglected to emphasize in my original presentation. This is the striking unity of results across several battleground states, including Arizona. The data shows either an amazing coincidence in accumulated troublesome ballots in just those places they were needed most for Biden, or the data shows something more interesting happened.

What follows are answers to specific criticisms.

2 Rebuttal

Ansolabehere pads his account with many extraneous words and arguments. I will be much briefer, while also answering every substantial criticism he made.

2.1 Error Definition

My original definition of errors were this:

Error #1: being recorded as sent an absentee ballot without requesting one. This is still an error even if ballots were sent to all voters without request, because of the very real chance of double-voting (in person and by mail).

Error #2: sending back an absentee ballot and having it recorded as not returned.

These followed directly from the survey design. The survey began by asking these specific questions "Q1 - Hello, this is [yourname] with the Voter Integrity Fund. May I please speak to [TARGET]?" If the person was available, they were asked "Q2 - [Target Name] in the state of [STATE] is marked as having received an absentee ballot request from you but did not receive your absentee ballot. Did you request an absentee ballot?"

Finally, if they said yes to that, respondents were asked "Q3 - Did you mail back that ballot?"

Ansolabehere finds ambiguity in these three simple questions via a wonderful display of specious argument, one he repeats in many places. He basically says that because the questions *could* have been misinterpreted in the various ways he suggests, they therefore *were* misinterpreted by a sufficient number of respondents, thus rendering the survey useless.

My answer is that this is a dumb argument. He has no evidence misinterpretations were made in the way he suggests. He could have spent the same amount of (expensive) time and came up with reasons why the survey was *not* misinterpreted.

For instance, the election was in the news and people were riled. They therefore welcomed the chance to set the record straight, and to ensure their legal ballots were counted. They were thus even more honest than they normally would be with telephone pollsters.

Of course, I have no evidence this, or other similar stories, are true. Just as Ansolabehere has no evidence his charges are true. All we can do, then, is to treat this survey like we treat all surveys: analyze the data as it is presented.

2.2 Ambiguous Wording

I will give one specific example of Ansolabehere trying to discover ambiguity. They are all much the same. He says (in point 7):

> The wording of Question 3 also is very problematic. First, the survey does not ascertain whether a ballot was in fact received. According to figures from the U.S. Election Assistance Commission, there were 102,896 undeliverable absentee ballots. Neither Question 2 nor Question 3 screens out people who did not receive a ballot. Second, Question 3 does not ascertain whether the ballot was mailed back in a timely manner so as to be included in the record of ballots cast. Third, Question 3 asks whether someone voted. As is well known among political scientists and survey researchers, survey questions asking whether someone voted are subject to substantial social desirability biases that lead to inflation in the estimated number of voters.

Earlier, Ansolabehere says that just about evey voter was sent automatically an absentee ballot, and here he says it's possibly they didn't. This is not consisent. And again, Ansolabehere uses the possibility of a thing as proof the thing existed. There no evidence, not one bit, that ballots were sent back late. Indeed, as all news reports indicate, certain late ballots were warmly accepted.

His second point is the same: because people lie on surveys, therefore they lied here in sufficient number. Would Ansolabehere apply this same reasoning to his own words? It is clearly nonsense. If accepted, his argument would toss out *all* surveys about voting.

2.3 Response Rate

Ansolabehere charges "the survey has extremely low response rates." He must know that the response rate here was not atypical. That is, it was low like many telephone polls are. But low does not imply too low. He must know this. Further, the mathematical extrapolations I made accounted for the size of the data.

Perhaps because Ansolabehere is a specialist in government, he does not know that when samples are low the confidence we have in extrapolations is wider. I will give one example, using Arizona, though this works for data from any state.

The original estimates of Error #2 for Arizona were that between 78,714–94,975 ballots were sent back but recorded as not returned, a "plus or minus" window of 16,261 votes. If we suppose we had *double* the response rate on the survey, in the same proportions as the original, then the Error #2 estimate becomes 81,739–93,214, a window of 11,475 votes. The 95% prediction interval shrinks, as expected, as we become more confident.

It does not shrink by much, of course, showing the analysis method is robust. If instead we allow a full ten times the original response rate, the plus-or-minus window shrinks to 5,046 votes.

Response rate is not a problem, and has been fully accounted for.

2.4 Top line Number Interpretations

Ansolabehere produces a lot of quibbles about the survey numbers, and uses the possibility of different interpretations of the numbers to say my entire analysis can't be trusted.

It is true that differences can exist in interpreting the top line numbers. I was aware of this when I did the analysis, which is why I everywhere used conservative interpretations. If I instead use one of the interpretations Ansolabehere suggests, the case about troublesome votes is made is even stronger.

I will use Arizona again as an example, though this applies to all states.

Again, the first question asked to speak to the relevant person. In Arizona, 1,872 were recorded as "Reached target", and an additional 335 were recorded as "'What is this about?'/Uncertain [Go to Q2]." I summed these two numbers to reach a total of 2,147.

One quibble is that the 335 who were uncertain should not be used in the total. If not, the sample size is, of course, reduced to 1,872. Yet we still have 906 who said "No" when asked if they received an absentee ballot. The ratio 906/1872 is larger than 906/1872, meaning it will look like even more errors were made (of type Error #1).

The original estimate of **Error #1** (being recorded as sent an absentee ballot without requesting one) for Arizona was the window of 208,333–229,937. If we reduce the sample to 1,872 by excluding the disputed 335, the new estimate is 239,518–262,932. It goes up in just the way we expect it to. This proves using the full 1,872 is the conservative choice.

Another way to interpret the top lines is to use all people who got to the point of Question 1. Ansolabehere disingenuously prefers this because it makes his case appear stronger.

Besides the two options to Question 1 already mentioned (reached target, uncertain), there were also "Refused" and "Hangup". I treated these as non-responses, which is the usual interpretation. A person who hangs up without responding is the same as the person who never answers, as far as the answering the question goes.

In the spirit of generosity, though, let's use all 4,524 who reached Question 1 (instead of the original 2,147), including the hangups and refusals. The window for Error #1 becomes 98,2018–110,240. The window shrinks, as Ansolabehere desires. *But not by enough.* This is still a large and troublesome window. The same is true for each state investigated.

Even stronger, the window for Error #2, the more significant error, *does not change.* This is because the calculations for this window are conditional only on those who answered Question 2 and 3.

Lastly, Ansolabehere disputes whether the answers spouses or other household members gave should be allowed. I used them in the totals. Ansolabehere would exclude them. This is really a nitpicking point because the total of these answers were small.

Here is proof. Again, the original window for Error#2 in Arizona was 78,714–94,975. This was conditional on the 355 respondents or their spouses or household members who said they mailed a ballot back. If we remove the 17 spouses or household members, the window becomes 76,176–92,232. It shrinks a bit. But again, *not by enough.*

All comments made here hold for all states.

3 Conclusion

The doubts cast on my original analysis by Ansolabehere either fail simple tests of logic, or are so small as to make no practical difference in the conclusion.

All his logical errors can be dismissed. Suggesting, as he often does, that mistakes *can* be made or that ambiguity *might* exist in the survey, is not proof that either *does* exist. I could have spent an equal amount of (unremunerated in my case) time suggesting ways the survey was better than most political polls. For instance, people are aware now more than ever of the importance of this election and they took greater care with their answers. I did not do this in the original report because I, unlike Ansolabehere, know the true value of such speculations.

The various numerical quibbles Ansolabehere has with the survey numbers either strengthen my case, or they are so small as to make no practical difference. Even with his own difficult-to-justify assumptions, the analysis reveals there still exist very large numbers of troublesome ballots in each battleground state. There are enough suspicious ballots left, even using his numbers, that could have changed the outcome of the election.

Finally, I reemphasize the remarkable coincidence that the amount of troublesome ballots was important to the election outcome in each state.

4 Declaration of William M. Briggs, PhD

1. My name is William M. Briggs. I am over 18 years of age and am competent to testify in this action. All of the facts stated herein are true and based on my personal knowledge.
2. I received a Ph.D of Statistics from Cornell University in 2004.
3. I am currently a statistical consultant. I make this declaration in my personal capacity.
4. I have analyzed data regarding responses to questions relating to mail ballot requests, returns and related issues.
5. I attest to a reasonable degree of professional certainty that the resulting analysis are accurate.

I declare under the penalty of perjury that the foregoing is true and correct.



5 December 2020

William M. Briggs

Exhibit 4

Testimony of Brian Teasley, B.S. Mathematics, M.S. Statistics, to rebut the opposition expert Jonathan Rodden, PhD of Political Science.

December 5, 2020

CHAID

Jonathan Rodden, with a PhD in Political Science and author of the rebuttal to my analysis, claims my use of the Chi-Squared Automatic Interaction Detection (CHAID) technique is "unusual". The technique has been around for 40 years and has been included in the offering of the Statistical Package for Social Sciences (SPSS) since approximately 1985. SPSS and SAS (formerly "Statistical Analysis Software") are primary tools for Statisticians – and it is unusual for an "expert" to label use of the CHAID technique as unusual. It is an excellent tool for initial analysis for all types of data, including election data. It is simple to use, easy to explain, and often provides statistically significant results, as it did in my analysis. Had this technique not shown the results that it did, my analysis would have likely terminated. Instead, the technique clearly indicated further exploration was appropriate.

Placebo

Author wants you to believe that the reason we see Biden doing so well is because the dominion machines are in Democrat counties. ("it is clearly the case that Democratic counties have been more likely to adopt Dominion machines than Republican counties"). This is demonstrably not the reason.

The pattern seen is across all types of counties – those with low likelihood to vote for candidate Biden as well as those with a high likelihood. It is precisely this pattern that is indicative of a system wide problem, not one just in Democrat counties. If, indeed the effect we are seeing was mainly in Democrat counties, the "unusually high" pattern of the green dots in the scatterplot would only be seen in areas where Biden is predicted to do well; i.e., we would only see the "unusually high" pattern in the green dots towards the right side of the graph –

where the counties with higher likelihood, and higher actual Biden results are located. Instead we see the unusually high pattern scattered across the vast majority of counties.

The pattern we see is very evident in rural counties in Minnesota, Michigan, and Wisconsin – these are all solid "Trump" areas; hence, the impact is seen in "Trump" counties as well as Democrat counties. This refutes the author's attempt at an alternative explanation.

Also in conjunction with this, the author argues that counties that are new to using Dominion machines "have larger shares of female residents, Latino residents, and… have lower median incomes". My propensity analysis, mentioned earlier, specifically controlled for these variables. The results of the analysis (output now included in appendix) were significant at the 95% level - and show a "Dominion Effect" in favor of candidate Biden. Since this analysis specifically controlled for the variables about which the author is concerned, my analysis has already refuted this argument.

False Positives

Rodden claims our results are erroneous due to probably being a "false positive". He then gives a select example showing that adoption of Dominion machine use in 2020 (from not using Dominion in 2012) is highly correlated with Obama's winning vote percentage in 2012. He provides that in those counties that have switched to Dominion machines at some point between 2012 and 2020, "Obama received about 5 to 6 percentage points higher vote share". He concludes, "there is no logical way that future use of Dominion voting machines could have affected past outcomes."

He seems to have forgotten his earlier (likely true) statement that, "Democratic counties have been more likely to adopt Dominion machines than Republican counties". Thus, with his own information, the author gives the reason why counties that changed from other machines to Dominion machines between 2012 and 2020 are more likely to vote for Obama. The counties that have changed are more Democrat counties, so *of course* they voted for Obama in 2012, apparently at a

rate of 5 to 6 percentage points higher. His "false positive" is anything but, and is explained *with his own information.*

Viewing his false positive analysis from a more fundamental aspect, I find that it ignores basic statistical principles. Rodden's select case suffers from a most basic trap; correlation does not infer causality, and ranging across historical elections is bound to introduce many potential causes. Rodden does not offer a statistical method to prove his theory goes beyond a correlation.

In contrast, my analysis considers all machines in parallel used in the same election, enabling me to apply reliable statistical methods and find statistical significance.

Going further, my analysis focuses on *all* US counties using Dominion and the patterns are seen in vast majority of counties, *not only counties that recently switched machine type*. The pattern becomes more apparent, and the statistical significance levels stronger – when looking at more data. That is what my analysis did.

Appendix

Propensity Score Output

P-value (which is significant at the 95% level)) are from a generalized linear model PercentageBidenVote = machine type.

Matching done using R package MatchIt with:

> matchit(bad.machine ~ White + Hispanic + Black + Native + Asian + Pacific + Income + IncomePerCap +
>
> TotalPop + Men + Poverty + ChildPoverty + Professional + Service + Office + Construction +
>
> Production + Drive + Carpool + Transit + Walk + WorkAtHome + MeanCommute,data=machine.data,
>
> method="nearest",distance="logit")

[1] "Dominion Voting Systems"

[1] "p-value = 0.044874"

[1] "n = 688"

Other Dominion Voting Systems

white	72.26	72.49
hispanic	11.35	10.59
black	12.19	12.33
native	0.97	1.10
asian	1.36	1.57
pacific	0.05	0.06
income	48980.58	49291.89
incomepercap	25664.95	25792.32
totpop	110522.27	128214.31
men	54489.92	63341.96
poverty	17.13	17.02
childpoverty	23.98	23.73
profession	30.86	31.14
service	19.00	19.00
office	22.26	22.18
construction	12.67	12.62
production	15.21	15.06
drive	79.58	79.47
carpool	10.15	10.04
transit	1.11	1.22
walk	2.87	2.95
workathome	4.58	4.58
commute	24.53	24.38
perbiden	36.09	37.91

Exhibit 5

Objective

Highly skilled and innovative security analyst seeking to work collaboratively to develop and implement security policy, best practices methodology, and timely incidence response/disaster recovery reporting.

Competencies

Linux and UNIX

Debian Family (Ubuntu, Kali, Mint) ● Redhat Family (Redhat, Fedora, Cent OS) ● SUSE Family (SUSE, Open SUSE, Slackware) ● Advanced Families (Arch, Gentoo, Linux from scratch) ● Deep understanding of Linux internals ● MacOS/OSX ● FreeBSD ● OpenBSD

IDS – Intrusion Detection Systems

Snort – with automation tools ● Suricata ● Tiger ● Samhain ● OSSEC HIDS

Vulnerability Scanning / Assessment

Nmap ● Open VAS ● Nessus ● Core Impact ● Nexpose ● Saint ● OS SIMS ● Sguil ● Honeyd

Firewalls

IP Cop ● IP Tables ● PF ● PF Sense ● CISCO ASA ● Alien Valt ●

Job Related Skills

• Provided expertise on IT-Security policies and guidelines, best practice approaches and solutions for compliance

• Developed detailed recommendations for mitigating findings and process improvement projects

• Validated and tracked security breach

• Documented results and presented findings to technical staff and management matching their skill level

- Assisted with planning and execution of domain integration, user account, and e-mail migration
- Reviewed user accounts and access on a monthly basis to ensure regulatory and corporate compliance
- Adhered to and enforced corporate policies regarding network security, data, and software usage
- Created, modified, and disabled user accounts base on authorized forms
- Acted as a liaison between various departmental groups on information security related topics
- Audited systems based on industry security standards
- Collaborated in teams of technical and non-technical experts

Experience

Senior Security Engineer ● Redacted	Mar 2013 - July 2020
Lead Pentester ● Self-employed ● Texas	Mar 2010 - Present
Contract InfoSec Analyst ● Redacted	Jan 2015 - Dec 2017
Network Administrator ● Redacted	Dec 2017 - Apr 2020

SOURCE 2 - Applied Mathematician, Computer Programmer, and Logistician – Member of Election Fraud Task Force - ASOG

Worked as an applied mathematician/computer programming for lab associated with the US National Nuclear Security Administration (NNSA) covering the interdisciplinary field with a focus on problems in the nuclear and space research programs area.

Areas of Expertise:

- Designing and analyzing complex algorithms
- Expressing difficult cryptographic problems in terms of mathematics
- Appling work to find a solution or demonstrating that a solution cannot be found, given certain computational limitations and reasonable time limits

Provided direction, analytics and coordination of various DoD/USIC supplychains to include programming of automated procurement, inventory management, and other supply chain planning and management systems.

Computer programming:

- Python
- C++
- C
- Perl
- Java
- Machine Languages:
  IBM 360/370
  Unisys mainframes
- Microcode:
  Intel
  IBM
  Unisys V
- Assembler
  Intel
  IBM
  Unisys Main and V
- CICS: IBM
- Databases:
  VSAM
  IMS
  DB2

Previous Employers (US) in no chronological order

- US Navy
- Sandia Labs (Honeywell)
- Department of Defense/USIC
- Sperry Univac

- Center of Strategic and International Studies (CSIS)
- Communication Corporation of America

Education:

University of North Texas. BS, Cyber Security
North Central Texas College. Computer Science & Cyber Security
CCI Training Institute. Computer Science
US Navy TRADOC. Electronics

Continuing Adult & Professional Education:

Southern Methodist University. Lyle School of Engineering & Applied Sciences
Southern Methodist University. Cox School of Business

SOURCE 1 – Ex-VP of Cyber Operations - Member of Election Fraud Task Force - ASOG

Pre-teen hack into Fort Sam Houston's Main Frame in San Antonio, TX, received FBI warning
Served in United State Marine Corps - 2 years
Worked as a CAD design engineer in San Antonio - 6 years
Served in United States Army - 6 years
17th Field Artillery Brigade with 2 combat tours, Iraq as a point gunner for a convoy security operation and in Afghanistan as Point gunner, mechanic and electronic technician in a Route Clearance package operating in RC East.
Cyber Security College 2014
While in the Army operated independently to penetrate Hacker groups hunting cyber terrorists and gaining informants for passing intelligence up to the US IC. Including:
- ISIS
- Anonymous,
- Red Cult,
- AnonGhost and
- others

8 reports that became part of the Presidential Intelligence briefing.
Assisted in gathering intel that lead to the take down of ISIS members including:
- Junaid Hussain,
- Fadel Ahmed Abdullah al-Hiyali AKA Abu Muslim Al-Turkmani
- assisting with stopping planned terror attacks in countries including
  - Belgium,
  - Georgia,
  - Russia,
  - France and
  - US.

Assisted in foiling cyber operations against
- US,
- Israel,
- Russia, and
- Europe.

Designing computer systems using Field Programmable Gate Arrays and Field Programmable Frequency modulators coupled with off the shelf micro electronics like Arduino and Raspberry Pis to assist in EW operations.
Working to reinvent binary systems and streamline communications at the processor level for aid in encryption dominance.

December 5, 2020

***Bowyer v. Ducey*, Case No. 2:20-cv-02321-DJH**

United States District Court for the District of Arizona

Expert Report of Russell J. Ramsland, Jr.



Russell J. Ramsland, Jr.

1) I have read the Dr. Reddon's rebuttal to my affidavit dated December 4, 2020 and find it unconvincing in a real world scenario for several reasons. The first of these reasons is the broadly recognized importance of contextual factors in inferring various analytical results from research data whether the considerations involve ecological fallacies, corporate fallacies or individualistic fallacies. Simply put, an over-reliance on inferred results without taking into consideration the events and their time- sequencing, the parties of input and influence (corporate or individual) and the historical and contemporary backdrop in which they exist ("spiraling contextuality" in political science jargon) yields false assurances in the outcomes. Dr. Reddon makes this very mistake in his arguments for his counter analysis that essentially boils down to the notion that Dominion machines cannot be held responsible for what our team found as highly anomalous reporting in favor of Biden using 3 different metrics because they are placed in historically democratic heavy areas to begin with. So we should expect this outcome. There are several problems with his argument.

2) The first example of failing to recognize contextual matters is Dr. Reddon's apparent assumption that any such selection of Dominion Systems by a heavily democratic area is divorced from Dominion's history and alliances. It is absurd to make such an assumption as the previous 4 affidavits of Spider and my own affidavit make clear. Further, the new affidavit of Spider adds to the enormity of the importance of viewing any anomaly in the context of Dominion's history and relationships. [1] Clearly Dominion's history and alliances are of tremendous importance to the decision makers who select these systems, and part of that history includes its vulnerability to being tampered with by inside or outside actors. For instance, in the real world of power politics it cannot be easily dismissed as a potentially attractive feature in certain cases, and in this sense the relationship between Dominion's selection and the heavy bias of Dominion outcomes may certainly be related. Hence no amount of correlation between Dominion selection by more heavily democrat counties has anything useful to add to the question of whether Dominion systems are innocent of fraud or tampering. That question is still wide open and our three perspectives on anomalous behavior in our analysis of this question is at least as valid as Dr. Reddons.

3) The second example of failing to recognize contextual matters is illustrated by one of the very sources Dr. Reddon uses in his analysis, Verified Voting. This organization has historically been a champion of actual paper ballots and scanners (as opposed to ballot marking devices, etc. as used by Dominion and ES&S) for the very reason they are so vulnerable to manipulation within the system and audit trails can be erased, changed or even bypassed since many aspects of them are now voluntary as selected by the user. However, as of late Verified Voting has come under intense criticism by some of it's own experts. Important excerpts from Fast Company's article about it in 2019 include:

[1] andy_huang_affidavit, Spider, 12.5.2020

"Amid heightened concerns about the integrity of the voting process in the run-up to the 2020 presidential election, two election security experts recently quit Verified Voting, a respected election accountability group, in protest. They claim that it has been downplaying security risks in popular voting machines.

Richard DeMillo, a Georgia Tech professor who sat on Verified Voter's advisory board, just left the group, soon after the departure of UC Berkeley statistics professor Philip Stark, a board member who sent a fiery letter of resignation on November 21st. Stark and DeMillo believe that Verified Voting has been giving election officials false confidence in their voting machines and providing cover for the companies that make and sell the machines." It further says "Amid heightened concerns about the integrity of the voting process in the run-up to the 2020 presidential election, two election security experts recently quit Verified Voting, a respected election accountability group, in protest. They claim that it has been downplaying security risks in popular voting machines.

Richard DeMillo, a Georgia Tech professor who sat on Verified Voter's advisory board, just left the group, soon after the departure of UC Berkeley statistics professor Philip Stark, a board member who sent a fiery letter of resignation on November 21st. Stark and DeMillo believe that Verified Voting has been giving election officials false confidence in their voting machines and providing cover for the companies that make and sell the machines.

In his resignation letter, Stark accused the group of being on the "wrong side" by approving pricey new voting systems that replace hand-marked ballots with computer-printed ballot summary cards [BMD], the accuracy of which he questions since they depend on potentially insecure software. . .

Since the election interference in 2016, many states and localities have been moving to voting machines called ballot marking devices that record the voter's choices digitally and also print them on a paper ballot as a backup. And there's the disconnect. The findings of the RLA depend totally on the assumption that the paper ballots accurately reflect the choices of the voter. Stark and DeMillo warn against making that assumption.

"Because there is software between the voter and the paper, what the paper shows might not be what the voter did or saw . . . on the device," Stark told me. That's because the software could be hacked and caused to create a false paper ballot. In close elections, it might take only a small number of these to change the result."

And then finally, lest anyone think the so-called audit in Georgia of it's Dominion machines (the same machines as in Maricopa, Co.) answered any questions about Dominion, Stark says "In Georgia and particular, the kind of

> audit that was done is called a ballot polling audit, and a ballot polling and *it doesn't even check the tabulation at all*," Stark told me. "It just checks whether there is a sufficiently large majority to report a winner and a sufficiently large sample that it's implausible that somebody else won." (italics and underline is added)[2].

4) These are but two examples of why no one should rely on merely a standalone analysis without taking into account the real world background and facts. Yet this is precisely the argument Dr. Reddon posits. Without context, it becomes merely an analytical argument of whose facts, which data, what approach is the superior one. While we are comfortable with our approach, which I will more thoroughly outline later, we would not argue it alone is sufficient to eliminate all other context and would say the same for Dr. Reddon's thesis.

5) This leads me to the second problem which is that there are the many documented vulnerabilities in Dominion and ES&S voting systems wherein the votes are demonstrably switched, and many experts have testified and written about the many ways this can be accomplished. These proven problems go more directly to the real question at hand and have been extensively examined by experts include Harri Hursti, Matt Blaze of Georgetown University and John Halderman of Michigan, and there are many others.[3] The State of Texas has refused to certify Dominion for use in Texas due to it's deficiencies, saying "Specifically, the examiner reports raise concerns about whether the Democracy Suite 5.5-A system is suitable for its intended purpose; operates efficiently and accurately; and it safe from fraudulent or unauthorized manipulation".[4] .

6) Further, spot field testing of results in Antrim Co., MI. that uses the same Dominion equipment as Maricopa Co., AZ, have now shown in Antrim Co. that as a result of a hand recount, 6,000 votes were switched by the machines. Separately, a re-tabulation on November 6th of the November 3rd tabulated results in Central Lake Township yielded dramatically different results as well (see attached Antrim Report V1.7). Then on December 3rd, from Ware Co., Georgia (that also uses the

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[2] https://www.fastcompany.com/90441559/two-experts-quit-election-accountability-group-over-claims-it-has-been-endorsing-untrustworthy-machines

[3] 2006 Hacking Democracy video
2020 Kill Chain video
Everest Report
C-Span Panel: ICIT - Cybersecurity and U.S. Voting Systems (2016)
Matt Blaze Testimony before before US Hse. Comm. On Administration (1/9/20)
ES&S Security Test Report Electionware 5.2.1.0 – 8/28/17 – Freeman, Craft, McGregor Group
Red Team Testing Report Dominion Democracy Suite 4.14-A and Dominion Democracy Suite 4.14.A.1 w/ Adjudication 2.4 - 11 -18 -14 - Freeman, Craft, McGregor Group

[4] https://www.sos.texas.gov/elections/forms/sysexam/dominion-d-suite-5.5-a.pdf

same Dominion equipment as Maricopa Co.) comes the report and sworn affidavit of Garland Favorito that a hand recount, as reported in Voter/GA "confirmed the Dominion Democracy Suite 5.5 system used throughout Georgia flipped dozens of votes cast in at least one county for President Donald Trump to former Vice President Joe Biden during the November 3, 2020 election. Dominion vote flipping from Trump to Biden was previously believed to have occurred only in Antrim County, Michigan where the system swapped 6,000 votes from Trump to Biden.

In Georgia, Ware County Elections Director confirmed that the recently completed hand count audit totals showed the total electronic vote count shorted Donald Trump 37 votes and added those 37 votes to totals for Joe Biden. The 74 affected votes represents .52% of the 14,192 county votes cast, exactly double Biden's total statewide margin of .26%". [5]

And finally, as proof that the same sort of machine vote switching behavior is happening in Maricopa there is the sworn affidavit of GOP chairwoman Linda Brickman as reported in the Epoch Times saying "Maricopa County GOP chairwoman Linda Brickman on Nov. 30 testified before members of the Arizona State Legislature that she personally observed votes for President Donald Trump being tallied as votes for Democratic presidential nominee Joe Biden when input into Dominion machines.

Brickman, the GOP head of one of the country's largest counties and a veteran county elections worker, submitted her testimony in a sworn affidavit under penalty of perjury. She testified that she and her Democratic partner witnessed "more than once" Trump votes default and shift to Biden when they were entering votes into Dominion machines from ballots that couldn't be read by machines."[6]

7) These sorts of problems simply should never occur in a secure voting system and all of these are proof Dominion EMS system is not secure.

8) This leads me to the third problem in Dr. Reddon's analysis that concerns actual proof of illegal activities with respect to the actions of individuals operating the election, be they Dominion personnel or county personnel. The ease and possibility of this type of activity is most graphically laid out in video footage first presented at the Subcommittee of Georgia Oversight Committee on December 3, 2020 wherein it was made clear that observers of the Georgia count were mis-led into thinking that counting had stopped and immediately after clearing the room boxes of ballots were pulled from under tables and a mad dash for counting them ensued, including

[5] https://voterga.files.wordpress.com/2020/12/press-release-dominion-flips-trump-votes-to-biden-in-ga-county.pdf

[6] https://www.theepochtimes.com/trump-ballots-defaulted-and-switched-to-biden-votes-on-dominion-system-maricopa-gop-chairwoman_3599899.html

excerpts where stacks of ballots were scanned multiple times.[7] Unfortunately, Dominion and ES&S equipment doesn't preclude multiple scans and repetitive counting of the same ballots.

9) So it should come as no surprise that on Friday, December 4, 2020, the Senate President Karen Fann and Speaker of the House Rusty Bowers called for an independent audit of the Dominion software and equipment used by Maricopa County in the 2020 General Election. [8]

10) Essentially ES&S has many of the same problems and vulnerabilities to operator or outside tampering as proven in Dallas in the 2020 Election and as outlined in my affidavit. Thus the results in Pima Co., AZ must likewise fall under suspicion since it was equally vulnerable and the results are anomalous in our opinion, Dr. Reddon nothwithstanding. I am surprised Dr. Reddon apparently did not understand my explanation of what we found took place in Dallas, but for further explanation, in Dallas County where ES&S is used, the voter records as published by Dallas County each day during early voting were captured on each day for those voters who cast ballots either in person or by mail-in and then catalogued in a database using the hash totals to provide an absolute unique identifier for each vote as it was originally cast and recorded. As required by state law, the Dallas County Elections Department published the Daily Vote Roster for all voters who cast ballots during Absentee and In-Person Early Voting. The Roster contained the VoterID, name, address, type of vote, and various dates associated with every Early-Voting vote cast, hence the record was complete enough to ensure a unique hash number. Dallas County claims its source of roster data was the In-Person Electronic Poll Books, and the Absentee Ballot scanners. DallasCounty has claimed that entry into the Vote Roster can only be done by a registered Dallas County voter who either appeared In-Person or by Absentee Ballot. The computer that generated the roster was apparently hacked between October 7 and October 30. During that period tens of thousands of vote records were purged, added, or edited from the ES&S generated Vote Roster.

Specifically, over this period, 53,485 voter records had their hash identifier changed, meaning the vote was tampered with. In most cases, this tampering took the form of purging the vote, and then re-constituting it in some form or fashion, but with a change in the hash total meaning the vote was somehow changed. This translates into approximately 107,000 hacked votes in Dallas County alone for ES&S. Ten blocks of voters on Westminster Street in Highland Park had their votes purged and then some of them were selectively re-instated at a later date with changes from the vote intended by the voter. People who double voted were catalogued as well as

[7] https://twitter.com/KanekoaTheGreat/status/1335027487357616128

[8] "Legislative Leaders call for audit of Maricopa County election software and equipment", Press Release dated Friday, December 4, 2020, Arizona State Legislature, 1700 West Washington, Phoenix, AZ 85007-2844

dead people who voted, people with no VUID voted (800 of them), unregistered university students voted, and people living abroad who claim a Dallas Residence for voting purposes, but who in a spot check are unknown to the residences they list in the ES&S system.[9]

11) With regards to most of the questions raised by Dr. Reddon as to ASOG's analysis of Voting irregularities in Arizona's Maricopa and Pima counties, and it's sources, I list the following full report:

Search Methodology

2012

The 2012 data was sourced from the Arizona Secretary of State site: https://apps.azsos.gov/results/2012/General/ . This site has an FTP (file transfer protocol) list of files that include all Arizona counties. The files are all of type .txt. They are in various formats:

- CSV- Comma Separated Value file.
- Fixed length file. Processing of the data

All of these text files are included in the file folder provided. All of the text files seem to be complete and in good order with the exception of Conchise which consistently has more voters than people registered. We believe that they mixed up those two terms but we do not know. Conchise's data was left as is in the text file.

2016

The 2016 data was also sourced from the Arizona Secretary of State site: https://apps.azsos.gov/results/2016/General/ . This site has an FTP (file transfer protocol) list of files that include all Arizona counties. The files are all of type .txt. They are in various formats:

- CSV- Comma Separated Value file.
- Fixed length file. Processing of the data

All of these text files are included in the file folder and stored. Most of the text files are in good order with the exception of Coconino, as well there were many counties which had many precincts from 2012 which disappeared in 2016 (list of these counties: Mohave, Navaho, Pima, and Yavapai. We think notably the county of Pima went from 288 precincts to 248 precincts. Since the precincts did not have names they could not be matched up. Comparing 2012 precinct races to 2016 races would not be advised. In the Coconino file the numbers do not make sense. The total voters does not equal the addition of the votes garnered by each politician. There seems to be no relation between the numbers. As such we left these numbers out.

2020

[9] http://www.openrecords.org "For Foreign White Hats Only", "Dallas County Early Vote Appears Compromised", "Dallas County Voting, What the HELL!", "How to Purge Thy Neighbor", "We Salute Our Canadian Voters".

The 2020 data not available as a whole yet. The three counties that were available were sourced from different places:

- Pima County was available from the Pima county recorder site (https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/elections/Election%20Results/ENR.CSV)
- Pinal County was available from the Pinal county recorder site: https://results.enr.clarityelections.com/AZ/Pinal/105207/web.264614/#/reporting (click on the Detail XLS on the left hand box below voter turnout)
- Maricopa County was available from the Maricopa county recorder site: https://recorder.maricopa.gov/electionresults/ (click on ArizonaExportByPrecinct_110320.txt)
- Apache County was also included but it was copied from a PDF from the county office and the results are not certified

Processing of the Data

The CSV files are processed by opening the file into excel and using the Text to Column command to put each piece of data into its own cell.
The Fixed file length files are basically all the fields put together in one long string. A file is provided in the Arizona Secretary of State site that provides the legend to break it into the fields. We wrote a spreadsheet that imported each field from the string block into a cell using the legend.
Using either method above, once all the fields were in a single sheet inside the spreadsheet, we sorted the spreadsheet based on the contest or race field first, then on the field with the politician's name or id second, and finally the precinct. We could copy from this list all the registered voters and ballots cast ordered by precinct. We put those two groups of data into their own sheets inside the spreadsheet. We then pulled the data from those two sheets into a final sheet.
Once that data was formatted properly, it was copied and pasted into the comprehensive document.

Legal Background of Pima County

We found the following blog of a person who was irate at the lack of professionalism in the 2012 election cycle. https://fatallyflawedelections.blogspot.com/2012/08/arizona-election-fraud-pima-county.html . This blog post has the following line: "Facts are, Pima County election process – a process involving election software the county has already admitted and situated in early cases (we won) as "fatally flawed" in a county that produced one of the most visibly hacked elections the country has ever seen." The author of the article seems to be John Brakey, co-founder of https://www.auditelectionsusa.org/team/ and can be contacted on this page: https://www.auditelectionsusa.org/contact/.

SOURCES OF DATA:

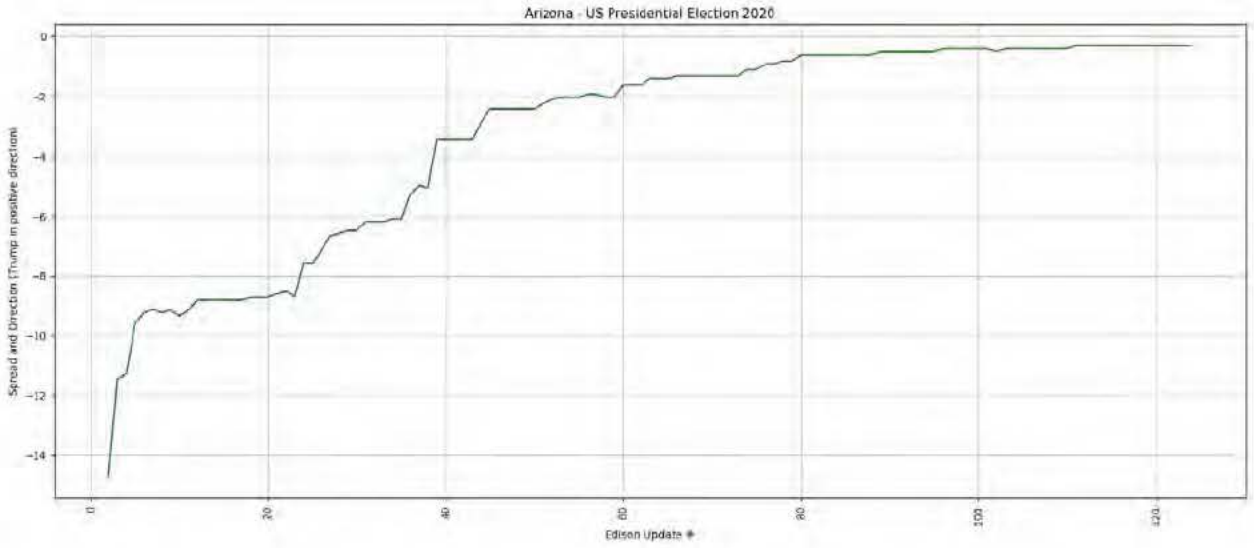
Name	URL
Arizona Report Readme	https://datascience-work-product.nyc3.digitaloceanspaces.com/Arizona-Package-sleepingbeauty%237089/Arizona_report_readme.docx
Pima County Details	https://datascience-work-product.nyc3.digitaloceanspaces.com/Arizona-Package-sleepingbeauty%237089/Pima_county_detailed.xlsx
Arizona Precincts Report	https://datascience-work-product.nyc3.digitaloceanspaces.com/Arizona-Package-sleepingbeauty%237089/Report_of_AZ_precincts.xlsx

Arizona Time Series Analysis By: ASOG

Summary:
Overall, based on the data examined, there is evidence of vote count manipulation, strong statistical suggestion of fraud, and very strong statistical evidence that algorithms were involved in the released vote counts.

Data source:
Edison Research via the New York Times website

Figure 1

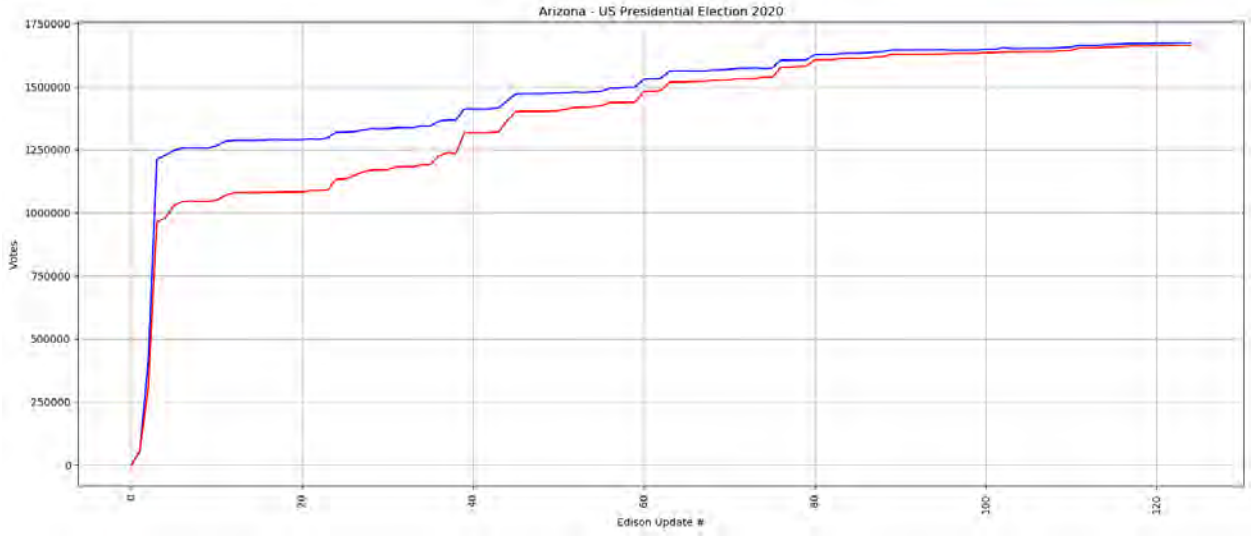


The cumulative spread in percentage between Trump and Biden at any point in time during the vote counting is shown in this graph, where Trump is positive percentage.
In other words, a point on the line in this graph represents which candidate is in the lead at any point in

time, and by how much. Movement of the line in this graph indicates change in the magnitude a candidate is winning by.

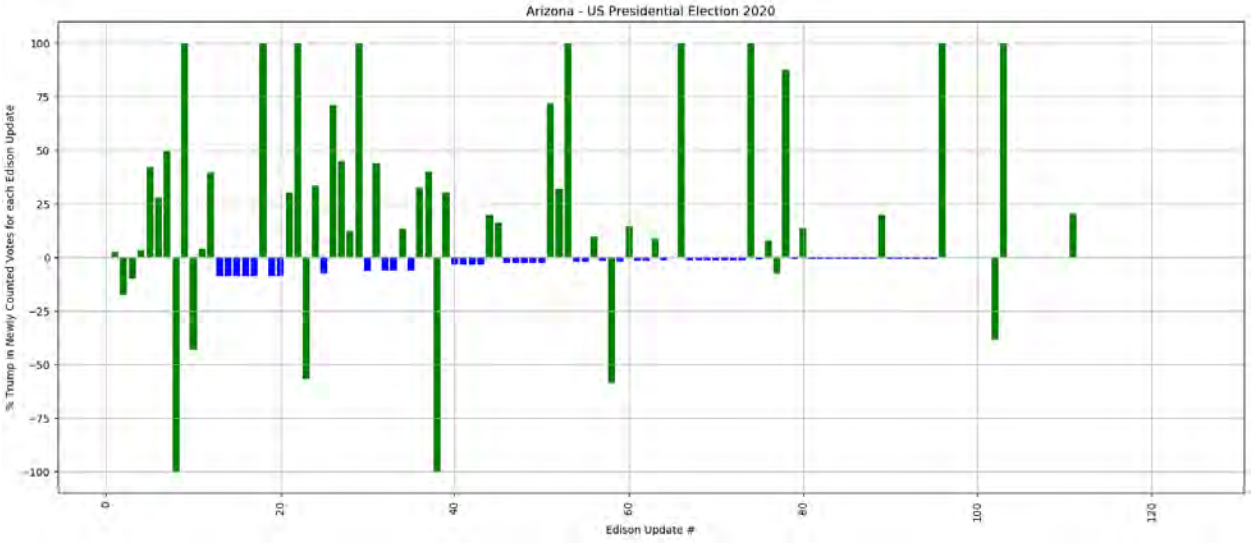
If the line slopes up, the votes are moving in a direction that favors Trump. If the line slopes down, the votes are moving in a direction that favors Biden.

Figure 2



The total accumulated votes counted at any point in time for each candidate is represented in this graph. Red is Trump. Blue is Biden.

Figure 3



Each bar on this graph represents what percentage of the votes submitted in each batch went towards a candidate, where Trump is positive and Biden is negative.

Analysis:

There are multiple highly anomalous features in these visualizations of the US 2020 General Election vote count data.

Firstly, I will explain the context of the lower graphs and analyze. Every batch of vote counts released represents various groups of people and their votes. These groups of people's votes can be expected to have variance, even if multiple batches were produced out of the same geographic area. There is also not a defined order of geographic areas released, so we can expect to see variance there too. What we see in the lower graphs instead of all expected noise are easily distinguishable trends, which are realistically improbable.

When the apparent trends we see pervade through the entirety of a graph, the statistical probability of that occurring approaches zero, and that is what we see in all five of these graphs. The observation of these trends not only strongly suggests fraud, but also suggests automated and algorithmic tampering of vote counts. The blue bars in Figure 3 indicate the probable algorithmically generated vote count releases.

The two spots labeled with the letter E show the vote counts being drastically changed up and down which is clear evidence of manipulation unless sound explanations are given.

All five graphs show a pattern of events that strongly indicate fraud occurring at the areas labeled with A, C, and D. There is a mechanical correlation between the suspected algorithmically generated vote count releases and the relative difference between the line in the upper graphs and zero (an intersection with the line at y=0 in the upper graph indicates a change in which candidate is leading). Furthermore, as soon as the line in the upper graphs intersect with y=0, the algorithmically generated vote count releases switch to the opposing side (D) - possibly to either maintain or eek in a Biden victory. The vertical lines at each place labeled with the letter C help to show that correlation.

The places on these charts labeled with the letter B consistently show relatively enormous vote count batches at the last minute in favor of Biden, which all almost exactly bring the difference in votes between Trump and Biden to zero, following hefty Trump leads.

Lastly, and importantly, we will address the areas of the charts labeled with the letter D. Once the majority of apparent real and organic votes ceased to be counted, we are left with large swaths of released vote counts that repeatedly have the same exact percentage of votes in each release going to Biden. By exact, we mean exact. That is until stray batches of apparent organic votes are released, and then the percentage of votes in each release from the apparent algorithmically generated vote counts going to Biden seem to adjust slightly to account for the change, which then continue to repeat in each release, until the next stray organic batch, and the cycle repeats. It is difficult to come up with a realistic scenario where this described phenomenon is not the result of an algorithm behind the scenes.

Pima Cluster Analysis By: ASOG

A cluster analysis of Pima County, AZ, vote count data.

A data set of six features was used. It includes the vote counts for the Republican and Democratic parties in the presidential, senate, and congress races. Only vote percentages were used for clustering. We chose the DBSCAN algorithm to cluster as it is able to detect outliers in the data set.

The clustering results are shown in Figure 1 (attached). The reachability plot at the top shows the "city block" distance between each precinct in the feature space. And the middle and bottom rows show the distribution of vote % for both Trump and Biden for cluster precincts and the outliers, respectively. On comparison between the two, the outlier precincts contain an extraordinarily high vote percentages to the Democrats in the Senate and Congress races.

An attempt was made to compare historical election results in Pima county. Unfortunately, gerrymandering has occurred after the 2016 election which made a direct precinct to precinct comparison between the two elections difficult. Furthermore, compared to other states, Arizona contain a very few number of precincts which makes it difficult to infer on Pima county, see Figure 2.

Figure 1

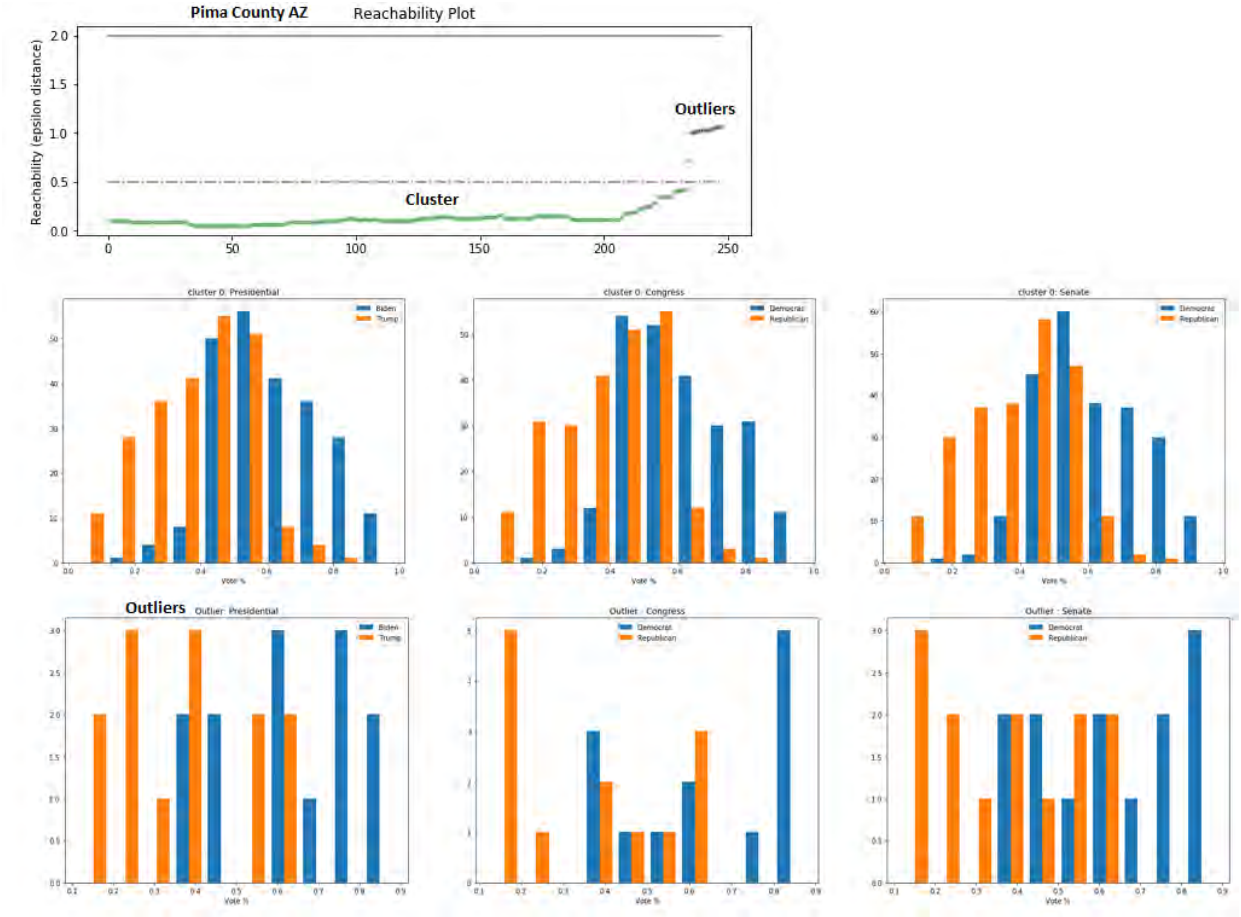
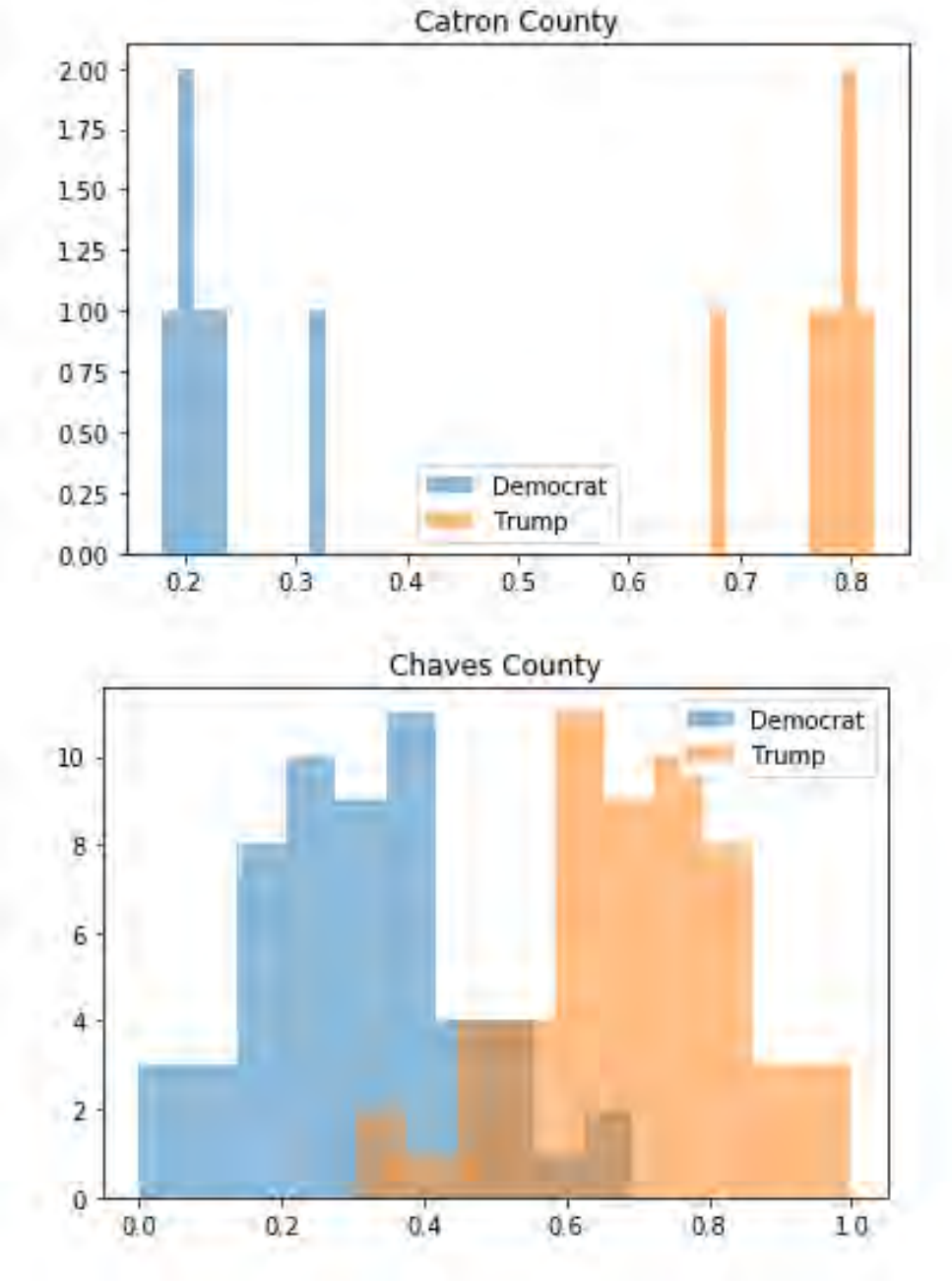

Pima County AZ
Reachability Plot
Reachability (epsilon distance)
Outliers
Cluster
cluster 0: Presidential
cluster 0: Congress
cluster 0: Senate
Outliers
Outlier: Presidential
Outlier : Congress
Outlier : Senate

Figure 2



12. The resumes of several key team members involved in the preparation of my affidavit and my response to Dr. Reddon are attached. With the exception of Professor Kevin M. Henson (deceased), I have shielded their names for their own protection and to maintain their operational effectiveness.

ATTACHMENTS:

1) Antrim Co. MI Report V 1.7

ASOG Forensics Report on Central Lake Township in Antrim Michigan

Report Date 11/29/2020
Report Version 1.4

On 11/27/2020 the ASOG forensics team visited Central Lake Township in Antrim Michigan on behalf of a local lawsuit filed by Michigan attorney Robert Marsh.

The clerk of Central Lake Township – at around 10:30am – Ms. Judith L. Kosloski, presented to us "two separate paper totals tape" from Tabulator ID 2.

One dated "Poll Opened Nov. 03/2020 06:38:48" (Roll 1)
Another dated "Poll Opened Nov. 06/2020 09:21:58" (Roll 2)

We were then told by her that on November 5, 2020, Ms. Kosloski was notified by Connie Wing of the County Clerk's Office and asked to bring the tabulator and ballots to the County Clerk's office for re-tabulation. They ran the ballots and printed "Roll 2". She noticed a difference in the votes and brought it up to the clerk, but canvasing still occurred, and her objections were not addressed.

Our team analyzed both rolls and compared the results.

Roll 1 had 1,494 total votes
Roll 2 had 1,491 votes (Roll 2 had 3 less ballots because 3 ballots were damaged in the process.)

"Statement of Votes Cast from Antrim" shows that only 1,491 votes were counted, and the 3 ballots that were damaged were not entered into final results.

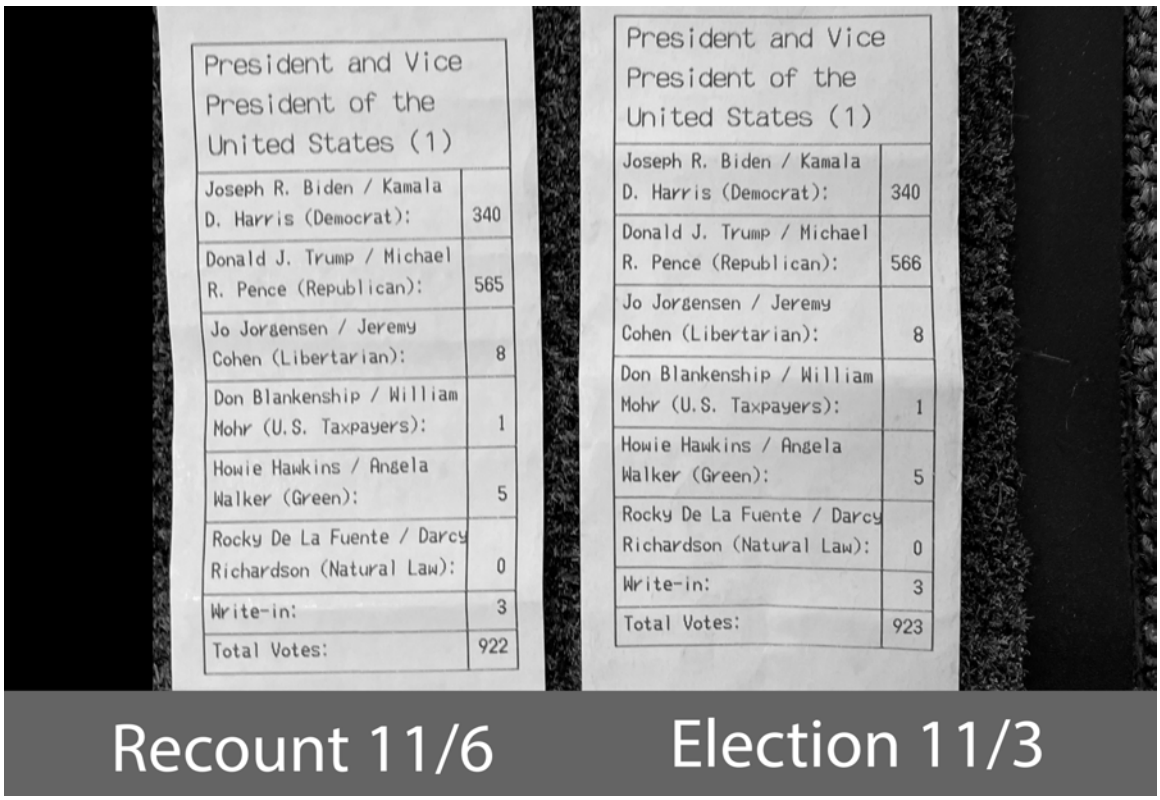
Ms. Kosloski stated that she and her assistant manually refilled out the three ballots, curing them, and ran them through the ballot counting system - but the final numbers do not reflect the inclusion of those 3 damaged ballots.

http://www.antrimcounty.org/downloads/official_results_2nd_amended.pdf
Source: http://www.antrimcounty.org/elections.asp

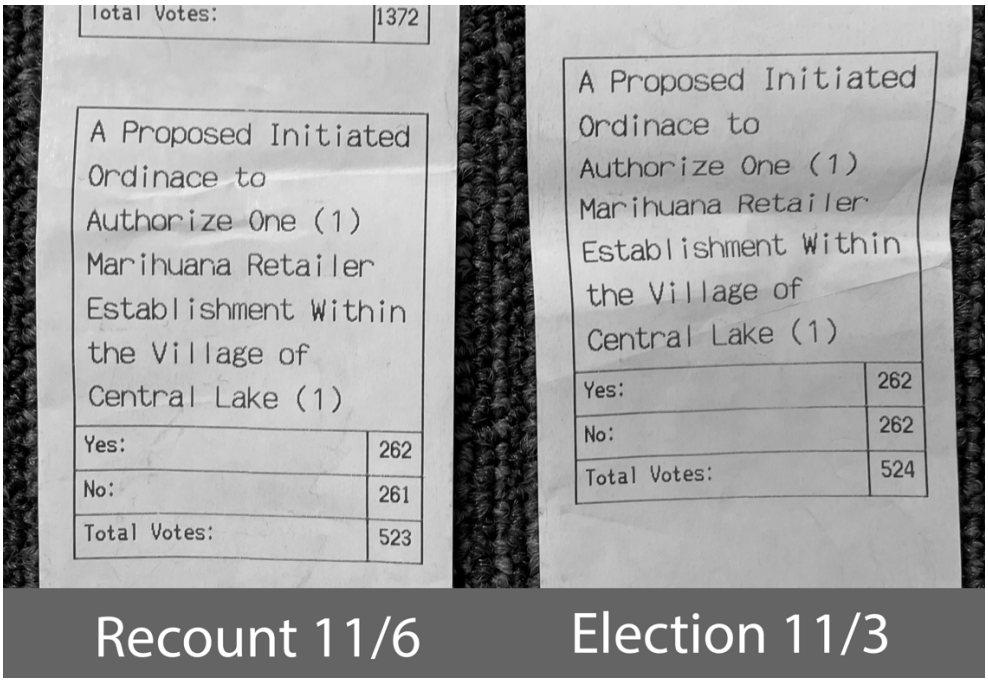
In comparing the numbers on both rolls, *we estimate 1,474 votes changed* across the two rolls, between the first and the second time the exact same ballots were run through the County Clerk's vote counting machine - *which is almost the same number of voters that voted in total.*

The five most significatn changes in vote totals are in the screenshots below:

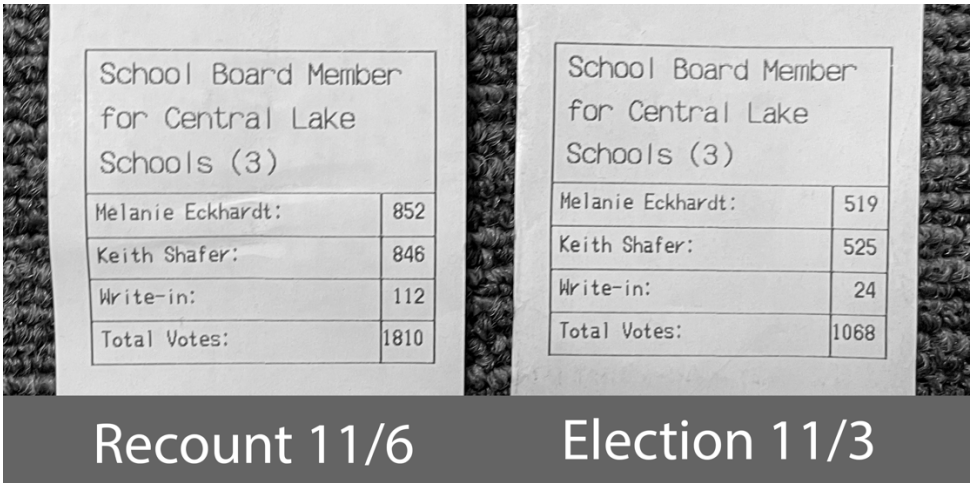
• On Election night, Trump received 566 votes, Biden received 340. On the recount, Trump had 1 less vote at 565 while Biden was unchanged at 340. This is particularly odd since 3 votes less were tabulated. So potentially Trump could have lost between 3 and 4 votes overall on a very small sample – but that did not happen.



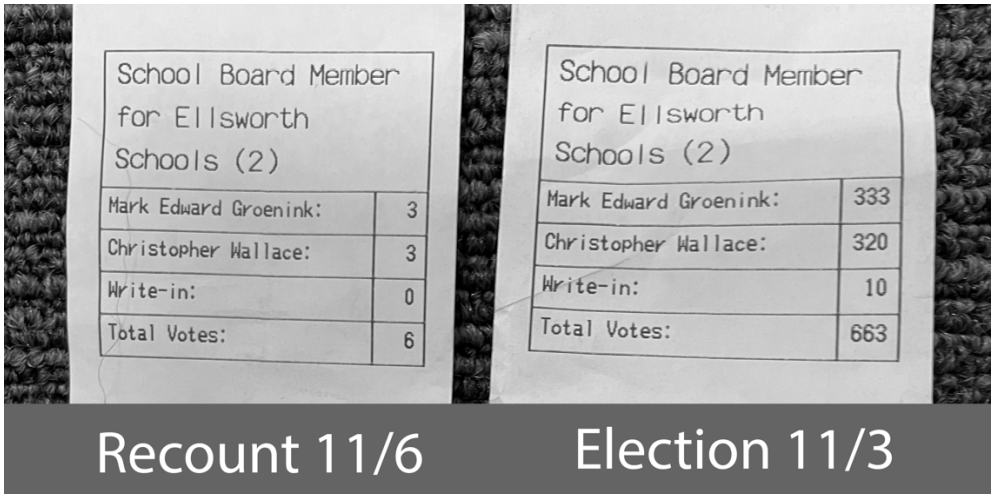
• A Proposed Initiated Ordinance to Authorize One (1) Marihuana (sic) Retailer Establishment Within the Village of Central Lake (1). – On election night, it was a tie vote. Then, on the recount, when 3 ballots were not counted, the proposal passed with 1 vote being removed from the No vote.



• For the School Board Member for Central Lake Schools (3) there were 742 votes added to this vote total. Since multiple people were elected, this did not change the result of both candidates being elected, but you do see a change in who had more votes. If it were a single person election, this would have changed the outcome, but this goes to the fact that votes can be and were changed during the second machine counting.



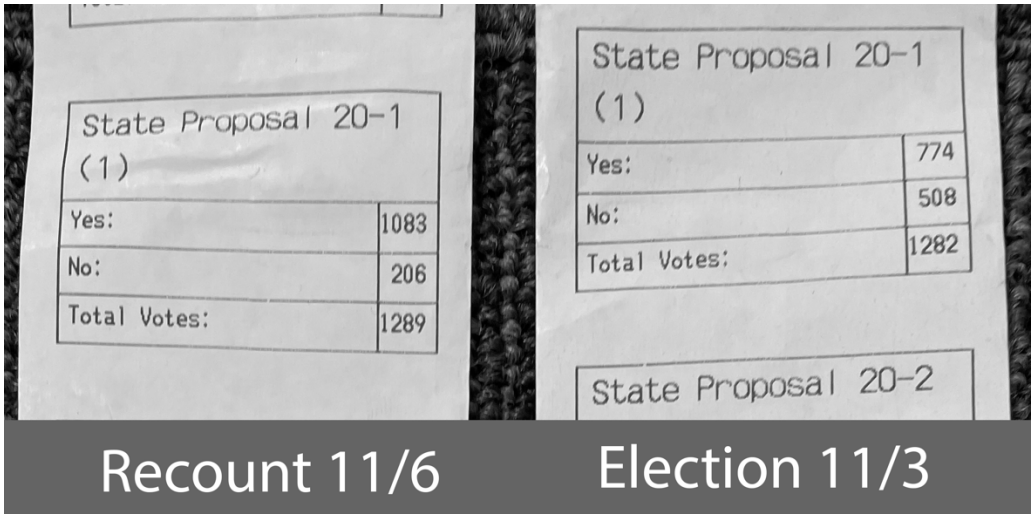
• For the School Board Member for Ellsworth Schools (2) it shows *657 votes being removed* from this election. In this case, only 3 people who were eligible to vote actually voted. Since there were 2 votes allowed for each voter to cast, the recount is correct to have 6 votes. But on election night, there is a major calculation issue:



• In State Proposal 20-1 (1), there is a major change in votes in this category.

Proposal 1 is a fairly technical and complicated proposed amendment to the Michigan Constitution to change the disposition and allowable uses of future revenue generated from oil and gas bonuses, rentals and royalties from state-owned land. There were 774 votes for YES during the election, to 1,083 votes for YES on the recount.

Information about the proposal: https://crcmich.org/publications/statewide-ballot-proposal-20-1-michigan-natural-resources-trust-fund



Process

Our team interviewed Ms. Kosloski on the process of tabulation and how the system works.

Essentially, the Township Clerk is given two Compact Flash Cards and a Security Key. One CF card (also known as ISD Card) goes into the "ADMINISTRATOR" in the "CF CARD 2" Slot and the other in the "POLL WORKER" in the "CF CARD 1" Slot. The security key is used on the "SECURITY KEY" connector on top.

Pre-election, Ms. Kosloski was given the cards by the County Clerk's office. The County Clerk is Sheryl Guy.

Once the printed ballots are hand-marked by voters, they are run through the machine. At the close of the polls, they run the totals on the print and bring the two CF Cards and security key back to the County Clerk for loading into the server. The cards and keys are not given back to the Township Clerk – these essential technical data sources for the Townships are thereafter held by the County Clerk.

On November 6th, at the request of the County Clerk, and with no explanation, Ms. Kosloski was told to bring the tabulator serial number AAFAJHX0226 and sealed ballots to the Country Clerk's office. There, she was presented with two CF Cards and a security key. Then, they re-ran the original election day ballots. During this process, 3 ballots were damaged and not tabulated on the "Roll 2" results. Again, under the oversight of the canvassing board, Ms. Kowloski cured those ballots, and re-ran them, but they appear to have not been counted in the final vote totals.

Conclusion

The ASOG forensics team believes that a software change loaded into Tabulator ID 2 on November 6th did occur, and this caused the vote totals to change. The change happened on the Tabulator unit, but did so using software configurations from the Country Clerk. The Clear Lake Township Clerk Ms. Kosloski has never been told why they needed to re-tabulate the ballots.

The forensics team would like access to the CF Cards and Security Key for Roll 1 and the CF Cards and Security Key for Roll 2. We also request unrestricted access to the machine that programs the CF Cards, which we believe is called the "Election Event Designer" software of Dominion Democracy Suite – or like-software that was used to program these CF Cards.

We do not believe that the Secretary of State report addresses this, and states the issue at the time was not on the printed totals tape. The Secretary even states "Because the Clerk correctly updated the media drives for the tabulators with changes to races, and because the other tabulators did not have changes to races, all tabulators counted ballots correctly." This is not the case.

We believe this directly contradicts the Sectary of State fact check document. (Link below.)

November 7, 2020 Isolated User Error in Antrim County Does Not Affect Election Results, Has no Impact on Other Counties or States - Jocelyn Benson – Secretary of State of Michigan
https://www.michigan.gov/documents/sos/Antrim_Fact_Check_707197_7.pdf

Excerpt from document:
"These errors can always be identified and corrected because every tabulator prints a paper totals tape showing how the ballots for each race were counted. After discovering the error in reporting the unofficial results, the clerk worked diligently to report correct unofficial results by reviewing the printed totals tape on each tabulator and hand-entering the results for each race, for each precinct in the county. Again, all ballots were properly tabulated. The user error affected only how the results from the tabulators communicated with the election management system for unofficial reporting.

Even if the error had not been noticed and quickly fixed, it would have been caught and identified during the county canvass when printed totals tapes are reviewed. This was an isolated error, there is no evidence this user error occurred elsewhere in the state, and if it did it would be caught during county canvasses, which are conducted by bipartisan boards of county canvassers."

Summary

If this had been a user setup issue, then the test ballots they run to verify the results they get by comparing them with the test matrix should have caught that. When they made the software change that that used to tabulate the 11/6/20 re-run, there should be a log of the test ballots run through the system and verified against the test matrix. This alone might not show fraud, but it is a crucial part of the software configuration validation process and apparently was not done.

We believe to a reasonable degree of professional certainty that this shows fraud and that vote changing at the local tabulator level has occurred due to a software change. This small sample amplified in a large population area would have major results. Without the explanation of why there was a re-tabulation, why the issue of numbers being off to a significant degree when a vote change was noted, and no further investigation occurred – and when 3 ballots were removed from the totals that changed the final outcome of one proposal, constitutes a definitive indication of fraud.

2. RESUME OF PROFESSOR KEVIN M. HENSON – deceased

Professor Kevin M. Henson (deceased 11/19)

Chief Scientist and Director of Digital Forensics - ASOG

Experience:
Allied Special Operations Group, Chief Scientist and Director of Digital Forensics
North Central Texas College, Professor Cyber Security
North Texas Crime Commission, Cyber Crime Committee, Chairman Threat Innovation Working group
Cyber Future Foundation, Director of Education
Cyber Defense Labs, Founder, Deputy Director
Accretive Solutions, National Security Team
Asier Technology Corporation, Founder, Chief Scientist
Internet on the Go, Security Manager
HBS Systems, Security Designer
Stream International, Security management, CompuServe, HP
Superconducting Super Collider, Research Scientist

Security Status: Clearance Active at time of death

Digital Forensics
Hardware Forensics and root cause analysis: Hard drives, embedded systems, SCADA device Internet of thing, mobile electronics, vehicle electronics
Memory Forensic: DUMP-IT, Redline, Volatility, Rubber Ducky, MacPmem, Memorize, SDL
Network Forensics: Wireshark, Xplico, Snort, Snuffle, Packet Squirrel, LAN Turtle, Kali, SAINT
Mobile Forensics iOS, Android, Windows, Accessdata MPE, Celebrite, MPE, Autopsy, Sleuthkit, and other mobile forensic tools with physical and logical manual extraction of data and recovery
Drive Forensics: Access Data FTK, Encase Kali, SAINT, Samurai, Axiom, REMNUX, Paladin

Cyber Security
Hardware: Engineering knowledge of desktops and embedded platforms, switches, routers, firewall appliances, crypto boxes, compression devices, sensors.
Operating Systems: Macintosh, Windows (all), CPM, UNIX (SUN, NeXT), Linux (20 versions)

Programming Languages:
C, C++, C#, ANSI C, JAVA, ADA, MODBUS, Profobus, FieldBus, embedded systems, (various scripting languages). FORTRAN, V BASIC, Pascal, Several Forms of assembly,

Databases:
SQL Queries, Ontologies, knowledge architectures, search technologies, user interfaces, cyber craft.

Classes Authored and Taught:

- ITNW 1313 - **COMPUTER VIRTUALIZATION**, hands on class teaching type 1 and 2 virtualization, cloud computing, Enterprise level security and related topics taught in 15 weekly labs.
- ITSY 1342 - **INFORMATION TECH SECURITY,** introductory cryptography, physical security, social engineering and related introductory topics in 15 hands on labs.
- ITSY 2300 - **OPERATING SYSTEM SECURITY,** a practical class in the methods used to breach, Window, Linux, Mac and other operating systems, both at the work station and network levels. Using the lates Hak5 Tools,
- ITSY 2301 - **FIREWALLS AND NETWORK SECURITY**, a comprehensive class were student construct and deploy a variety of firewalls and IDS/IPS systems
- ITSY 2330 - **INTRUSION DETECTION**, A competitive class were students conduct Red/Blue Team operations in real time, in a CTF safe lab environment.
- ITSY 2342 - **INCIDENT RESPONSE AND HANDLING**, Step by step work through of realistic cyber disasters and how to respond to them with the latest tools and techniques.
- ITSY 2343 - **COMPUTER SYSTEM FORENSICS**, An advanced class that practices, Memory, Network, Mobil, Hard-drive and other areas of forensics analysis with a variety of multi platform tools.
- ITSY 2359 - **SECURITY ASSESSMENT AND AUDITING**, This hands on class prepares student sot do compliance auditing against a variety of frameworks.
- ITSY 2445 - **NETWORK DEFENSE AND COUNTERMEASURE,** This is the capstone class that brings all practical areas of security together so student can start walking the walk of a cyber security professional

Software: All versions and components of Microsoft Office, Project and Visio
Special: Developed, advanced, secure communication and collaboration software
Security: Nessus, SAINT, and many other testing and penetration tools.
Cloud: Virtual Box, VMWare, HyperV, Xem, ESXI, Citrix, AWS, AZURE, G-Sphere
Graphical: CAD/Modeling systems, TrueSpace, Adobe Photo Shop / Illustrator

Security Skills : Surveillance / Counter surveillance, physical security, network security
Intrusion detection, secure channels, encrypted communications, network security assessment methodology, information warfare, effects based operations

Awards

North Texas Crime Commission, Chairman Award Cyber Crime Fighter of the Year 2013

Nominated, Cyber Security Excellence Award, Educator of the Year, 2016

Experience

Allied Special Operations Group

Network security, evaluation and testing for various critical infrastructure & defense related companies while working for Cyber Defense labs. Member of Election Fraud Task Force. Particular focus on Supervisory Control and Data Acquisition (SCADA) systems. Extensive PI work and Forensic investigations, (particularly of Foreign Nationals)

Cyber Defense Labs Founder

Significant experience in cryptography, information security and information processing. Have working knowledge of applied physics electrical and mechanical engineering, biometrics, cryptography, PKI, web apps and data warehousing. Have worked in penetration testing, vulnerability assessment, system audit, and social engineering.

- Network security, evaluation and testing for various critical infrastructure & defense related companies while working for Cyber Defense labs.
- Developed 160 hour (4 week) Cyber Defense Camp for high school students, going into its third year.
- Helped design new security and encryption standards for nation critical infrastructure (SCADA) while working on contract for DHS-ARPA and with the Gas Technology Institute (GTI)
- Invented low latency integrated data & video compression and encryption hardware for Missile Defense Agency (MDA
- Developed roadmap to integrate 42 separate technologies and companies that would eventual form the Collaboration Gateway Architecture, while working for the Air Force Research labs (AFRL)
- Developed, advanced high speed streaming encryption and authentication technologies for various clients
- Developed “Big Data” simulation for Super Conducting Super Collider
- Developed automated tools for correlating ground based sensors for use in battlefield and homeland security applications.
- Defensive SCADA Technologies, for Critical Infrastructure
- Created Threat Models for National Critical Infrastructure
- Mapped Strategic Attack Vectors.
- Developed mobile distributed NBC survey interface
- Designed Advance multilevel collaboration and data abstractions tools
- Designed users interfaces for advanced encryption and data sharing applications
- Designed intuitive user interfaces for multi-level encrypted web creation technology.
- Designed defensive autonomous agent tasking application
- Developed intellectual property for modular / portable gas to liquid fuels system, with emphasis on production engineering for mass production.

Accretive Solutions security scientist

Conducted in-depth security analysis in large Natural Gas SCADA network and designed detailed remediation plan. Worked on fraud detection, digital forensics, data recovery and incident response.

Asier Technology Corporation

Served as principal investigator on research projects for the US Army, DHS, AFRL, MDA, ONR and others. Experienced in, cryptography / data security, image and data compression, SCADA systems and RF. Significant experience in government contracting and management of research projects. Invented new technology for security/intelligence related problems.

Lead interdisciplinary team to develop security related technologies and applications focusing on multi-level security and clandestine information sharing. Used agile development methods to designed low powered security technologies for embedded sensor, and network devices.

Served as principal investigator (Lead System Engineer) and overall manager on the following R&D projects

- Office of the Secretary of Defense / Air Force Research Labs (OSD/AFRL)
  - New Approaches to sharing data across multiple security domains.
  - Produced a working roadmap for integration of multi-level security collaboration technologies from 42 companies, and a road map for technology insertion into CONOPS.

- Office of Naval research (ONR)
  - Programmed multilevel security for collaboration tools, for web based applications.

- Missile Defense Agency (MDA)
  - Designed Authentication for Agent-Based Security Systems.
  - Integrated Data Compression and Security Algorithms.
    - Achieved 50% increase in available telemetry bandwidth.
    - Real-time embedded system designed, built and tested ahead of schedule
    - Combined inputs for telemetry and video links into fast synchronous feed
    - Integrated with existing ground station infrastructure

- Department of Homeland Security Advance Research Projects Administration (HS-ARPA)
  - Advanced Secure, Supervisory Control and Data Acquisition (SCADA) and Related Distributed Control Systems (DCS), for management of critical infrastructure.
  - Produced the first encrypted serial MODBUS communications for AGA-12 standard

Internal Research and Development (IRAD) Asier Technology
- Multi Level Secure web based systems, incorporating biometrics
- Secure collaboration over ad-hoc wireless networks.
- Remote agent authentication for distributed networks.
- Researched secure communication for distributed, micro wireless sensors
- Networked low cost mobile radiation detectors and agent based reporting systems for them
- Optical shared memory for processor interconnection.

University Of Texas at Dallas, *95-2002*
Worked in physical measurements lab, electronics lab, optics lab and did proposal and 3D visualization support for UTD Space Sciences Institute. Was also conducting my own research into advanced cryptography which lead to the formation of Asier Technology in 2000.

Investigator Special Optics *Sept 1993 June 1995 University of Texas at Arlington*

Worked on diverse problems related to optical and particle physics. Maintained computer network and data gathering devices for laboratory operations.
- Worked in positron annihilation lifetime studies, and cosmic ray detector experiments.
- Helped design visualization system for 3d Magnetic Spin Domain Imager
- Characterization of human ocular lenses (with Dr. Shacker) and investigation of the long term physiological effects of surgical vision correction
- Worked with Dr. Truman Black on special problems involving diffraction in the microwave spectrum and synthetic wave front reconstruction as well as solid state crystalline holography.

RESEARCHER, SUPER CONDUCTING SUPER COLLIDER, *May, 1993 to cancellation Sept., 1993*
Designed and refined the simulation software used to calibrate the magnetic testing and particle detecting equipment. Liaison between physicists and programmers. Extensive lab work with cryogenic and particle detector systems. Significant C programming and mathematical analysis led to improvements in detection systems.
- Worked with advanced Neutron, Hadron, Boson, and Gamma detection systems
- Significant lab experience with high field magnetic and vacuum systems
- Real work experience in lab safety and management procedures.

Education:

University of Texas at Dallas BS, Applied Physics, minor in mathematics 2002

PROFESSIONAL ORGANIZATIONS

Infarguard partnership between the FBI and private security professionals to secure critical infrastructure
American Institute of Aeronautics and Astronautics
Process Control Systems Forum (PCSF) organization to design and implement security for national critical infrastructure

Selected Issued Patents for Professor Kevin M. Henson:

1. **Data Encryption System,** Patent No. 6,950,518, Issued 9/27/2005, Country ID: US
2. **Data Encryption Methodology,** Patent No. 7,003,108, Issued 2/21/2006, Country ID: US
3. **Data Decryption System,** Patent No. 7,016,497, Issued 3/21/2006, Country ID: US
4. **Data Decryption Methodology, P**atent No. 6,996,234, Issued 2/7/2006, Country ID: US
5. **Key Matrix System,** Patent No. 7,016,493, Issued 3/21/2006, Country ID: US
6. **Managing telemetry bandwidth and security ,** Patent No **8,184,691** Issued 5/22/2012, Country ID: US
7. **Method, system and process for data encryption and transmission**, **7,844,813**, Issued 11/30/2010
8. **Encrypting a plaintext message with authentication**, Patent No. **7,715,553** Issued 5/11/2010
9. **Key Matrix Methodology** Serial Number, 09/796,964, Status: Pending, Country ID: US
10. **Data Encryption System**, Serial No. US01/40737, Status: Pending, Country ID: WO
11. **Data Encryption System,** Patent No. 2,437,500**,** Issued 2/21/2006**,** Country ID: CA
12. **Data Encryption System,** Patent No. 1410588, Status: Issued 7/20/2005, Country ID: EP
13. **Data Encryption System**, Serial No. 2001259860, Status: Pending, Country ID: AU
14. **Data Encryption System using Key Matrix**, Serial No. 05014960.8, EP 1 619 820
15. **Data Encryption System Using Key Matrix**, Application No. 03808233.3, Status: Pending, Country ID: EP
16. **Data Encryption System,** Patent No. 1410558, Status: Issued 7/20/2005, Country ID: GB
17. **Data Encryption System,** Patent No. 1410558**,** Status: Issued 7/20/2005**,** Country ID: DE
18. **Data Encryption System,** Patent No. 1410558**,** Status: Issued 7/20/2005**,** Country ID: IE

Selected: Papers, Presentations and Conference Appearances

- "Guest Instructor, SMU Master Program Advances Network Security" 2018
- "International Cryptography and Quantum Computing Conference" 2018
- Guest Instructor SMU "Cyber Day" Mobile Forensics with Linux
- "Forensics for Prosecutors Seminar on Cyber Security" 2017
- "Guest Instructor, UTD Forensic analysis" 2017
- "ISSA International Conference, Silicon Valley 2016
- "The Future of Cyber Crime" Cyber Future Foundation 2015
- Wrote / Directed and Ran Summer Cyber program (4 weeks 8 hours a day) for the NSA at UTD 2013-2016
- "UML Threat Modeling of SCADA Systems", No Magic World Conference 2013
- "Computer Crime and Prevention", Junior League of Dallas 2012
- "SCADA Security, and Advance Persistent Threats", Innotech, Dallas 2012

- "Corporate Espionage: Secrets for Sale", North Texas Crime Commission Lecture Series 2011
- "Hacking SCADA: Our Infrastructure at Risk", InfraGard Dallas 2010
- "RFID Insecurity the next attack vector? " UTD Home Stars Lecture Series 2008
- "Threat modeling", SANS Institute 2007
- "Integrated Encrypted Security For Legacy SCADA Networks". DHS Publication 2006
- "Telemetry Bandwidth Management and Security", 2006 International Missile Defense Conference D.C.
- "Integrated Compression and Encryption", MDA Press 2005
- "Message Authentication for Agent-Based Systems", MDA Press 2005
- "Mobile Collaboration in Multi-Security-Level Domains", Office of Naval Research 2004
- "Non-Deterministic Cryptography, an Answer to quantum Cryptanalysis". 2003
- "Cyber Terrorism, Enemy Unseen", IEEE Sept 11, 2001

3. RESUME OF SOURCE 1

SOURCE 1 – Ex-VP of Cyber Operations - Member of Election Fraud Task Force - ASOG

Pre-teen hack into Fort Sam Houston's Main Frame in San Antonio, TX, received FBI warning
Served in United State Marine Corps - 2 years
Worked as a CAD design engineer in San Antonio - 6 years
Served in United States Army - 6 years
17th Field Artillery Brigade with 2 combat tours, Iraq as a point gunner for a convoy security operation and in Afghanistan as Point gunner, mechanic and electronic technician in a Route Clearance package operating in RC East.
Cyber Security College 2014
While in the Army operated independently to penetrate Hacker groups hunting cyber terrorists and gaining informants for passing intelligence up to the US IC. Including:
- ISIS
- Anonymous,
- Red Cult,
- AnonGhost and
- others

8 reports that became part of the Presidential Intelligence briefing.
Assisted in gathering intel that lead to the take down of ISIS members including:
- ❖ Junaid Hussain,
- ❖ Fadel Ahmed Abdullah al-Hiyali AKA Abu Muslim Al-Turkmani

- ❖ assisting with stopping planned terror attacks in countries including
  - ➢ Belgium,
  - ➢ Georgia,
  - ➢ Russia,
  - ➢ France and
  - ➢ US.

Assisted in foiling cyber operations against

- US,
- Israel,
- Russia, and
- Europe.

Designing computer systems using Field Programmable Gate Arrays and Field Programmable Frequency modulators coupled with off the shelf micro electronics like Arduino and Raspberry Pis to assist in EW operations.

Working to reinvent binary systems and streamline communications at the processor level for aid in encryption dominance.

4. RESUME OF SOURCE 2

SOURCE 2 - Applied Mathematician, Computer Programmer, and Logistician – Member of Election Fraud Task Force - ASOG

Worked as an applied mathematician/computer programming for lab associated with the US National Nuclear Security Administration (NNSA) covering the interdisciplinary field with a focus on problems in the nuclear and space research programs area.

<u>Areas of Expertise:</u>

- Designing and analyzing complex algorithms
- Expressing difficult cryptographic problems in terms of mathematics
- Appling work to find a solution or demonstrating that a solution cannot be found, given certain computational limitations and reasonable time limits

Provided direction, analytics and coordination of various DoD/USIC supplychains to include programming of automated procurement, inventory management, and other supply chain planning and management systems.

<u>Computer programming:</u>

- Python
- C++
- C
- Perl
- Java
- Machine Languages:

IBM 360/370
Unisys mainframes
• Microcode:
Intel
IBM
Unisys V
• Assembler
Intel
IBM
Unisys Main and V
• CICS: IBM
• Databases:
VSAM
IMS
DB2

Previous Employers (US) in no chronological order

- US Navy
- Sandia Labs (Honeywell)
- Department of Defense/USIC
- Sperry Univac
- Center of Strategic and International Studies (CSIS)
- Communication Corporation of America

Education:

University of North Texas. BS, Cyber Security
North Central Texas College. Computer Science & Cyber Security
CCI Training Institute. Computer Science
US Navy TRADOC. Electronics

Continuing Adult & Professional Education:

Southern Methodist University. Lyle School of Engineering & Applied Sciences
Southern Methodist University. Cox School of Business

5. RESUME OF SOURCE 3

SOURCE 3 – DIRECTOR OF PENETRATION TESTING OPERATIONS

Objective

Highly skilled and innovative security analyst seeking to work collaboratively to develop and implement security policy, best practices methodology, and timely incidence response/disaster recovery reporting.

Competencies Linux and UNIX
Debian Family (Ubuntu, Kali, Mint) ● Redhat Family (Redhat, Fedora, Cent OS) ● SUSE Family (SUSE, Open SUSE, Slackware) ● Advanced Families (Arch, Gentoo, Linux from scratch) ● Deep understanding of Linux internals ● MacOS/OSX ● FreeBSD ● OpenBSD
IDS – Intrusion Detection Systems
Snort – with automation tools ● Suricata ● Tiger ● Samhain ● OSSEC HIDS
Vulnerability Scanning / Assessment
Nmap ● Open VAS ● Nessus ● Core Impact ● Nexpose ● Saint ● OS SIMS ● Sguil ● Honeyd
Firewalls
IP Cop ● IP Tables ● PF ● PF Sense ● CISCO ASA ● Alien Valt ● **Job Related Skills**
• Provided expertise on IT-Security policies and guidelines, best practice approaches and solutions for compliance
- Developed detailed recommendations for mitigating findings and process improvement projects
- Validated and tracked security breach
- Documented results and presented findings to technical staff and management matching their skill level

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- Assisted with planning and execution of domain integration, user account, and e-mail migration
- Reviewed user accounts and access on a monthly basis to ensure regulatory and corporate compliance
- Adhered to and enforced corporate policies regarding network security, data, and software usage
- Created, modified, and disabled user accounts base on authorized forms
- Acted as a liaison between various departmental groups on information security related topics
- Audited systems based on industry security standards
- Collaborated in teams of technical and non-technical experts

Experience

Senior Security Engineer ● Redacted	**Mar 2013 - July 2020**
Lead Pentester ● Self-employed ● Texas	**Mar 2010 - Present**
Contract InfoSec Analyst ● Redacted	**Jan 2015 - Dec 2017**
Network Administrator ● Redacted	**Dec 2017 - Apr 2020**

6. RESUME OF SOURCE 4

SOURCE 4 - OPEN SOURCE INTELLIGENCE OFFICER – Allied Security Operations Group

INTELLIGENCE ANALYST
Trained intelligence analyst with over 10 years professional experience conducting civil and criminal investigations. Transform raw data into actionable intelligence by utilizing modern reporting tools and data visualization techniques. Leverage open/closed source intelligence to research, analyze and extract decision-useful information to create comprehensive behavior, reputation and threat assessments for individuals and entities.

AREAS OF EXPERTISE

Open/Closed Source Intelligence	Intelligence Systems/Databases
Threat Assessments	Data Analysis and Visualization
Due Diligence Analysis and Reporting	Creating/Filing Court Exhibits
Criminal Investigations	Indexed/Non-Indexed Web Queries

PROFESSIONAL EXPERIENCE Previous to ASOG

The*AkeeliGroup, Houston1 TX*

SR, INTELLIGENCE ANALYST

Provide extensive behavior, lifestyle and reputation assessments for corporate clients. Perform due diligence analysis and social link analysis using open source collection methodologies.

- Conduct in-depth investigations of individuals, and corporations using OSINT techniques, proprietary databases, analyst software, and data visualization software; Utilize link analysis to provide actionable intelligence analyses for clients.
- Develop and execute OSINT, digital vulnerability and cyber security training for C-suite executives.
- Domestic and global investigations that gather unique data going beyond traditional searches, exploiting metadata, postings that are tangential to the ultimate subject of inquiry and data sets not indexed by traditional search engines.
- Utilize intelligence sources include the deep web, dark web, social media sites, news organizations, proprietary databases, .and private investigative databases.

Social Surveillance, Houston, TX

FOUNDER AND SR. INTELLIGENCE ANALYST

Launched a social media and investigative consultancy for professional sports franchises. Provide specialized investigations and training to meet the growing need for enhanced due diligence using Open Source Intelligence. Licensed training school #Y05219201 (TX); Licensed Private Investigator #00352311 (TX).

- Conduct in-depth investigations of individuals, corporations, and criminal enterprises using OSINT techniques, closed-source databases, and analyst software; Utilize link analysis software to provide actionable intelligence reports for clients; Licensed Investigation Agency.
- Develop and execute OSINT training courses and cyber security training for law enforcement, executive protection agencies, and business leaders.
- Consult for NFL teams on issues concerning security', privacy, and reputation management.
- Monitor and analyze a broad range of social media platforms for threats and/or changes in public sentiment pertaining to events, organizations and/or high-profile individuals.

North Central Texas Fusion Center, McKinney, TX

INTELLIGENCE ANALYST

Served as an Intelligence Analyst and supported the Collin County Sheriff's Office Crimes Against Children Taskforce with investigation and prosecution of sex crimes and the planning and development of intelligence reports and products.

KinaCounty -Prosecutor'sOffice,Seattle,WA

LEGAL SPECIALIST

Served as Legal Specialist Ill within the King County Prosecutor's Office, managed junior analysts as head of the Sexually Violent Predators division of Criminal Justice Internship at King County Prosecutor's Office.

- Led four staff interns with full responsibility for onboarding, managing and training and supervision of day-to-day wort< and execution of long-term projects
- Managed and analyzed confidential materials include victim data, surveillance, criminal histories, and police evidence; searched for and tracked witnesses, victims, and offenders across the nation

- Provided Investigative and trial support for nine attorneys and three paralegals; assembled briefs and exhibits for filings in County Court, Court of Appeals, State Superior Court and Federal Courts
- Developed presentation and facilitated training to over 500 employees on new electronic filing systems and implementation of new processes and procedures
- Collaborated with attorneys and paralegals in all phases of Sexually Violent Predator Commitment trial preparation, from initial investigation to final disposition .
- Drafted subpoenas, declarations and correspondence ensured compliance with Civil Rules of Procedure and Local Court Rules; scheduled dispositions, court reporters and testimony providers such as Expert Sex Offender Treatment Providers for availabilities
- Compiled thousands of pages of data and evidence (e.g. redacted, enhanced and edited surveillance video, interviews and phones calls) for relevant case and court file purposes
- Developed innovative ways to incorporate various media platforms such as video, phone, maps and analytic software for court exhibits and evidence

EDUCATION

Master of Science (MS) - Justice, Administration and Leadership
University of Texas,
Cumulative GPA: 3.9/4.0

Bachelor of Arts (BA) - Criminal Justice
University of Washington, Cumulative GPA:
3.9/ 4.0
Graduated with Honors, Dean's list (4 times)

TECHNICAL SKILLS

- Certifications (ICS 100, 200 and 700);
- Michael Bazzel Open Source Intelligence Systems Training Certificate.
- Thomson Reuters CLEAR investigative research and risk management software
- Transunion TLOxp investigative research and risk management software
- Maltego and Analyst Software Packages (Analyze intelligence and construct

criminal cases);

- Open Source Intelligence Analysis (Locate targets and build suspect target packages from any location)
- Web-Based Applications (Facebook, LinkedIn, Twitter);
- Microsoft Office (Microsoft Word, PowerPoint, Excel, Outlook)

7. RESUME OF SOURCE 5

SOURCE 5 – Consulting Internal Audit & Fraud Analysis

EDUCATION

Master of Science, Accounting & Information Mgmt, University of Texas at Dallas
- High Distinction graduate
- GPA: 4.00/4.00

Master of Science, Chemical Engineering, University of Maryland, College Park, MD
- GPA: 4.00/4.00

Bachelor of Science, U.S. Coast Guard Academy, New London, CT
- With Honors
- Commissioned, Ensign, U. S. Coast Guard

CAREER EXPERIENCE

Key Performance Initiatives, McKinney, TX

Owner, President & CEO
- Management consulting – governance, risk management & compliance
  - Internal Audit
  - Data analytics and statistical analysis
  - Implementation of systematic processes for risk management and compliance
  - Performance excellence and process improvement
  - Quality Management training
  - Management of natural resources
- Provided coaching for chief audit executive for aerospace/defense contractor
- Audimation Integration Partner – implementation of IDEA data analytics software
- Assisted major client with preparing for Malcolm Baldrige National Quality Award
- Delivered 5S training and facilitated implementation workshop for manufacturer

KBJ Holdings, LLC

Manager & Chairman
- Management of private natural resources holding company.

- General Partner for KBJ Timber, LTD.

KBJ Timber, LTD.

Chief Executive Officer

- Overall responsibility for executive management of private natural resources company
  - Manage planning and execution of timber operations
  - Manage oil and gas leases
  - Consolidate, monitor, and report financial performance to General Partner
  - Oversee preparation of annual tax returns
  - Responsible for over $3 million in real, timber, and oil & gas assets
  - Calculate Net Present Value and make recommendations on real estate acquisitions and sale

Vice President, Operations

- Responsible for management of operations
  - Manage planning and execution of timber operations
  - Manage oil and gas leases

Elbit Systems of America, LLC (EFW Inc)

Senior Director, Internal Audit

- Chief Audit Executive for US Division of Elbit Systems, Ltd.
  - Responsible for internal audit function for all U.S. businesses
    - Developed & executed annual risk assessment & audit plan.
    - Coordinated with Israeli counterpart.
  - Provided SOX 404 Assurance support to external auditor
  - Provided advisory insights – government contracting compliance:
    - Developed a 3 Lines of Defense approach
    - Developed an internal control
  - Direct report to ESA Audit Committee.
  - Business grew from 300 million to > 700 million.

Director, Quality Management & Process Improvement

- Responsible for quality management system for Fort Worth Operations
- Achieved registration to ISO 9001:2000, AS9100, CMMI – Level 3
- Implemented Six Sigma methodology
- Member of Elbit Corporate Quality Leaders Group – setting global corporate standards
- Member of Site Senior Leadership Team
- Business grew from < $100 million to > $300 million

Trinity Industries, Dallas, TX

Director of Quality Assurance and Master Black Belt

- Responsible for quality assurance system for Freight Car Division
- Member of division senior leadership team
- Led implementation of Six Sigma
- Coached Six Sigma teams, achieving over $1 million in annual saving and 83% reduction in customer-reported defects

John Harland Co., Grapevine, TX

Director of Quality, Southwest Regional Printing Facility

- Developed and implemented a process-based quality management system
- Member of Executive Management Team, reporting to Regional General Manager.
- Member of corporate Quality Community that developed quality policy and training packages for entire corporation.
- Implemented performance excellence initiatives that resulted in annual savings exceeding $500,000 after 1 year, while improving delivery by 70% and reducing customer returns by 50%

The Earthgrains Company (Merico, Inc.), Carrollton, TX

Total Quality Manager, Refrigerated Dough Plant

Developed and implemented first Total Quality Management initiative within the Refrigerated Dough Division.

- Team leader for statistically aided design and start up of high-speed biscuit line. Actual speed reached 110% of design. Reduced cutter variability by 60%. Reduced start up time from 2 weeks to 4 hours. Innovative drive positioned cans in less than 20% of tolerance. Annual savings exceeded $1.5 million

Special Projects Manager, Merico General Office

- Responsible for overseeing the design and installation of a variety of facility, production, and management improvements

United States Coast Guard

Commissioned Officer, retired as Commander (O5)

- Executive Officer, Marine Safety Office, Port Arthur, TX
- Assistant to Federal On Scene Coordinator, Exxon Valdez oil spill
- Chief, Merchant Marine Inspection, Houston, TX
- Chief, Foreign Vessels Section, USCG Headquarters, Washington, DC
- Commanding Officer, USCGC Point Divide (WPB-82337)
- Communications Officer, USCGC Rush (WHEC-723)

HONORS, CREDENTIALS & SOCIETIES

Certified Internal Auditor, IIA

- William S. Smith Certificate of Honors

Certification in Risk Management Assurance, IIA

Professional Engineer, District of Columbia

Member, Institute of Internal Auditors (IIA)

- Member of Dallas and Fort Worth CAE Roundtables
- ***Industry 4.0 – Rising to the Challenge of Disruptive Technology***, Audimation Webinar, November 2018
- ***Airline Performance Measurement – Data Fusion with IDEA*****,** IDEA Innovations Conference, September 2018
- ***Implementing Data Analytics***, IIA Fort Worth, May 2018
- ***Disruptive Technology***, Fort Worth CAE Roundtable, February 2018
- ***How to Get the Right Data for Your Audit in 3 Easy Steps.*** Presented: AuditNet Webinar – May 2017
- ***Accelerating Time to Insights with Data Analytics***.
  - Presented: IDEA User Group, Dallas, December 2016.
  - Presented expanded half-day seminar: IIA Fort Worth, October 2016.
  - Recorded Webinar for CaseWare marketing: September 2016
  - Presented: IIA International Conference, July 2016
- ***Alias Smith & Jones: Unmasking the Outlaws with IDEA***. Presented: IIA/UTD Fraud Summit, March 2012 (with Scott Smith)

Senior Member, American Society for Quality (ASQ)

- ***Creating New Insights with Data Analytics***, ASQ Dallas Lean Six Sigma Special Interest Group, May 2018
- ***Creating New Insights – Joining Data from Disparate Databases with Data Analytics***, ASQ Collaboration on Quality in the Space & defense Industries, March 2018
- ***Accelerating Quality Insights with Data Analytics***, ASQ Dallas, February 2018
- ***Hot on the Trail - Software-aided audit method helps detect accounting fraud***. Six Sigma Forum Magazine, November 2017.
- ***Accelerating Your Audit Insights with Data Analytics.*** Presented to DFW ASQ Audit Special Interest Group, May 2017.
- ***Partnering in a Global Organization***. Presented: American Society for Quality Conference on Quality in the Space and Defense Industries, March 2007

Member, Society of Automotive Engineers (SAE)

Member, Beta Gamma Sigma (business honor society)

Member, Golden Key International Honour Society

Commercial Pilot and Certified Flight Instructor (airplanes, instrument)

Texas Award for Performance Excellence

- **Member, Board of Overseers**: 2005 – 2007
- **Examiner Training Team** – Member: 2004, Co-leader: 2005 – 2007
- **Process Observer**: 2006 & 2007
- **Senior Member & Team Leader, Board of Examiners**: 2001-2004
- **Member, Board of Examiners**: 2000

Astronaut Nominee

- Nominated by U. S. Coast Guard to NASA for Astronaut Candidate program, 1985 & 1986

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(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' MOTION TO STRIKE PROPOSED-INTERVENOR ARIZONA DEMOCRATIC PARTY'S MOTION TO DISMISS CASE AND RESPONSE TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

[1] District of Arizona admission scheduled for 12/9/2020.

Pursuant to Federal Rule of Civil Procedure 12(f), Plaintiffs move to strike Proposed-Intervenor Arizona Democratic Party's ("ADP") Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction and Motion to Dismiss ("Motion to Dismiss").

INTRODUCTION

Plaintiffs move to strike ADP's Motion to Dismiss for three reasons, (1) the Court has yet to rule on ADP's Motion to Intervene, (2) the expectation of the Court as expressed at the initial hearing on Thursday, December 3, 2020, was that any Intervenors would keep their pleadings to around five pages, and (3) Plaintiffs meet the requirements of Rule 12(f) as discussed below.

As mentioned above, ADP's Motion to Intervene has yet to be ruled on and ADP is not currently a party to this action. The Court, on December 4, 2020, granted Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes' Motion to Intervene and stated "Maricopa County may respond to the TRO and/or file a Motion to Dismiss with the same deadlines set by the Court for the other Defendants to respond (Doc. 28)." Order, ECF No. 32. In the same order, the Court stated it "is aware that a Motion to Intervene has been filed by the Arizona Democratic Party (Doc. 26), but does not rule on that Motion herein." *Id*. As of this moment, the Court has yet to rule on ADP's Motion to Intervene.

In addition, the Court made it clear during the hearing on Thursday, December 3, 2020, that it expected both proposed Intervenors to keep their pleadings to around five pages. Despite the Court's expectation that proposed intervenors keep their pleadings to around five pages, ADP brazenly ignored this direction and filed a nineteen-page motion on December 4, 2020. Making this blatant disregard of the Court's expression even more egregious, the Local Rules of Civil Procedure for the District Court of Arizona makes it clear that "[u]nless otherwise permitted by the Court, a motion including its supporting memorandum . . . may not exceed seventeen (17) pages, exclusive of attachments and any

required statements of facts." LRCiv 7.2(e)(1). ADP's Motion to Dismiss should be struck pursuant to Federal Rule of Civil Procedure 12(f).

ARGUMENT

A Rule 12(f) movant must demonstrate that the allegedly offending material is either redundant, immaterial, impertinent, scandalous, or constitutes an insufficient defense. *XY Skin Care & Cosmetics, LLC v. Hugo Boss United States, Inc.,* No. CV-08-1467-PHX-ROS, 2009 U.S. Dist. LEXIS 69866, 2009 WL 2382998, at *1 (D. Ariz. Aug. 4, 2009). Courts often require a showing of prejudice by the moving party as well. *SEC v. Sands*, 902 F. Supp. 1149, 1166 (C.D. Cal. 1995).

As will be discussed below, ADP's Motion to Dismiss is immaterial as the Court has yet to grant them the right to intervene, is impertinent as ADP disregarded the Court's instructions, and because ADP's Motion to Dismiss is redundant when compared to Defendant Secretary of State Katie Hobbs' Combined Motion to Dismiss and Opposition to Motion for TRO/Preliminary Injunction, Defendant Governor Ducey's Combined: (a) Motion to Dismiss and (b) Response to Plaintiffs' Motion for TRO and Preliminary Injunction, and Maricopa County Intervenors' Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

1. **ADP's Motion to Dismiss is Immaterial as the Court has yet to Grant ADP's Motion to Intervene.**

As discussed earlier, the Court has yet to rule on ADP's Motion to Intervene. As a non-party, ADP's Motion to Dismiss is immaterial. ADP has yet to become a party in this matter and the filing of its Motion to Dismiss goes against the Court Order from December 4, 2020, ECF No. 32. In that Court order, the Court explicitly granted Maricopa County the right to intervene and stated it "may respond to the TRO and/or file a Motion to Dismiss with the same deadlines set by the Court for the other Defendants to respond (Doc. 28)." Order, ECF No. 32. The Court also explicitly stated that it "is aware that a Motion to Intervene has been filed by the Arizona Democratic Party (Doc. 26), but does not rule on

that Motion herein." *Id*. What is notably absent in the Court's mention of ADP's Motion to Intervene is any permission to respond to Plaintiffs' TRO and/or file a Motion to Dismiss, which was explicitly granted to Maricopa County in the same order. *Id*.

As the Court has yet to rule on ADP's Motion to Intervene, and did not explicitly give permission to ADP to respond to Plaintiffs' TRO and/or file a Motion to Dismiss as it did to Maricopa County, ADP's Motion to Dismiss should be struck for being immaterial to the case.

2. ADP's Motion to Dismiss is Impertinent as it clearly ignores the Court's instructions from the December 3, 2020 hearing.

At the December 3, 2020 hearing in this matter, the Court expressed its expectation that any Intervenors would be limited to around five pages for their Motion to Dismiss if they were given permission to intervene. Not only has ADP yet to receive the Court's permission to intervene, but ADP also completely disregarded the Court's instruction to limit pleadings for intervenors to around five pages. ADP apparently thinks it is above the Court's instruction as it not only filed without first being granted the right to intervene, they also filed a pleading that adds up to nineteen pages, a whole fourteen pages more than what the Court instructed intervenors.

Due to ADP's blatant disregard for the Court's instruction, the Court should find that ADP's Motion to Dismiss is impertinent and grant Plaintiffs' Motion to Strike.

3. ADP's Motion to Dismiss is Redundant as it mirrors the Motion's filed by both Defendants and Intervenor Maricopa County.

In addition, ADP's motion would be redundant as its Motion to Dismiss does not bring any new issues that have not already been address by Defendant Secretary of State Katie Hobbs' Combined Motion to Dismiss and Opposition to Motion for TRO/Preliminary Injunction, Defendant Governor Ducey's Combined: (a) Motion to Dismiss and (b) Response to Plaintiffs' Motion for TRO and Preliminary Injunction, and Maricopa County Intervenors' Motion to Dismiss and Response in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

ADP starts off its Motion to Dismiss by addressing that Plaintiffs lack standing, exactly what is argued by Governor Ducey and Secretary of State Hobbs. ADP then addresses laches, which was argued by Secretary of State Hobbs. Next, ADP addresses how the Eleventh Amendment bars Plaintiffs' claims, which again was argued by both Governor Ducey and Secretary of State Hobbs. After this, ADP moves to federalism and comity which was also mentioned by Secretary of State Hobbs. ADP goes on to claim that Plaintiffs fail to state a claim on which relief can be granted, which is touched on by every other party that filed a Motion to Dismiss. Finally, ADP states that Plaintiffs are not entitled to a temporary or preliminary injunction which is covered by every other party that filed a Motion to Dismiss as well.

As outlined above, ADP's Motion to Dismiss brings nothing new to the table and should be struck for being redundant.

4. There would be significant prejudice to Plaintiffs if ADP's Motion to Dismiss is not struck.

Finally, if Plaintiffs' Motion to Strike is not granted, Plaintiffs will be subjected to significant prejudice. Plaintiffs already have the burden of responding to a twenty-four-page brief from Defendant Secretary Hobbs, a nine-page brief from Defendant Ducey, and an eight-page brief from Maricopa County Intervenors. If the Motion to Strike is not granted, Plaintiffs would have the burden of responding to an additional nineteen pages on top of the forty-one pages it already has to respond to.

CONCLUSION

The Court should grant Plaintiffs' Motion to Strike ADP's Motion to Dismiss for three reasons, (1) the Court has yet to rule on ADP's Motion to Intervene, (2) the expectation of the Court as expressed at the initial hearing on Thursday, December 3, 2020, was that both proposed Intervenors would keep their pleadings to around five pages, and (3) Plaintiffs meet the requirements of Rule 12(f) as discussed above. For these reasons the pleading should be struck.

Respectfully submitted this 5th day of December, 2020

/s Alexander Kolodin

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*Application for admission pro hac vice forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Records;

Intervenors.

Case No. 2:20-cv-02321-JAT

PROPOSED ORDER GRANTING PLAINTIFFS' MOTION TO STRIKE PROPOSED-INTERVENOR ARIZONA DEMOCRATIC PARTY'S MOTION TO DISMISS CASE AND RESPONSE TO PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

THE COURT has before it Plaintiffs' Motion to Strike Proposed-Intervenor Arizona Democratic Party's Motion to Dismiss Case and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction filed December 5, 2020.

For the reasons set forth in Plaintiffs' Motion to Strike Proposed-Intervenor Arizona Democratic Party's Motion to Dismiss Case and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction, pursuant to Federal Rule of Civil Procedure 12(f) and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. Proposed-Intervenor Arizona Democratic Party's Motion to Dismiss Case and Response to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction is hereby stricken.

DATED this _____ day of _____, 2020.

Honorable _____

United States District Judge

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Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' MOTION FOR MODIFICATION OF HEARING SCHEDULE

[1] District of Arizona admission scheduled for 12/9/2020.

Plaintiffs respectfully request a change to the Court's minute entry concerning the time allotted for parties to present their cases on December 8. The Court has provided one hour to each side with a provision that the Court may extend the time for the hearing to 9:00 a.m. on December 9.

Plaintiffs have provided Defendants with their witness list and expert disclosure. It has six experts and seventeen fact witnesses. We realize the Court cannot accommodate such a large showing. We therefore have proposed to limit our presentation to three expert witnesses whose testimony we believe will be beneficial to the Court. The remaining witnesses would go in via declaration or by expert reports already provided in Plaintiffs' filing with the Court. The experts we intend to call and who will appear at the hearing are: Spider (his redacted name); Russell Ramsland and James Phillip Waldron. These experts will testify to the vulnerability to outside infiltration of the Dominion and other voting machines and software used by the elections officials in Arizona. They will also quantify the amount of fraud into a tally of illegal votes that easily overturns the 2020 election results.

In order to allow a complete presentation of their testimony and the exhibits supporting their conclusions, we respectfully ask the Court to enlarge the time for Plaintiffs' case to three hours. We also agree to permit Defendants to have three hours on their case should they so require. We reached out to all counsel about this matter at 7:42 p.m. on December 5, 2020 but have not received a response.

To the extent this interferes with the Court's other scheduled matters, we propose moving argument on the various motions to dismiss to Wednesday morning at 9:00 a.m. Alternatively, because Plaintiffs feel so strongly about presenting their expert witnesses to the Court, Plaintiffs are prepared to rest on their papers in connection with the pending motions to dismiss and forego oral arguments.

Respectfully submitted this 5th day of December, 2020

/s/ Howard Kleinhendler

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*Application for admission pro hac vice forthcoming

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*Application for admission pro hac vice Forthcoming

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CERTIFICATE OF SERVICE

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Records;

Intervenors.

Case No. 2:20-cv-02321-DJH

PROPOSED ORDER GRANTING PLAINTIFFS' MOTION FOR MODIFICATION OF HEARING SCHEDULE

THE COURT has before it Plaintiffs' Motion for Modification of Hearing Schedule filed December 5, 2020.

For the reasons set forth in Plaintiffs' Motion for Modification of Hearing Schedule and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. Plaintiffs and Defendants shall have three hours each to present their cases.

DATED this _____ day of _____, 2020.

Honorable _____

United States District Judge

Brett W. Johnson (#021527)
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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Notice of Service of Defendant Governor Ducey's Combined Exhibit and Witness List for December 10, 2020 Hearing

Assigned to: Hon. Diane Humetewa

TRO Hearing Set: December 10, 2020 at 9:30 a.m.

Pursuant to L.R. Civ. 5.2 and the Court's Order, (Doc. 35), Defendant Douglas A. Ducey, Governor of the State of Arizona, hereby gives notice that he served his Combined Exhibit and Witness List for the December 10, 2020 evidentiary hearing on Plaintiffs; Defendant Secretary of State Katie Hobbs; Intervenor-Defendants Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes; and Proposed Intervenor-Defendant Arizona Democratic Party, via email on December 6, 2020.

DATED this 6th day of December, 2020.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

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CERTIFICATE OF SERVICE

I certify that on December 6, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Tracy Hobbs

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Attorneys for Maricopa County Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants.

NO. CV20-02321-PHX-DJH

NOTICE OF SERVICE OF MARICOPA COUNTY INTERVENORS' LIST OF WITNESSES AND EXHIBITS AND PROVIDING COPIES OF EXHIBITS

Pursuant to L.R.Civ.P. 5.2 and the Court's Order at Doc. 35, the Maricopa County Board of Supervisors and Maricopa County Recorder, Adrian Fontes, Intervenor-

Defendants hereby give notice that they served their List of Witnesses and Exhibits on all parties in this matter via electronic mail on December 6, 2020 at 11:57 a.m.

Additionally, the Maricopa County Intervenor-Defendants have provided copies of each exhibit listed in their List of Witnesses and Exhibits to all parties via electronic mail.

RESPECTFULLY submitted this 6th day of December, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: */s/*Joseph I. Vigil
Thomas P. Liddy
Emily Craiger
Joseph I. Vigil
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Attorneys for Maricopa County Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 6th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

*/s/*Joseph I. Vigil
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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

NOTICE OF SERVICE OF DEFENDANT ARIZONA SECRETARY OF STATE KATIE HOBBS RULE 26 EXPERT DISCLOSURES AND WITNESS DISCLOSURES

Pursuant to L.R. Civ. 5.2 and the Court's Order, (Doc. 35), Defendant Arizona Secretary of State Katie Hobbs, hereby gives notice that she served her Rule 26 Expert Disclosures and Witness Disclosures for the December 10, 2020 evidentiary hearing on Plaintiffs; Defendant Douglas A. Ducey, Governor of the State of Arizona Intervenor-Defendants Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes; and Proposed IntervenorDefendant Arizona Democratic Party, via email on December 6, 2020.

Respectfully submitted this 6th day of December, 2020.

SUSMAN GODFREY L.L.P.

By s/ Davida Brook
Justin A. Nelson
Stephen E. Morrissey
Stephen Shackelford
Davida Brook

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

NOTICE OF SERVICE OF DEFENDANT ARIZONA SECRETARY OF STATE KATIE HOBBS EXHIBIT LIST AND PROVIDING COPIES OF EXHIBITS

Pursuant to L.R. Civ. 5.2 and the Court's Order, (Doc. 35), Defendant Arizona Secretary of State Katie Hobbs, hereby gives notice that she served her Exhibit List and Exhibits on all parties in this matter via electronic mail on December 6, 2020.

Additionally, Defendant Arizona Secretary of State Katie Hobbs has provided copies of each exhibit listed in her Exhibit List to all parties via electronic mail.

Respectfully submitted this 6th day of December, 2020.

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Bowyer, et al.,

Plaintiffs,

v.

Ducey, et al.,

Defendants.

No. 2:20-cv-02321-DJH

PROPOSED INTERVENOR-DEFENDANT'S (1) REPLY IN SUPPORT OF MOTION TO DISMISS AND (2) OPPOSITION TO MOTION TO STRIKE

Expedited Election Matter

Hon. Diane J. Humetewa

I. INTRODUCTION

Like the best fiction writers, Plaintiffs do not let inconvenient facts get in the way of their narrative. Arizona's election is over, Governor Ducey and Secretary of State Hobbs have signed the Certificate of Ascertainment, and the Certificate has been sent to the Archivist of the United States. There is nothing left for this Court to enjoin, and Plaintiffs never address this fairly elemental issue. In any event, Plaintiffs would have no standing to seek the relief they request. The other flaws in Plaintiffs' claims remain, and their latest filing does nothing to remedy them. This charade must end. This Court should dismiss.

II. ARGUMENT

A. Plaintiffs do not have standing.

Plaintiffs' opposition fails to demonstrate that they have met any of the three elements of standing for their due process and equal protection claims, which include injury in fact, traceability, and redressability. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

1. None of Plaintiffs' claims are redressable by these Defendants.

Plaintiffs' injuries are not redressable by these Defendants. Plaintiffs make no further argument regarding redressability in their most recent filing. To briefly reiterate, there is no authority for the proposition that a federal court has the power to order Arizona state officials to "de-certify" an election they have already certified, and Plaintiffs' claim to the contrary in their Complaint relies entirely on provisions of Arizona law allowing a state court, following an election contest duly filed in state court and in compliance with state law, to "se[t] aside the election" or hold that a certificate of election "is of no further legal force or effect." A.R.S. § 16-676; *see* Compl. ¶ 16 (stating "the relief sought is in accord with Arizona law" and citing to A.R.S. § 16-676). But the fact that Arizona's legislature has given *Arizona* courts this power following an election contest does not mean that either the Secretary or Governor possess that power, and federal courts cannot order state officials to take an action that they *lack* the ability to do under state law. *See, e.g.*, *Okpalobi v. Foster*, 244 F.3d 405, 427 (5th Cir. 2001) ("[A] state official cannot be enjoined to act in any way that is beyond his authority to act in the first place.").

Plaintiffs' similar request that this Court order an injunction to prevent Governor Ducey "from transmitting the currently certified electoral results [to] the Electoral College" is a factual impossibility. Compl. ¶ 145. The Certificate of Ascertainment has already been transmitted. *See* Nat'l Archives, *2020 Electoral College Results*, https://www.archives.gov/electoral-college/2020 (linking to Arizona's Certificate of Ascertainment, indicating it has already been sent to and received by the Archivist of the United States). Plaintiffs bizarrely claim that 3 U.S.C. § 6 allows the Governor to undo the transmission of this certification, Opp. at 13, but the statute is entirely silent on that point. Plaintiffs' delay has made their requested remedy no longer possible.

2. None of Plaintiffs' claims are traceable to these Defendants.

Plaintiffs do not offer any argument for the traceability problems readily apparent in their Complaint. As detailed in ADP's Motion to Dismiss, Plaintiffs' claims focus on actions by unnamed nefarious actors and local officials. Dkt. 37 at 8. Neither is traceable to Governor Ducey or Secretary Hobbs. The lack of traceability is a second fatal flaw for Plaintiffs' standing here, and independently requires dismissal. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (requiring causal connection between injury and defendant's conduct).

3. Plaintiffs do not allege an injury-in-fact for their equal protection and due process claims.

Plaintiffs have failed to establish that they have suffered an injury in fact sufficient to maintain their due process and equal protection claims. First, they claim they were injured by violations of Arizona law. Opp. at 7. This does not provide them standing to bring either of the constitutional claims they assert. *See, e.g.*, *Shipley v. Chi. Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("A violation of state law does not . . . transgress against the Constitution."); *Martinez v. Colon*, 54 F.3d 980, 989 (1st Cir. 1995) ("[T]he Constitution is not an empty ledger awaiting the entry of an aggrieved litigant's recitation of alleged state law violations….").

Second, Plaintiffs assert that their vote-dilution theory is not a generalized grievance

because they have alleged that their votes were diluted in a manner that made their preferred candidate lose. Opp. at 7-8. But this assertion (which, like all of the asserted injuries in their Complaint, is not supported by even a modicum of plausible factual allegations), still does not rescue their standing. All of the cases Plaintiffs cite focus on the prospect of an individual losing their individual opportunity to vote or an organization suffering an organizational injury due to diversion of resources due to such a harm. *See Mi Familia v. Hobbs*, No. CV20-01903-PHX-SPL, 2020 WL 5904952, at *2 (D. Az. Oct. 5, 2020) (holding organization had standing to seek injunction against voter registration deadline due to frustration of organizational mission and diversion of resources); *Ariz. Democratic Party v. Hobbs*, No. CV-20-01143-PHX-DLR, 2020 WL 5423898, at *5 (D. Az. Sept. 10, 2020) (holding organization had standing to seek injunction against deadline for curing missing signatures under associational theory of standing due to threatened harm to its members); *Raetzel v. Parks/Bellemont Absentee Election Bd.*, 762 F. Supp. 1354, 1356 (D. Az. 1990) (holding plaintiffs had standing to challenge lack of notice and a hearing prior to their absentee voters being disqualified). Plaintiffs' injury, by contrast, is not about their individual votes, but rather about the fortunes of political parties, and courts have repeatedly held that (for a voter) this is merely a generalized grievance insufficient for Article III standing. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1247 (11th Cir. 2020) ("[A] citizen is not injured by the simple fact that a candidate for whom she votes loses or stands to lose an election."); *Berg v. Obama*, 586 F.3d 234, 240 (3d Cir. 2009) ("Berg's wish that the Democratic primary voters had chosen a different presidential candidate ... do[es] not state a legal harm."); *Becker v. Fed. Election Comm'n*, 230 F.3d 381, 390 (1st Cir. 2000) (holding that a candidate's decreased "chance of being elected" was "hardly a restriction on voters' rights and by itself [was] not a legally cognizable injury sufficient for standing"). Plaintiffs bring the paradigmatic case about "group political interests, not individual legal rights," and this cannot demonstrate Article III injury for individuals. *Gill v. Whitford*, 138 S. Ct. 1916, 1933 (2018). Losing hurts, but the fact that their preferred candidate lost does not give these voters standing.

4. Plaintiffs cannot raise Elections and Electors Clause injuries.

Plaintiffs also do not have standing under the Electors and Elections Clauses. Plaintiffs' opposition makes no assertion that Plaintiffs have standing under the Elections Clause, focusing solely on standing under the Electors Clause based on non-binding and incorrect authority. Plaintiffs' entire argument is premised on the Eighth Circuit's decision in *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020). Plaintiffs' claim that "the *Carson* court affirmed that Presidential Electors have both Article III and Prudential standing under the Electors and Elections Clauses" misstates the case. Opp. at 5. *Carson* did not address the Elections Clause at all.

As to the Electors Clause, *Carson* is not binding on this Court and was incorrectly decided. The Court in *Bognet v. Sec'y of Commonwealth*, No. 20-2314, 2020 WL 6686120 (3d Cir. Nov. 13, 2020), specifically detailed the *Carson* court's error in rejecting its holding concerning standing, explaining that "[t]he *Carson* court appears to have cited language from [*Bond v. U.S.*, 564 U.S. 211 (2011)] without considering the context—specifically, the Tenth Amendment and the reserved police powers—in which the U.S. Supreme Court employed that language. There is no precedent for expanding *Bond* beyond this context, and the *Carson* court cited none." *Id*. at *8 n.6. This is why multiple other courts to consider the issue have rejected the conclusion embraced in *Carson*, finding correctly that the only entity injured by a violation of the Elections and Electors Clauses is the legislature itself and that, for anyone else, such a claim is simply a generalized grievance. *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (individuals lacked Article III standing to bring claim under the Elections Clause); *Bognet* 2020 WL 6686120, at *6-7 (voters and candidate lacked Article III standing to bring claims under Elections and Electors Clauses); *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020) (holding candidate lacked standing under Elections Clause and concluding that Supreme Court's cases "stand for the proposition that only the state legislature (or a majority of the members thereof) have standing to assert a violation of the Elections Clause").

Even if Plaintiffs did have standing to assert an injury under either clause, they would

still be unable to show either traceability or redressability for the reasons described above. *See supra* Sections II.A.1 and II.A.2.

B. Plaintiffs' claims are barred by laches.

Plaintiffs cannot overcome the doctrine of laches, which plainly bars the relief they seek. *See Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951 (9th Cir. 2001) (laches bars a claim when plaintiff engaged in unreasonable delay that prejudiced the defendant). Plaintiffs do not dispute that the election was held on November 3, 2020. They do not dispute that Governor Ducey and Secretary Hobbs signed the Certificate of Ascertainment on November 30 and then transmitted it to the Archivist of the United States. They do not dispute that they waited until after all these steps had occurred—when it was certain President Trump had lost the election—to bring their lawsuit. And they do not dispute that the relief they seek would deprive all Arizona voters of the right to vote.[1] In the election context, any delay is prejudicial, but a month-long delay in bringing a post-election lawsuit is damning. *See Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at *1 (Pa. Nov. 28, 2020) ("[I]t is beyond cavil that [Republican] Petitioners failed to act with due diligence in presenting the instant claim" when they waited until November 21 to sue to invalidate Pennsylvania's election); *Kistner v. Simon*, No. A20-1486, slip op. at 3-4 (Minn. Dec. 4, 2020) (Dkt. 37-5); *see also, e.g.*, *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 922-23 (D. Ariz. 2016).

Plaintiffs' primary arguments against laches are (1) the application of laches is frequently fact-specific, and (2) laches should be invoked cautiously. Neither argument suggests that laches is inappropriate here. First, courts can and do dismiss claims due to laches based on the pleadings or before trial, particularly when it is clear from the face of the complaint that laches applies. *See, e.g.*, *Kelly*, 2020 WL 7018314, at *1; *Kistner*, No. A20-1486, slip op. at 3-4; *see also Aguila Mgmt. LLC v. Int'l Fruit Genetics LLC*, No. CV-

[1] Plaintiffs waived the right to challenge ADP's arguments on prejudice. *See* Opp. at 10 (stating without argument that Defendants have not suffered "genuine prejudice").

19-00173-PHX-DJH, 2020 WL 736303, at *3 (D. Ariz. Feb. 13, 2020) (Humetewa, J.) (noting that "[c]ourts in this district have previously applied laches in a motion to dismiss" because "where the elements of laches are apparent on the face of a complaint, it may be asserted on a motion to dismiss" (citation omitted)). Second, even if laches should generally be invoked with "caution[]," Opp. at 9, that does not affect its application here. Plaintiffs try to justify their delay by linking the filing of their lawsuit to the date Arizona certified its election results, November 30. Opp. at 10. But that date is irrelevant because Plaintiffs have brought a constitutional challenge in federal court, not an election contest under state law. Further, Plaintiffs concede that they knew the basis of their claims "during the course of the election." Opp. at 9. That is confirmed by the exhibits to their Complaint, many of which involve events that allegedly occurred on or before Election Day.

In short, Plaintiffs unreasonably delayed in bringing suit, and that delay prejudiced the other parties and the public. Laches applies, and the Complaint should be dismissed.

C. The Eleventh Amendment bars Plaintiffs' claims.

Plaintiffs' response regarding the Eleventh Amendment seems to misunderstand the fundamental problem with their Complaint. It is not enough to escape the Eleventh Amendment that Governor Ducey's actions are more than ministerial or that Plaintiffs ask for prospective relief. *See* Opp. at 13-14. The Eleventh Amendment prohibits federal courts from granting "relief against state officials on the basis of state law, **whether prospective or retroactive**." *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984) (emphasis added); *see also Students of Cal. Sch. for the Blind v. Honig*, 745 F.2d 582, 586 (9th Cir. 1984) ("The Supreme Court decided in *Pennhurst*" that the Eleventh Amendment "stands as an absolute bar to actions in federal court alleging that state officials have violated state law"). This is true even when state law claims are styled as federal causes of action. *See, e.g.*, *Massey v. Coon*, No. 87-3768, 1989 WL 884, at *2 (9th Cir. Jan. 3, 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law"); *Balsam v. Sec'y of*

State, 607 F. App'x 177, 183–84 (3d Cir. 2015) (finding Eleventh Amendment bars state law claims even when "premised on violations of the federal Constitution").

As detailed in ADP's Motion to Dismiss, none of Plaintiffs' claims escape this bar. *See* Dkt. 37 at 11-13. It most clearly prohibits Plaintiffs' free-standing fraud claim in Count IV, in which Plaintiffs' assert that the fraud alleged in the Complaint should result in the invalidation of ballots based on binding Arizona law. Compl. ¶ 138. But it is also true of Plaintiffs' other claims, each of which, although ostensibly cloaked in the garb of a federal cause of action, ultimately ask the Court to determine that state officials violated state law and compel state officials to do what Plaintiffs believe *Arizona* law requires. Unfortunately for Plaintiffs, the Eleventh Amendment prohibits this Court from issuing any such order.

D. Principles of federalism and comity strongly favor abstention.

Even if the Court were to conclude that each of the above hurdles did not bar it from exercising jurisdiction, the Court should decline to do so in deference to the state of Arizona. The relief Plaintiffs seek calls for an extraordinary intrusion on state sovereignty by a federal court. Under the *Pullman* abstention doctrine, the claims Plaintiffs raise should be addressed in state court. *See R. Comm'n v. Pullman Co.*, 312 U.S. 496, 501 (1941). As ADP's Motion to Dismiss makes clear, all of the factors the Ninth Circuit looks to determine whether *Pullman* abstention is appropriate are present here. *See* Dkt. 37 at 13-14.

Plaintiffs' latest filing offers little argument to the contrary. Instead, Plaintiffs acknowledge that if "the federal constitutional question[s] [are] dependent upon, or may be materially altered by, the determination of an uncertain issue of state law" and "state law is uncertain," abstention may be appropriate. Opp. at 23 (quoting *Harman v. Forssenius*, 380 U.S. 528, 534 (1965)). Both are present here. Even putting aside their other arguments, Plaintiffs assert that Arizona law allows for the invalidation of wide swaths of ballots on the basis of purported fraud. Compl. ¶¶ 135-140. This is far from a certain interpretation of Arizona law, but—if Plaintiffs' interpretation of the law is correct—this alone might entitle them to the relief they seek and avoid a court having to reach the purported constitutional questions they raise. In these circumstances, abstention is the proper course.

E. Plaintiffs do not argue they can survive a motion to dismiss for failure to state a claim.

ADP's motion to dismiss argues that the Complaint fails to state a claim on which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Plaintiffs do not even try to argue they have stated a plausible claim or respond to ADP's legal arguments. *See Bell Atlantic Corp v. Twombly*, 550 U.S. 554, 570 (2007) (plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face"). The closest they come in their opposition are the conclusory assertions that the "Complaint alleges serious violations of Arizona state law, as well as the U.S. Constitution and federal laws, as part of a larger scheme of election fraud that affected the result" and that the Complaint meets "applicable pleading requirements under Arizona law and the Federal Rules of Civil Procedure." Opp. at 24. But wishing a claim exists does not make it so.

Plaintiffs appear to confuse federal pleading standards with substantive law. Opp. at 23 (suggesting that Federal Rule of Civil Procedure 9(b) does not apply "because it [is not] the standard for ballot fraud" under state law). Federal Rule of Civil Procedure 9(b) requires allegations of fraud or mistake to be stated with particularity in all cases brought in federal court. *See* Fed. R. Civ. P. 9(b). The Complaint mentions fraud, or some variation thereof, six times on the first page alone; Count IV is even titled "Wide-Spread Ballot Fraud." Yet Plaintiffs seem to argue that they do not need to satisfy Rule 9(b)'s specificity requirements because Arizona law invalidates some ballots even in the absence of fraud. Perhaps they are conceding "this is not a fraud case." *Donald J. Trump for President, Inc. v. Pennsylvania*, No. 20-3371, 2020 WL 7012522, at *1 (3d Cir. Nov. 27, 2020). If so, then it is precisely the type of "post-election contest[] about garden-variety issues of vote counting and misconduct" which federal courts "may not entertain." *Wood v. Raffensperger*, No. 20-14418, slip op. at 2 (11th Cir. Dec. 5, 2020) (Dkt. 41-1). Or perhaps they do not understand the law. In either case, dismissal is warranted.

F. Plaintiffs' motion to strike should be denied.

Finally, Plaintiffs' late-filed motion to strike should be denied. *See* Dkt. 45. First, as

Plaintiffs acknowledge, the Court has not ruled on ADP's motion to intervene. Intervenors are typically required to file proposed pleadings in a timely manner so as not to delay the proceedings or prejudice the other parties. *See* Fed. R. Civ. P. 24(a)-(b); *United States v. Alisal Water Corp*., 370 F.3d 915, 921 (9th Cir. 2004). ADP has done just that. Indeed, Plaintiffs themselves seek expedited review. Opp. at 30-31 (asking the Court to rule on the TRO motion by December 10). Second, the Court did not set page limits specific to intervenors at the hearing or in a written order, and ADP is unaware of any five-page limit. Finally, as ADP noted in a footnote in its motion, it *could* have filed two separate 17-page briefs: one a motion to dismiss, the other an opposition to Plaintiffs' motion for TRO. Instead, it combined those briefs into one shorter filing to help the Court efficiently resolve these proceedings. There was no violation of the local rules.[2]

III. CONCLUSION

For the foregoing reasons, ADP respectfully requests that the Court dismiss Plaintiffs' Complaint.

[2] It is also worth noting that Plaintiffs complain about a disregard for page limits right after themselves filing a 31-page brief.

Dated: December 6, 2020

/s Alexis E. Danneman

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2020, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s Indy Fitzgerald

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Reply in Support of Governor Ducey's Motion to Dismiss

Assigned to: Hon. Diane Humetewa

Oral argument set: December 8, 2020 at 9:15 a.m.

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Introduction

Plaintiffs have failed to fully address Defendant Governor Douglas A. Ducey's arguments for dismissal of the specific claims against him in their response. (Doc. 43). For instance, Plaintiffs do not respond to Governor Ducey's arguments that (1) they have failed to allege any facts to support a plausible claim that he violated their constitutional rights or any other law; or that (2) they cannot meet the traceability or redressability elements of Article III standing for purposes of their claims against him. Having failed to respond, Plaintiffs have essentially conceded that Governor Ducey should be dismissed from this case. *See* L.R. Civ. 7.1(I).

To the extent Plaintiffs do respond, their rationales for including Governor Ducey as a Defendant are misguided. Plaintiffs appear to raise a new form of relief that was not in the Complaint (which sought to enjoin the issuance of a Certificate of Ascertainment to the National Archivist, even though that non-discretionary ministerial act had already been completed). (*See* Doc. 1 at ¶ 145). Now, Plaintiffs contend that under 3 U.S.C. § 6, Governor Ducey is a necessary party in this litigation in order to send the National Archivist a separate certificate concerning the eventual outcome of this litigation. But, this statute does not save Plaintiffs' claims against Governor Ducey because it was not part of their original Complaint. Moreover, the "capable of repetition, yet evading review" exception to mootness is not applicable here, particularly when Arizona statutes expressly allow for expedited decisions of election contests. *See* A.R.S. § 16-671 *et seq.* Lastly, Plaintiffs fail to distinguish *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-cv-02078, 2020 WL 6821992 (M.D. Penn. Nov. 21, 2020), on any relevant ground. It is settled that Article III standing requires that an alleged injury be "fairly traceable" to a defendant's conduct. (Doc. 38 at 8). *Boockvar*'s references to other forms of standing do not grant Plaintiffs standing to raise claims against Governor Ducey here.

All claims against Governor Ducey should be dismissed with prejudice.[1]

[1] Governor Ducey has not requested oral argument on his Motion to Dismiss, and does not object to the Court deciding that Motion on the papers.

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Argument

I. Plaintiffs' Claims Against Governor Ducey Are Moot and Not Subject to any Mootness Exception.

Plaintiffs do not dispute that Governor Ducey has two non-discretionary ministerial roles in Arizona's electoral process (observing the statewide canvass and transmitting a Certificate of Ascertainment to the National Archivist), and that both of these duties have been performed. Plaintiffs raise two arguments against the mootness doctrine, both of which fail. *First*, Plaintiffs cite 3 U.S.C. § 6 for the proposition that the Court can somehow require Governor Ducey to effectively undo the State's transmission of the Certificate to the National Archivist on November 30. (*See* Doc. 44 at 11, 13). More specifically, Plaintiffs note that under 3 U.S.C. § 6:

> if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination . . . .

At the outset, Plaintiffs did not request that Governor Ducey issue a "final determination" certificate in their Complaint or their injunctive request. (*See* Doc. 1 at ¶ 145.) As such, this request is not properly before the Court and cannot be granted. *See Rental Dev. Corp. of Am. v. Lavery*, 304 F.2d 839, 842 (9th Cir. 1962).

Moreover, Plaintiffs' reliance on 3 U.S.C. § 6 is misplaced because an order from this Court order does not constitute a "determination" within the meaning of that statute. The statutory text relied on by Plaintiffs instead concerns *state court* election contests decided under state law. That is apparent from the text itself, which discusses a "final determination *in a State in the manner provided for by law* of a controversy or contest concerning the appointment of all or any of the electors *of such State.*" (Emphasis added).

The meaning of the phrase "controversy or contest" is further elucidated by 3 U.S.C. § 5, which explains that such matters shall be decided in accordance with *state* law. *See* 3 U.S.C. § 5 ("If any State shall have provided, by laws enacted prior to the day fixed for the

appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State . . . ."). Reading these statutes together, as the Court must, it is apparent that the "determination" of a "controversy or contest" for purposes of 3 U.S.C. § 6 is one made pursuant to *state* law in a *state* forum. *See California v. Trump*, 963 F.3d 926, 947 n.15 (9th Cir. 2020) ("[S]tatutes addressing the same subject matter should be construed *in pari materia*.") (internal quotations omitted). Because 3 U.S.C. § 6 imposes no duty on Governor Ducey to issue another certificate to the National Archivist, Plaintiffs have no live case or controversy claim against him. *See Wood v. Raffensperger*, ---F.3d---, 2020 WL 7094866 (11th Cir. Dec. 5, 2020) (holding that the plaintiffs' claims were moot "[b]ecause Georgia has already certified its results" and because the court "cannot turn back the clock and create a world in which the 2020 election results are not certified") (internal quotations and citations omitted).[2]

Second, Plaintiffs argue that this case is not moot because election cases fall within the "capable of repetition, yet evading review" exception. (Doc. 44 at 11-12). But that exception does not apply. A case is only "capable of repetition, yet evading review" when (1) the challenged action is too short in duration to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again. *See Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 187 (1979); *see also Hamamoto v. Ige*, 881 F.3d 719, 723 (9th Cir. 2018) (explaining that the first factor applies when expedited review is unavailable).

[2] Even if a federal court order could constitute a "determination" under 3 U.S.C. § 6 (it cannot), that statute only allows Governor Ducey to send an alternative slate of electors in the event that an election outcome is altered after the initial Certificate was sent. *See* Richard D. Friedman, *Trying to Make Peace with Bush v. Gore*, 29 Fla. St. U. L. Rev. 811, 821 (2001) (noting that in 1960 Hawaii sent "two competing slates" to the electoral college because it "first certified the Republican slate as the winners" but later "reversed itself after . . . the completion of a recount ordered by a state court . . . ."). Here, Plaintiffs do not ask the Court for mandamus relief requiring Governor Ducey to send an alternative slate of electors to the National Archivist. Instead, they seek to enjoin him from sending *any* certificate of ascertainment to the National Archivist. (See Doc. 1 at ¶ 145 (requesting an "order enjoining Governor Ducey from transmitting the currently certified election results to the Electoral College"). Indeed, Plaintiffs maintain that if their requested relief is granted, "the question of the choice of electors" will be "revert[ed] to the legislature." (*Id.* at ¶ 17 (emphasis added)).

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Plaintiffs have not identified how either factor is met here, and the allegations in their Complaint focus on the 2020 General Election. (*See*, *e.g.*, Doc 1 at ¶¶ 1-4, 48-62, 65-66, 79, 83, 97-102, 111, 116-23, 139-45); *see also Wood*, 2020 WL 7094866 (holding that the mootness doctrine applied when a plaintiff did not have "a 'reasonable expectation' that he will again seek to delay certification," and that the "possibility of a recurrence is purely theoretical"). Plaintiffs' claims against the Governor should therefore be dismissed because they are moot.[3]

II. Plaintiffs' Claims Against Governor Ducey are Barred by the Eleventh Amendment.

Plaintiffs do not dispute that the Eleventh Amendment bars their claims against Governor Ducey unless Governor Ducey has a requisite *Ex Parte Young* connection to this action. Plaintiffs also do not dispute that Governor Ducey lacks a connection to any of the allegations, speculative or otherwise, made in the Complaint or that he lacked authority to oversee, correct, or prevent these alleged issues. (*See* Doc. 38 at 7). Plaintiffs nevertheless assert that *Ex Parte Young* applies due to the provision in 3 U.S.C. § 6 requiring a state's chief executive to issue a certificate to the National Archivist regarding the determination in a "controversy or contest concerning the appointment of all or any of the electors of such State." (Doc. 44. at 13.) This argument fails for the same reasons described above. Again, the "controversy or contest" referenced in 3 U.S.C § 6 refers to a *state law* election contest in a state forum, such as the type of election challenged authorized by A.R.S. § 16-672(B). Moreover, because Plaintiffs did not raise this issue in their Complaint or provide any other grounds for applying *Ex Parte Young*, all claims against the Governor should be dismissed based on Eleventh Amendment immunity.

[3] Plaintiffs argue that their claims are not moot because they have asked for a court order impounding Dominion voting machines. (Doc. 44 at 11). But Plaintiffs do not (and cannot) allege that the impound of Dominion voting machines has anything to do with Governor Ducey. (*See id.*).

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III. Plaintiffs Fail to Plead any Plausible Claim for Relief Against Governor Ducey under the *Iqbal/Twombly* Pleading Standard.

Plaintiffs did not respond to Governor Ducey's argument that he should "be dismissed because Plaintiffs' Complaint is devoid of any 'factual content that allows the court to draw the reasonable inference that the defendant' at issue—Governor Ducey—'is liable for the misconduct alleged.'" (Doc. 38 at 7 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When a party fails to respond to an argument in a motion to dismiss, a district court "may dispose of the motion summarily." *See* L.R. Civ. 7.2(I); *see also Owner-Operator Independent Drivers Assoc., Inc. v. Swift Transp. Co., Inc.*, No. CV 02-1059-PHX-PGR, 2004 WL 5376210, at *5 (D. Ariz. July 28, 2004) (a party's "failure in its response to set forth any argument in opposition to such a dismissal to be a consent on its part to the requested dismissal").

In addition, Plaintiffs' response to the arguments made by other Defendants confirms they have no plausible claim for relief against Governor Ducey. Plaintiffs assert that the crux of their Complaint is alleged "systematic violations of procedural safeguards designed to prevent 'fraud' and 'ballot tampering.'". (Doc. 44 at 24). At no point, however, do Plaintiffs suggest that Governor Ducey has any involvement in these alleged systemic issues in election administration. Indeed, the Complaint does not contain any specific factual allegations against him at all. (*See* Doc. 38 at 7). Thus, all that remains is Governor Ducey's non-discretionary ministerial role (along with the Arizona Attorney General, who is not named as a Defendant) in observing the certification of the official statewide canvass and transmitting the names of Arizona's electoral college electors to the National Archivist. *See* A.R.S. § 16-648; 3 U.S.C § 6. That alone cannot be sufficient to state a plausible claim against Governor Ducey for violations of equal protection or due process rights or any other law.

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IV. Plaintiffs' Lack Standing to Bring Claims Against Governor Ducey Because They Cannot Show that Their Alleged Injuries Are Traceable to, or Redressable by, the Governor.

As stated above, Plaintiffs do not address Governor Ducey's argument that their alleged injuries are not traceable to or redressable by him. Instead, they attempt (in a footnote) to distinguish one of the cases cited regarding standing—*Donald J. Trump for President, Inc. v. Boockvar*, ---F. Supp. 3d---, 2020 WL 6821992 (M.D. Penn. Nov. 21, 2020)—on the ground that *Boockvar* addressed certain standing theories "that are not present here." (Doc. 44 at 7 n.6). This argument misses the point. *Boockvar* is relevant here because, as in that case, Plaintiffs' injuries are neither traceable to nor redressable by the government official they sued. (Doc. 38 at 9); *see Boockvar*, 2020 WL 6821992, at *6-7. Critically, Plaintiffs do not explain how they meet either of these standing elements. Governor Ducey did not, under any factual scenario, "actually cause[] their [alleged] injuries" related to systemic election fraud and cannot redress those alleged injuries. *See Boockvar*, 2020 WL 6821992, at *6-7; *see also Barnum Timber Co. v. U.S. E.P.A.*, 633 F.3d 894, 897 (9th Cir. 2011). Because Plaintiffs are unable to explain how their claims against Governor Ducey satisfy two fundamental elements of standing, the Court should dismiss their claims against him. *See* L.R. Civ. 7.2(I).

Conclusion

Plaintiffs' claims against Governor Ducey should be dismissed with prejudice under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) because those claims are moot, barred by the Eleventh Amendment, unsupported by factual allegations, and Plaintiffs lack standing to bring them against Governor Ducey.

DATED this 6th day of December, 2020.

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CERTIFICATE OF SERVICE

I certify that on December 6, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Tracy Hobbs

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

NO. CV20-02321-PHX-DJH

MARICOPA COUNTY INTERVENORS' REPLY IN SUPPORT OF MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 9(b), the Intervenor-Defendants Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes

("Maricopa County Intervenors") respectfully reply in support of their motion to dismiss Plaintiff's Complaint (the "Motion").[1] Plaintiffs' response to the Motion misrepresents Arizona case law and misstates the applicable standard under Federal Rule of Civil Procedure 9(b). Most importantly, the Response fails to cite to a single allegation *at all*, much less one that could even remotely support a finding of fraud. Because Plaintiffs fail to "state with particularity the circumstances constituting fraud," as required by Federal Rule of Civil Procedure 9(b), this action must be dismissed.[2]

I. Plaintiffs allege fraud.

Plaintiff's entire claim is grounded in an assertion—a baseless one—of widespread election fraud. (*See* Doc. 1, ¶¶ 1-5, 10, 11, 19, 21, 44, 45, 49, 53, 54, 57-59, 61, 67, 92, 98, 108, 117, 126, 128, 129, 136, and 138-141). The word fraud, or some derivative thereof, is stated 56 times throughout the Complaint. The first sentence of the Complaint states, "this civil action brings to light a massive election fraud" and Plaintiffs request a declaration of fraud from this court. (*Id*. at ¶ 1 and *Prayer for Relief* ¶¶ 7-8). Likewise, their Response unequivocally states this case alleges, "ballot fraud," and that all the claims set forth in the complaint are "part of a *larger scheme of election fraud* that affected the result." (Doc. 44 at 23, 24 (*emphasis added*)). Yet, Plaintiffs now inexplicably assert that a showing of fraud is not necessary to prevail and, therefore, Rule 9(b)'s clear dictates need not apply. Plaintiffs are incorrect.

A. A party asserting election fraud must prove fraud to prevail.

The Response sets out the ludicrous proposition that in a case alleging "ballot

[1] If the Court holds argument, as it indicated in its most recent Order that it would, (Doc. 51), the Maricopa County Intervenors will participate. However, they believe the motions to dismiss could be decided without argument, on the submitted papers, if the Court is inclined to do so.

[2] At the telephonic hearing on December 3, 2020, the Court asked whether the election materials used in the November 3, 2020, election (such as the software, tabulators, printers, logs, etc.) are preserved. They are. The County preserves the software, logs, and ballots cast for two years, in accordance with state law. The tabulators and printers are stored in the Maricopa County Tabulation and Elections Center until they are used in the next election.

fraud" the Arizona Supreme Court has ruled that "a showing of fraud is not necessary." (Doc. 44 at 23). The Arizona Supreme Court issued no such ruling. In *Miller v. Picacho Elementary School District Number 33*, 179 Ariz. 178, 180 (Ariz. 1994), the only case Plaintiffs cite, the court ruled that if one does not allege fraud in a challenge to ballot procedures, one need not prove fraud to prevail. *Id*. Here, Plaintiff's entire complaint is based in allegations of fraud.

Moreover, the Response completely misrepresents long-standing Arizona precedent with respect to claims of election fraud. In *Hunt v. Campbell*, the Arizona Supreme Court held that claims of election fraud must be made with "sufficient proof to establish (the) charge," going on to state that "no court . . . is permitted to found its judgment upon mere suspicion and conjecture of wrongdoing, but, unless there be satisfactory evidence to the contrary, to look upon the acts of public officials with a presumption of their rectitude and good faith." 19 Ariz. 254, 264 (Ariz. 1917).

B. The Federal Rules of Civil Procedure apply in Federal Court.

To the extent Plaintiffs are asserting that the Federal Rules of Civil Procedure do not apply to this election contest, they are mistaken. Although Plaintiffs sprinkle citations to state law throughout their Complaint, it raises claims under § 1983 based on the U.S. Constitution's Fourteenth Amendment and the Elections and Electors Clauses. Plaintiffs do not address why they think the federal rules do not apply to federal claims in federal court.

Further, it is well-established that Rule 9(b)'s particularity requirement also applies to state-law causes of action. "It is well-settled that the Federal Rules of Civil Procedure apply in federal court, irrespective of the source of the subject matter jurisdiction, and irrespective of whether the substantive law at issue is state or federal." *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125 (9th Cir. 2009) (internal quotation marks omitted). "[W]hile a federal court will examine state law to determine whether the elements of fraud have been pled sufficiently to state a cause of action, the Rule 9(b) requirement that the *circumstances* of the fraud must be stated with particularity is a federally imposed rule."

Hayduk v. Lanna, 775 F.2d 441, 443 (1st Cir. 1985) (emphasis in original); *see also Jenkins v. Commonwealth Land Title Ins. Co.*, 95 F.3d 791, 796 (9th Cir.1996) (applying Rule 9(b) to pleading of state-law cause of action); *Minger v. Gre*en, 239 F.3d 793, 800 (6th Cir.2001) (same); *Roberts v. Francis*, 128 F.3d 647, 650–51 (8th Cir.1997) (same).

Finally, even if the Arizona Rules of Civil Procedure apply,which they do not, the same Rule 9(b) standard applies. Arizona Rule of Civil Procedure 9(b) states: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." This is the same whether fraud is claimed as a basis of an action for damages or as a defense. *Wilson v. Byrd*, 79 Ariz. 302 (Ariz. 1955). Similar to the Federal rules, bare allegations that a thing is "fraudulent" are insufficient to comply with the rule. *In re Cassidy's Estate*, 77 Ariz. 288 (1954); *cf. Bender v. Bender*, 123 Ariz. 90, 94 (Ariz. Ct. App. 1979) ("Fraud is never presumed, but must be alleged; therefore the party who seeks fraud as a defense must plead it with particularity.") (citing *Hunt v. Campbell*, 19 Ariz. 254 (Ariz. 1917)).

II. Plaintiffs pled no facts to support a finding of election fraud.

As is the case here, and addressed at length in the Motion, "[w]hen an entire complaint, or an entire claim within a complaint, is grounded in fraud and its allegations fail to satisfy the heightened pleading requirements of Rule 9(b), a district court may dismiss the complaint or claim." *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003). Plaintiffs' Response does not cite a single fact alleged in the Complaint to support their fraud claims and instead reasserts broad, conclusory statements with no factual support.

Plaintiffs request the extraordinary relief of setting aside the results of the election based on blanket assertions of fraud for which, more than a month after the election, they have no factual basis. This is the sixth lawsuit in which Maricopa County's elections practices have been called into question; all six of these cases were either voluntarily dismissed or dismissed by the courts, and yet Plaintiffs continue to assert claims of wrongdoing with absolutely no factual support alleged. These repeated attacks continue

to cause significant harm to the election process and to the dedicated election employees who have worked tirelessly day after day in support of this Country's vital electoral process. Defendant is hard-pressed to find an instance where the requirements of Rule 9(b) could be more necessary and consequential. As the *Bly-McGee* court aptly stated,

> Rule 9(b) serves not only to give notice to defendants of the specific fraudulent conduct against which they must defend, but also 'to deter the filing of complaints as a pretext for the discovery of unknown wrongs, to protect [defendants] from the harm that comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis.'

Bly-Magee v. California, 236 F.3d 1014, 1018 (9th Cir. 2001).

For these reasons, this Court should dismiss this Complaint with prejudice under Rule 9(b).

RESPECTFULLY submitted this 6th day of December, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on December 6th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/ V. Sisneros

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE HOBBS' REPLY IN SUPPORT OF MOTION TO DISMISS

I. Introduction

Plaintiffs' Response demonstrates the extreme disconnect between, on the one hand, the profound and antidemocratic relief they are seeking, and on the other, their failure on the facts and the law to support such extraordinary relief. Each of the arguments below independently supports granting the Secretary's Motion to Dismiss. Together, they demonstrate the frivolity of this Complaint and the tremendous damage it would cause to free and fair elections.

First, Plaintiffs fail completely to respond on the plausibility of their arguments. In the face of the Defendants' detailed arguments as to their failure to state a claim, Plaintiffs do not even cite the federal standard. Instead, they cite to an Arizona state case that only emphasizes why they should have brought a contest under Arizona law. They do not attempt to argue how their Complaint satisfies Rule 9 or makes any coherent sense. Instead, they repeat their same string of allegations about a wide-ranging global conspiracy by thousands of election officials across the country that supposedly tricked Arizona's accuracy testing. *Second*, Plaintiffs' claims are barred by laches. Plaintiffs could have brought all these claims well before now. *Third*, Plaintiffs' claims are rooted in state law and should have been brought as an election contest. The Arizona legislature crafted procedures for resolving election disputes, certifying election results, and contesting elections in specific venues and on a specific timeline. *Fourth*, Plaintiffs lack standing. They assert only generalized grievances and do not even meaningfully engage on their vote dilution claims. On the Election Clause claim, they fare no better. Their status as electors performing only ministerial duties does not provide the requisite standing. *Fifth*, the Eleventh Amendment bars these claims, which by Plaintiffs' own admission stem from Arizona law. The Court should deny Plaintiffs' requested relief and summarily dismiss this transparent effort to override the will of Arizona voters.[1]

[1] The Secretary urges this Court to decide the Defendants' and Defendant Intervenor's Motions to Dismiss on their papers without argument, which will only provide Plaintiffs with another platform to sow doubt in the election and perpetuate their unfounded claims. Indeed, Plaintiffs themselves indicated their willingness to forgo argument. [*See* Doc. 46]

II. Argument

A. Plaintiffs' implausible claims are unsupported by their so-called "evidence" and do not satisfy the heightened pleading standard.

Shockingly, Plaintiffs devote *less than a page* of their response to the argument that their claims are utterly implausible. Doc. 44 at 23-24. Their brief makes no mention whatsoever of the Rule 12 plausibility standard under *Twombly* or *Iqbal,* and no attempt to argue they meet Fed. R. Civ. 9(b). Rather, Plaintiffs take aim at a strawman, arguing about the circumstances under which non-compliance with state statutes can invalidate a vote under Arizona pleading standards, and that they satisfy the standard for "ballot fraud" under *Miller v. Picacho Elementary Sch. Dist., No. 33*, 877 P.2d 277, 279 (Ariz. 1994)). This misses the point entirely. State-court pleading standards, of course, are simply irrelevant in federal court. Even more fundamentally, though, the Secretary's *Iqbal/Twombly* section was not based on some distinction between "technical" and more "substantive" violations of Arizona law. Rather, the Secretary spent pages explaining all the many independent reasons why Plaintiffs' allegations were utterly implausible: the "expert" allegations were attributed to people with no relevant expertise, suffered from numerous fatal methodological flaws, and were untethered to any actual facts about the election in Arizona, while the inferences Plaintiffs ask the Court to draw from both the "expert" and "fact" allegations make no sense—and certainly are not plausible. *See* Doc. 40 at 13-18. Plaintiffs responded to these detailed arguments with precisely nothing.

Even if one were charitably to assume the "likelihood of success" portion of Plaintiffs' brief was also intended to demonstrate the plausibility of their claims, nothing in that part provides any basis for avoiding dismissal either. Simply saying that allegations are "compelling," Doc. 44 at 25, and asserting that "Defendants' actions disenfranchised Republicans," *id.* at 26, is not enough. Nor does the fact that the same unqualified expert, Dr. Briggs, has made the same sham claims in five states in any way buttress his opinions. *Id.* at 27. Plaintiffs cannot and do not dispute that the surveys on which Dr. Briggs bases his opinions and that Plaintiffs offer as grounds for casting aside hundreds of thousands

of votes and overturning the election are based entirely on a survey conducted by another person: Matt Braynard. Doc. 1-2. Plaintiffs offer zero evidence of Braynard's identity or qualifications (apart from a printout of four tweets from someone apparently named Matt Braynard, Doc. 1-9), let alone allege or offer any information regarding his experience and qualifications as to political surveys and quantitative methods, or any steps he took to ensure the reliability of his survey results.

And Plaintiffs offer nothing to support their core conspiracy theory that Dominion voting machines and software manipulated the election results *in Arizona*. Instead, Plaintiffs have merely taken the step of identifying one of their previously anonymous experts, Mr. Teasley, the author of the report included as Exhibit 4 to their Complaint. Doc. 1-11. Plaintiffs now offer another report from Teasley (this time belatedly served, nine hours *after* the court-ordered deadline for expert disclosures), in which he asserts that the results were higher for President-Elect Biden than he would have expected in counties using Dominion machines. Doc. 44-1 at 24-34. But Teasley provides none of the basic data and information required to validate his assumptions—he doesn't disclose what counties he studied, what data he used, how he determined those results were exceptionally high, or how his experience in cybersecurity somehow qualifies him to opine on election results. Apart from Teasley's inadmissible and unreliable opinions, Plaintiffs make no effort to connect the dots on their Dominion conspiracy theory that somehow links the late Hugo Chavez to Election Day 2020 in Arizona, nor do they plausibly explain how their assertion of "old fashioned vote stuffing" somehow caused Biden's lead in Arizona to *diminish* by tens of thousands of votes counted by those same machines during the several days following Election Day.

Plaintiffs' claims are even more implausible given that the election passed all of Arizona's statutorily-required post-election hand count audits and logic and accuracy testing. Doc. 40 at 3; *see* A.R.S. §§ 16-449, 16-602. Indeed, the Complaint recognizes this post-election logic and accuracy testing. Doc. 1 at ¶ 53. The only allegation in the Complaint to impugn the accuracy of this testing is based on one Declarant, Linda

Brickman, **who testified in the state court election contest regarding various alleged problems**, but whose testimony was not given any weight by the superior court in its ruling denying the contest. *See* Ex. A (Ruling in CV 2020-015285, Maricopa County, Dec. 4, 2020); *see also* recording of Dec. 4, 2020 hearing, part 2, *available at* https://superiorcourt.maricopa.gov/civil/2020-general-election-cases/. The Complaint cites Ms. Brickman for supposed issues regarding signature verification and alleged vote switching. Doc. 1 at ¶ 53. Those claims were rejected by the superior court. Ex. A at 8-9. Regardless, even accepted as true, it is but one example of inference after inference tied together with no sound connection—let alone one that states a claim.

Plaintiffs also now attempt to bolster their implausible claims by attaching letters from Congressmen Gosar and Biggs and six members of the Arizona legislature, which are dated December 5 and were presumably solicited for the purpose of attaching to Plaintiffs' Response. Doc. 44 at 2–3. In effect, Plaintiffs ask this Court to ignore the standards of *Twombly*, *Iqbal*, and Rule 9(b) because a handful of elected officials ask it to. In addition to being inappropriate, these letters further evince that Plaintiffs' case is built on nothing but falsehoods and conspiracies. Congressman Gosar's letter, for example, claims that evidence of anomalies was presented "in a recent legislative hearing." Doc. 44 at 3 (quoting Doc. 44-1 at 3). But there was no legislative hearing. A "hearing" in a hotel conference room with participation from a handful of state legislators is a press conference (or, as Arizona's House Speaker Rusty Bowers put it, an "unofficial public gathering"). *See* Ex. B at 1. In fact, despite repeated requests, Arizona's legislative leaders have refused to hold an *actual* legislative hearing on purported fraud; as Speaker Bowers described, proponents of these claims have "presented only theories, not proof." *Id.* Now, having failed to get the Republican-controlled legislature to do their bidding, Plaintiffs ask this Court to essentially appoint them as a private grand jury with free-ranging authority, conferring upon them the right to make a federal case out of whatever conspiracy theory they may dream up—no matter how implausible.

B. Plaintiffs' claims are barred by laches.

Plaintiffs argue (1) they could not have discovered the factual basis for any of their claims earlier than when they did, and (2) they could only have filed their action after vote-counting misconduct became apparent in the days following the election and particularly the statewide canvass. Doc. 44 at 9-10. Neither argument is persuasive for multiple independent reasons. *First*, many of plaintiffs' alleged injuries arose—and were ripe for challenge—as early as October, when counties began to tabulate early ballots and early voting was underway. *See, e.g.*, Doc. 1 ¶¶ 46-48 (taking issue with the process used to match signatures on absentee ballots during the election); *id.* ¶¶ 48-49 (criticizing the roles of poll watchers and poll referees); *id.* ¶¶ 118-120 (claiming violations of the right to be present and have observation and access to the electoral process "as secured by the Equal Protection Clause of the United States Constitution and Arizona law").

Second, nothing—not even the Arizona election contest law that Plaintiffs cite—requires that challenges to alleged errors in tabulation be saved until after the Secretary certifies the official statewide canvass. Even accepting Plaintiffs' allegations as true, their Complaint makes plain that their purported reasons to suspect the accuracy of the Dominion machines arose far in advance of the 2020 General Election. *See* Doc. 40 at 11; *see also* Doc. 1 ¶¶ 67-69. And counties released their results within days after polls closed on November 3, 2020. If, in fact, the returns were as suspect as Plaintiffs claim, they could have brought suit once individual counties began to certify their canvasses throughout mid-November. Plaintiffs have no good explanation for why they needed to wait until days after the Secretary and Governor certified the statewide canvass.

Third, there is a reason why Arizona sets strict procedural requirements and a very short window for filing and resolving election contests, and why federal law discourages these *post-hoc* challenges, "lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs." *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988); *see also Donaghey*, 584 P.2d at 559. Finality and stability are cornerstones of our democratic process. Congress has made clear that election disputes should be resolved quickly, and sets specified timeframes for the

Electoral College, starting on "the Tuesday next after the first Monday in November" through the meeting of the Electoral College in December through the meeting of Congress that occurs by statute on January 6. *See* 3 U.S.C. §§ 1-15. The Court should accordingly find that laches bars this suit.

C. This Court should not condone Plaintiffs' unprecedented attempt to make an end-run around Arizona's election contest procedures.

The Arizona legislature crafted procedures for resolving election disputes, certifying election results, and contesting elections in specific venues and on a strict timeline. A.R.S. § 16-672 *et seq*. These grounds include contesting an election "misconduct on the part of election boards or any members thereof" or any officer who participates in a state canvass, *id.* § 16-672(A), or "[o]n account of illegal votes," *id.* § 16-672(A)(4). Plaintiffs' suit attempts to circumvent those procedures and inappropriately invoke federal jurisdiction. Plaintiffs concede that their Complaint alleges "that Defendants have both violated *Arizona law* and applied *Arizona law* to dilute the votes of Arizona Republicans." Doc. 44 at 7 (emphasis added). This concession is fatal. They cannot attempt to create federal court jurisdiction even while conceding that they base their entire claim on "violat[ions]" and "appli[cations]" of Arizona law. The Arizona Supreme Court has rejected the idea that election contests may depart from the stringent statutory text—which allows contest claims in state court, not federal court. *Donaghey v. Ariz. Attorney Gen.*, 584 P.2d 557, 559 (Ariz. 1978).

Plaintiffs could have brought an election contest under Section 16-672. The remedy sought there, like the remedy sought here, is to undo the election. *Compare* Doc. 1 at 51-52 (Plaintiffs' Complaint here seeking to "de-certify the election results" *with* Doc. 40 Exh. B at 19 (Plaintiff Ward's state complaint seeking "[t]hat the Court declare the certificate of election of the Biden Electors is of no further legal force or effect, and that the election is annulled and set aside in accordance with A.R.S. § 16-676(B)). Indeed, Plaintiffs' own Complaint makes clear that it is about "specific violations of *Arizona* law." *See* Doc. 1 ¶ 21 (emphasis added); *see also id.* ¶¶ 46–53.

Even while attempting to press their argument that this case differs from an Arizona election contest, they simultaneously attempt to avail themselves of Arizona's contest statutes where it benefits them. They argue, for example, that rather than having to satisfy Rule 9(b), they need only satisfy the lower threshold of "ballot fraud" as set forth by Arizona law and the Arizona Supreme Court. Doc. 44 at 23-24. And incredibly, they point to the Arizona contest provision stating that Arizona election contests may only be brought in a 5-day window after the canvass. *See id.* at 10 (citing A.R.S. § 16-673).

Plaintiffs' allegations here are precisely the sorts of claims captured by the Arizona elections contest statute. They allege misconduct on the part of election officials and their claims depend entirely on the presence of "illegal votes." A.R.S. § 16-672(A)(4). Plaintiffs cite no authority for the proposition that they may bring Arizona law-based claims specifically covered by the Arizona contest statute under Arizona law-based pleading standards and seek Arizona law-based remedies in federal court.

And contrary to Plaintiffs' apparent contention in their response, *see* Doc. 44 at 6, it is *Plaintiffs'* burden to establish federal jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). This they have not done. Plaintiffs' allegations are ultimately state law claims repackaged as federal law claims. For example, Plaintiffs cite to the federal Voting Rights Act and the Help America Vote Act. *See* Doc. 44 at 14–15. But Plaintiffs do not allege a cause of action under either HAVA or the VRA, nor would they have standing to bring such a claim. *See also* Part II.D.

Federal jurisdiction is not available to circumvent the Arizona legislature's designated forum for challenging an election simply by bootstrapping concerns about the constitutional right to vote to any election-related cause of action. None of Plaintiffs' authorities help them. Doc. 44 at 15-16. They at most supply a string of citations to support non-controversial and high-level principles reaffirming that federal jurisdiction exists for distinguishable voting-rights claims, or the well-known fact that federal laws protect voting—none of which Plaintiffs advance here. Plaintiffs' Equal Protection claim, for example, alleges so-called "vote dilution" because of Defendants' purported failure

to "comply with the requirements of Arizona law," Doc. 1 ¶ 117 (emphasis added). But "vote dilution" is not a viable legal theory in this context, *see infra* Part II.D, and what Plaintiffs really take issue with is an alleged failure to follow state law, such as allowing greater access to the observation of ballot counting, *see* Doc. 1 ¶¶ 118, 120.

Apart from citing repeatedly and misleadingly to cases about true vote dilution—that is, cases about apportionment or redistricting—Plaintiffs' star authority for their argument that they need not bring their case as an election contest is Chief Justice Rehnquist's concurrence in *Bush v. Gore*. *See* Doc. 44 at 15 (citing 531 U.S. 98, 112–14 (2000)). That opinion, of course, is a non-controlling concurrence. But even the majority opinion in *Bush* expressly disclaimed application outside its specific facts, *id.* at 109, and those facts bear no resemblance to this case. Gore filed several election contests under Florida law, which ultimately led to the Florida Supreme Court ordering that one county conduct a large manual recount several days before the "safe harbor" deadline under 3 U.S.C. § 5. Id. at 101-03. *Bush v. Gore* was decided as an appeal from state-court decisions, not from federal court proceedings. It thus in no way supports Plaintiffs' argument that they can file directly in federal district court in violation of strict state election law procedures for challenging an election outcome Moreover, it is especially inappropriate to allow an end-run around the state court procedure here because a state court already has rejected a contest provision filed by one of the named Plaintiffs. The state court rejected the very remedy Plaintiffs seek. Instead, it "confirm[ed] the election." Ex. A at 9. It found "no misconduct, no fraud, and no effect on the outcome of the election." *Id.* at 8. And it found that "the evidence did not prove illegal votes." *Id.*

Finally, if Plaintiffs are not required to avail themselves of Arizona's strict procedural and timing requirements for elections contests and instead may proceed in federal court, what's to stop other disappointed Republican voters or candidates from filing lawsuit after lawsuit until January 20 (if not beyond)? Such a result would further destabilize our democracy and undermine the will of Congress, the Arizona legislature and, above all, the will of Arizona's voters. *See also supra* Part II.B (laches).

D. Plaintiffs lack standing to pursue their claims.

Plaintiffs appear to concede that they do not have standing under the Electors/Elections Clause as private plaintiffs and instead argue they have standing because they are the appointed electors for President Trump and therefore have standing as candidates under *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020). Doc. 44 at 5. There, the Eighth Circuit held that presidential electors were definitively considered "candidates" under Minnesota law and thus had standing. *Id.* at 1057. But regardless of how Minnesota law treats electors, Arizona law makes clear that the presidential electors are ministerial even if on the ballot. Plaintiffs cite only one provision that contains both the terms "candidate" and "elector." *See* Doc. 44 at 6 (citing A.R.S. § 16-344(A)). That statute provides only that candidates for the office of presidential elector be appointed by state party representatives; *see also* A.R.S. § 16-212(C) (describing presidential electors as state officeholders who can be removed and replaced by appointment). Indeed, Arizona law specifies that the presidential electors are ministerial. The voter is voting for the Presidential candidate, whose name "shall be printed in bold type," and "one mark directly next to a presidential candidate's surname shall be counted as a vote for each elector in the bracketed list next to the presidential and vice-presidential candidates." *Id.* § 16-507(B). Notably, the Presidential candidate has not joined this action by his electors.

Even if plaintiffs were considered "candidates" under Arizona (they aren't), *Carson* is an outlier and distinguishable because it was about a state court's change of the legislature's requirement on absentee ballots whereas here, Defendants acted under law. The weight of federal authority holds that only state legislatures have standing to bring Electors/Elections Clause cases in cases like this. *See* Doc. 40 at 7-8 (citing *Bognet v. Sec'y of Commonwealth*, No. 20-2314, 2020 WL 6686120 (3d Cir. Nov. 13, 2020)); *Hotze v. Hollins*, No. 4:20-cv-03709, 2020 WL 6437668, at *2 (S.D. Tex. Nov. 2, 2020).[2]

[2] Plaintiffs cite *McPherson v. Blacker*, 146 U.S. 1 (1892) and *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) in passing and without further explication. Both are inapposite. *McPherson* involved Michigan electors who brought suit to challenge the

Indeed, in *Bognet*, the Third Circuit rejected standing even though a plaintiff was a candidate for Congress. 2020 WL 6686120 at *4, *6-8.

With respect to standing for their remaining claims, Plaintiffs insist that theirs are not generalized grievances because they challenge the dilution of Republican votes. Doc. 44 at 7-8. Aside from the fact that their allegations of a "scheme" to selectively undercount votes of one political party are fantastical, they cannot find support for their novel brand of vote-dilution claim in federal law. Doc. 44 at 27. The Supreme Court has long considered vote dilution claims to "involve challenges to methods of electing representatives—like redistricting or at-large districts—as having the effect of diminishing minorities' voting strength." *Democratic Nat'l Comm. v. Hobbs*, 948 F.3d 989, 1011 (9th Cir. 2020), *cert. granted on other grounds sub nom. Arizona Republican Party v. Democratic Nat'l Comm*., No. 19-1258, 2020 WL 5847129 (U.S. Oct. 2, 2020) (citation omitted). Plaintiffs' claims are not that. As the *Bognet* case discussed in the Secretary's Motion to Dismiss (Doc. 40 at 9) held, Plaintiffs lack standing for these types of vote dilution claims. 2020 WL 6686120, at *11. "Vote dilution in this context is a paradigmatic generalized grievance that cannot support standing." *Wood v. Raffensberger*, — F.3d —, 2020 WL 7094866, at *12 (11th Cir., Dec. 5, 2020). Accordingly, they are left with nothing more than a grievance shared by other disappointed voters, and so cannot bring suit here.

E. The Eleventh Amendment bars Plaintiffs' request for prospective relief because their claims ultimately sound in state, not federal, law.

The Secretary does not dispute that the Eleventh Amendment permits prospective injunctive relief against state officials on the basis of *federal* law. But Plaintiffs ignore the requisite latter part of that sentence. Where claims are based on *state* law, the Eleventh Amendment bars all relief, "whether prospective or retroactive." *Pennhurst State Sch. &*

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state's new method of choosing electors. It has nothing to do with standing to challenge the *results* of a presidential election. And *Bush*, of course, was brought by the *presidential candidate* in the 2000 election, not an elector.

Hosp. v. Halderman, 465 U.S. 89, 106 (1984). That restriction applies even where, as here, plaintiffs cloak their state-law claims in federal garb. Doc. 40 at 19–20 (citing cases). As noted previously, Plaintiffs' own Complaint alleges "specific violations of *Arizona* law." Doc. 1 ¶¶ 21, 46–53 (emphasis added). Their Elections and Electors Clause claim is based on Defendants purportedly exercising electoral authority "in ways that conflict with existing [state] legislation." Doc. 1 ¶ 106. Likewise, their Equal Protection Clause hinges on Defendants' alleged failure to "enforce[] fairly and uniformly" Arizona's election laws, claiming that because "Defendants failed to comply with the requirements of *Arizona* law," their votes were diluted in violation of the Equal Protection Clause. Doc. 1 ¶ 116–17 (emphasis added). Count III alleges a Due Process Clause violation based on so-called "vote dilution." This, too, has no actual basis in federal law, for much the same reasons Plaintiffs lack standing for this claim. *See supra* at 11; Doc. 40 at 8. Plaintiffs' reliance on *Porter v. Jones*, 319 F.3d 483, 491 (9th Cir. 2003), is similarly unpersuasive. That case involved violations of the First Amendment, not state law. In short, Plaintiffs cannot escape the Eleventh Amendment's bar by simply slapping a "federal claim" label on what are ultimately questions of state law.

III. Conclusion

Plaintiffs seek to cast a cloud over the outcome of the 2020 election, and ask this Court to facilitate their futile hunt for evidence supporting their sensational claim that President-Elect Biden's victory resulted from a global conspiracy, rather than from a straightforward counting of votes. Plaintiffs offer only a mix of speculation, inadmissible evidence, and failed legal theories—not the plausible theories, federal claims, and Article III standing required to bring this case in federal court. In short, they have supplied no reason to question a single vote, let alone a sufficient number of votes to overturn the results of the election. This Court should dismiss their brazen effort to undermine the collective will of Arizona voters expressed through a fair, free, and secure election.

Respectfully submitted this 6th day of December, 2020.

SUSMAN GODFREY L.L.P.

By s/ Justin A. Nelson
Justin A. Nelson
Stephen E. Morrissey
Stephen Shackelford
Davida Brook

COPPERSMITH BROCKELMAN PLC
Roopali H. Desai
D. Andrew Gaona
Kristen Yost

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

INDEX OF EXHIBITS

Exhibit	Description	Date
A	Minute Order of the Superior Court of Arizona Maricopa County *Ward v. Constance Jackson, et al.,* Case No. CV2020-015285	12/04/2020
B	News Release – Arizona House of Representatives Speaker Bowers Addresses Calls for the Legislature to Overturn 2020 Certified Election Results	12/04/2020

Exhibit A

Clerk of the Superior Court
*** Filed ***
12/4/2020 4:05 p m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

KELLI WARD

DENNIS I WILENCHIK

v.

CONSTANCE JACKSON, et al.

SARAH R GONSKI

ROOPALI HARDIN DESAI
JOSEPH EUGENE LA RUE
DAVID SPILSBURY
ROY HERRERA
DANIEL A ARELLANO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE WARNER
BRUCE SPIVA
PERKINS COIE LLP
700 THIRTEENTH STREET NW
SUITE 600
WASHINGTON DC 20005

MINUTE ENTRY

East Court Building – Courtroom 414

9:15 a.m. This is the time set for a continued Evidentiary Hearing on Plaintiff's anticipated election contest petition via GoToMeeting.

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MARICOPA COUNTY

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The following parties/counsel are present virtually through GoToMeeting and/or telephonically:

- Plaintiff Kelli Ward is represented by counsel, John D. Wilenchik.

- Defendants Constance Jackson, Felicia Rotellini, Fred Yamashita, James McLaughlin, Jonathan Nez, Luis Alberto Heredia, Ned Norris, Regina Romero, Sandra D. Kennedy, Stephen Roe Lewis, and Steve Gallardo (collectively, the "Biden Elector Defendants") are represented by counsel, Sarah Gonski, Bruce Spiva (*pro hac vice*), Daniel Arellano, and Roy Herrera.

- Intervenors Adrian Fontes (in his official capacity as Maricopa County Recorder) and Maricopa County Board of Supervisors (collectively, "County Intervenors") and are represented by counsel, Thomas Liddy, Emily Craiger, and Joseph La Rue.

- Intervenor Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Rooplai Desai and Kristen Yost. State Election Director Sambo "Bo" Dul is also present.

Counsel for Biden Elector Defendants addresses the court as to the court's ruling denying any Rule 50 motion practice after the conclusion of Plaintiff's case. Discussion is held thereon and counsel for Biden Elector Defendants states his position on the record. The court affirms its prior ruling denying the request for any Rule 50 motion practice.

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

Biden Elector Defendants' Case:

Linton Mohammed is sworn and testifies.

Biden Elector Defendants' exhibit 16 is received in evidence.

Linton Mohammed is excused.

Biden Elector Defendants rest.

Intervenor Secretary of State's Case:

Sambo "Bo" Dul is sworn and testifies.

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Intervenor Secretary of State's exhibit 32 is received in evidence.

Sambo "Bo" Dul is excused.

Intervenor Secretary of State rests.

LET THE RECORD REFLECT that the court notes its prior acquaintance with County Intervenors' witness, Reynaldo Valenzuela, due to election matters while serving previously as the civil presiding judge.

County Intervenors' Case:

Reynaldo Valenzuela is sworn and testifies.

County Intervenors' exhibit 29 is received in evidence.

10:31 a.m. The court stands at recess.

10:41 a.m. Court reconvenes with the parties and respective counsel present.

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

Reynaldo Valenzuela continues to testify.

County Intervenors' exhibit 30 is received on evidence.

Reynaldo Venezuela is excused.

Scott Jarrett is recalled and testifies further.

Scott Jarrett is excused.

County Intervenors rest.

Plaintiff's Rebuttal:

Liesl Emerson is sworn and testifies.

Liesl Emerson is excused.

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Plaintiff rests.

11:30 a.m. The court stands at recess.

11:36 a.m. Court reconvenes with the parties and respective counsel present.

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

Closing arguments are presented.

Based on the testimony and evidence presented,

IT IS ORDERED taking this matter under advisement with a written ruling to be issued as a "**LATER**:" to this minute entry.

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

LET THE RECORD FURTHER REFLECT counsel indicate on the record that the courtroom clerk may dispose of Plaintiff's exhibits 2 through 13 and 15; County Intervenors' exhibit 21; and Intervenor Secretary of State's exhibits 33 and 34 not offered or received in evidence.

12:22 p.m. Matter concludes.

LATER:

Based on the evidence presented, the Court makes the following findings, conclusions, and orders. For reasons that follow, the relief requested in the Petition is denied.

1. Background.

On November 30, 2020, Governor Ducey certified the results of Arizona's 2020 general election, and the Biden/Harris ticket was declared the winner of Arizona's 11 electoral votes. The same day, Plaintiff filed this election challenge under A.R.S. § 16-672. In order to permit this matter to be heard and appealed (if necessary) to the Arizona Supreme Court before the Electoral College meets on December 14, 2020, the Court held an accelerated evidentiary hearing on December 3 and 4, 2020.

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2. <u>The Burden Of Proof In An Election Contest</u>.

A.R.S. § 16-672 specifies five grounds on which an election may be contested, three of which are alleged here:

> A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:
>
> 1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.
>
> . . .
>
> 4. On account of illegal votes.
>
> 5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

A.R.S. § 16-672(A)(1). Arizona law provides two remedies for a successful election contest. One is setting aside the election. A.R.S. § 16-676(B). The other is to declare the other candidate the winner if "it appears that a person other than the contestee has the highest number of legal votes." A.R.S. § 16-676(C).

The Plaintiff in an election contest has a high burden of proof and the actions of election officials are presumed to be free from fraud and misconduct. *See Hunt v. Campbell*, 19 Ariz. 254, 268, 169 P. 596, 602 (1917) ("the returns of the election officers are prima facie correct and free from the imputation of fraud"); *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986) ("One who contests an election has the burden of proving that if illegal votes were cast the illegal votes were sufficient to change the outcome of the election."). A plaintiff alleging misconduct must prove that the misconduct rose to the level of fraud, or that the result would have been different had proper procedures been used. *Moore*, 148 Ariz. at 159, 713 P.2d

at 821. "[H]onest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).

These standards derive, in large part, from Arizona's constitutional commitment to separation of powers. Ariz. Const. Art. 3. The State Legislature enacts the statutes that set the rules for conducting elections. The Executive Branch, including the Secretary of State and county election officials, determine how to implement those legislative directives. These decisions are made by balancing policy considerations, including the need to protect against fraud and illegal voting, the need to preserve citizens' legitimate right to vote, public resource considerations, and—in 2020—the need to protect election workers' health. It is not the Court's role to second-guess these decisions. And for the Court to nullify an election that State election officials have declared valid is an extraordinary act to be undertaken only in extraordinary circumstances.

3. <u>The Evidence Does Not Show Fraud Or Misconduct</u>.

A.R.S. § 16-672(A)(1) permits an election contest "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." Plaintiff alleges misconduct in three respects. First is that insufficient opportunity was given to observe the actions of election officials. The Court previously dismissed that claim as untimely. *See Lubin v. Thomas*, 213 Ariz. 496, 497, 144 P.3d 510, 511 (2006) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice."). The observation procedures for the November general election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured.

Second, Plaintiff alleges that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file. Under Arizona law, voters who vote by mail submit their ballot inside an envelope that is also an affidavit signed by the voter. Election officials review all mail-in envelope/affidavits to compare the signature on them with the signature in voter registration records. If the official is "satisfied that the signatures correspond," the unopened envelope is held until the time for counting votes. If not, officials attempt to contact the voter to validate the ballot. A.R.S. § 16-550(A).

This legislatively-prescribed process is elaborated on in the Secretary of State's Election Procedures Manual. The signature comparison is just one part of the verification process. Other

safeguards include the fact that mail-in ballots are mailed to the voter's address as listed in voter registration records, and that voters can put their phone number on the envelope/affidavit, which allows election officials to compare that number to the phone number on file from voter registration records or prior ballots.

Maricopa County election officials followed this process faithfully in 2020. Approximately 1.9 million mail-in ballots were cast and, of these, approximately 20,000 were identified that required contacting the voter. Of those, only 587 ultimately could not be validated.

The Court ordered that counsel and their forensic document examiners could review 100 randomly selected envelope/affidavits to do a signature comparison. These were envelope/affidavits as to which election officials had found a signature match, so the ballots were long ago removed and tabulated. Because voter names are on the envelope/affidavits, the Court ordered them sealed. But because the ballots were separated from the envelope/affidavits, there is no way to know how any particular voter voted. The secrecy of their votes was preserved.

Two forensic document examiners testified, one for Plaintiff and one for Defendants. The process forensic document examiners use to testify in court for purposes of criminal guilt or civil liability is much different from the review Arizona election law requires. A document examiner might take hours on a single signature to be able to provide a professional opinion to the required degree of certainty.

Of the 100 envelope/affidavits reviewed, Plaintiff's forensic document examiner found 6 signatures to be "inconclusive," meaning she could not testify that the signature on the envelope/affidavit matched the signature on file. She found no sign of forgery or simulation as to any of these ballots.

Defendants' expert testified that 11 of the 100 envelopes were inconclusive, mostly because there were insufficient specimens to which to compare them. He too found no sign of forgery or simulation, and found no basis for rejecting any of the signatures.

These ballots were admitted at trial and the Court heard testimony about them and reviewed them. None of them shows an abuse of discretion on the part of the reviewer. Every one of them listed a phone number that matched a phone number already on file, either through voter registration records or from a prior ballot. The evidence does not show that these affidavits are fraudulent, or that someone other than the voter signed them. There is no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots.

Third, Plaintiff alleges errors in the duplication of ballots. Arizona law requires election officials to duplicate a ballot under a number of circumstances. One is where the voter is overseas and submits a ballot under UOCAVA, the Uniformed And Overseas Citizens Absentee Voting Act. Another is where the ballot is damaged or otherwise cannot be machine-tabulated. When a duplicate is necessary, a bipartisan board creates a duplicate ballot based on the original. A.R.S. § 16-621(A). In 2020, Maricopa County had 27,869 duplicate ballots out of more than 2 million total ballots. The vast majority of these were either mail-in ballots or UOCAVA ballots. 999 of them came from polling places.

The Court ordered that counsel could review 100 duplicate ballots. Maricopa County voluntarily made another 1,526 duplicate ballots available for review. These ballots do not identify the voter so, again, there is no way to know how any individual voter voted. Of the 1,626 ballots reviewed, 9 had an error in the duplication of the vote for president.

Plaintiff called a number of witnesses who observed the duplication process as credentialed election observers. There was credible testimony that they saw errors in which the duplicated ballot did not accurately reflect the voter's apparent intent as reflected on the original ballot. This testimony is corroborated by the review of the 1,626 duplicate ballots in this case, and it confirms both that there were mistakes in the duplication process, and that the mistakes were few. When mistakes were brought to the attention of election workers, they were fixed.

The duplication process prescribed by the Legislature necessarily requires manual action and human judgment, which entail a risk of human error. Despite that, the duplication process for the presidential election was 99.45% accurate. And there is no evidence that the inaccuracies were intentional or part of a fraudulent scheme. They were mistakes. And given both the small number of duplicate ballots and the low error rate, the evidence does not show any impact on the outcome.

The Court finds no misconduct, no fraud, and no effect on the outcome of the election.

4. <u>The Evidence Does Not Show Illegal Votes</u>.

A.R.S. § 16-672(A)(2) permits an election contest "[o]n account of illegal votes." Based on the facts found above, the evidence did not prove illegal votes, much less enough to affect the outcome of the election. As a matter of law, mistakes in the duplication of ballots that do not affect the outcome of the election do not satisfy the burden of proof under Section 16-672(A)(2).

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5. The Evidence Does Not Show An Erroneous Vote Count.

A.R.S. § 16-672(A)(5) permits an election contest on the ground that, "by reason of erroneous count of votes" the candidate certified as the winner "did not in fact receive the highest number of votes." Plaintiff has not proven that the Biden/Harris ticket did not receive the highest number of votes.

6. Orders.

Based on the foregoing,

IT IS ORDERED denying the relief requested in the Petition.

IT IS FURTHER ORDERED denying the request to continue the hearing and permit additional inspection of ballots.

IT IS FURTHER ORDERED, as required by A.R.S. § 16-676(B), confirming the election.

IT IS FURTHER ORDERED that any request for costs and/or attorneys' fees be filed, and a form of final judgment be lodged, no later than January 5, 2020. If none of these is filed or lodged, the Court will issue a minute entry with Rule 54(c) language dismissing all remaining claims.

The Court finds no just reason for delay and enters this partial final judgment under Ariz. R. Civ. P. 54(b). The Court makes this finding for purposes of permitting an immediate appeal to the Arizona Supreme Court.

/ s / RANDALL H. WARNER

JUDGE OF THE SUPERIOR COURT

Exhibit B

NEWS RELEASE

Arizona House of Representatives
Speaker of the House Rusty Bowers (R-25)
1700 West Washington • Phoenix, Arizona • 85007

Friday, December 4, 2020
FOR IMMEDIATE RELEASE

Speaker Bowers Addresses Calls for the Legislature to Overturn 2020 Certified Election Results

STATE CAPITOL, PHOENIX – Arizona House Speaker Rusty Bowers today made the following statement:

This week, Rudy Giuliani, Jenna Ellis, and others representing President Donald Trump came to Arizona with a breathtaking request: that the Arizona Legislature overturn the certified results of last month's election and deliver the state's electoral college votes to President Trump. The rule of law forbids us to do that.

Mr. Giuliani and Ms. Ellis made their case here at least twice—on Monday, at an unofficial public gathering hosted by a small group of legislators; and again on Tuesday, during a closed-door meeting at the State Capitol with Republican leaders from both chambers of the Legislature. Both times, the Trump team made claims that the election was tainted by fraud but presented only theories, not proof. U.S. Attorney General William P. Barr said on Tuesday that he, too, has "not seen fraud on a scale that could have effected a different outcome of the election."

Even if such evidence existed, the Arizona Legislature simply couldn't do what is being asked. Under our state's constitution, the Legislature can act only when it is in session, and the Legislature could call itself into a special session only with the support of a bipartisan supermajority of its members.

That won't materialize, but even if did, the Legislature couldn't provide the recourse the President's team seeks. The U.S. Constitution authorizes each state to appoint presidential electors "in such Manner as the Legislature thereof may direct." For decades, Arizona law has required that the voters elect the state's electors on Election Day—this year, on November 3rd. And under a law the Republican-led Legislature passed just three years ago, the state's electors are required to cast their votes for the candidates who received the most votes in the official statewide election canvass. Enacted after the 2016 presidential election, in which President Trump won the electoral college but not the popular vote, the law was aimed at ensuring that Arizona's electors would remain faithful to the vote of the people.

Our state's canvass was completed on Monday, and Joe Biden and Kamala Harris received the most votes, so those are the candidates whom the state's presidential electors must vote for. Nothing in the U.S. Constitution or the decisions of the U.S. Supreme Court even suggests that the Arizona Legislature could retroactively appoint different electors who would cast their ballots for

different candidates. The Trump legal team has cited *McPherson v. Blacker* (1892), to claim that the legislature can "resume the power [to appoint electors] at any time." And it is true that the Arizona Legislature could alter the method of appointing electors prospectively. But it cannot undo the election of electors whom the voters already voted for. As the Supreme Court made clear in *Bush v. Gore* (2000), "[w]hen the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental."

No election is perfect, and if there were evidence of illegal votes or an improper count, then Arizona law provides a process to contest the election: a lawsuit under state law. But the law does not authorize the Legislature to reverse the results of an election.

As a conservative Republican, I don't like the results of the presidential election. I voted for President Trump and worked hard to reelect him. But I cannot and will not entertain a suggestion that we violate current law to change the outcome of a certified election.

I and my fellow legislators swore an oath to support the U.S. Constitution and the constitution and laws of the state of Arizona. It would violate that oath, the basic principles of republican government, and the rule of law if we attempted to nullify the people's vote based on unsupported theories of fraud. Under the laws that we wrote and voted upon, Arizona voters choose who wins, and our system requires that their choice be respected.

Forty years ago next month, President Ronald Reagan reminded us that while the "orderly transfer of authority" is a "commonplace occurrence" for Americans, "[i]n the eyes of many in the world, this every-4-year ceremony we accept as normal is nothing less than a miracle." Now, Americans are being reminded once again never to take for granted what President Reagan correctly described as "the continuity which is the bulwark of our Republic."

###

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' MOTION FOR HEARING ON MOTION FOR PRELIMINARY INJUNCTION

[1] District of Arizona admission scheduled for 12/9/2020.

COMES NOW Plaintiffs, by and through undersigned counsel, and moves the Court to schedule a hearing on Plaintiffs' motion for a preliminary injunction on December 8, 2020 after oral arguments on the motions to dismiss per the court's order dated December 5, 2020 [Dkt No. 43]. This Motion is brought pursuant to FRCP 65.

In support, Plaintiffs show:

1) Plaintiffs' filed a Motion for Temporary Restraining Order, Motion for Preliminary Injunction on December 2, 2020 to, among other things, decertify the 2020 elections results. [Doc-2].

2) Plaintiffs also filed a Motion to Seal on December 2, 2020 [Doc-14].

3) On December 5, 2020, the Court issued a minute order rescheduling a scheduled hearing: IT IS ORDERED the Hearing set for Tuesday, December 8, 2020 at 9:15 AM on Plaintiffs' Motion for Temporary Restraining Order [Doc. 28] is hereby converted to Oral Argument on the pending Motions to Dismiss [Docs. 36, 37, 38, 40.]

4) Each of Defendants' Motions, 36, 37, 38 and 40, set for argument, constitute a Motion to Dismiss and a Response to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

5) The Court further issued the minute order to say: IT IS FURTHER ORDERED the Hearing on Plaintiffs' Motion for Temporary Restraining Order [Doc. 2] is reset to Thursday, December 10, 2020 at 9:30 AM.

6) The parties have fully briefed the Motion for Preliminary Injunction filed December 2, 2020.

7) Plaintiffs move, pursuant to FRCP 65, for a hearing on their motion for a preliminary injunction which seeks, among other things, an order decertifying the 2020 Arizona presidential election results. Plaintiffs are Arizona's Republican Presidential electors. Electors are seated and vote for President on December 14, 2020. If Plaintiffs' preliminary injunction motion is not set for a hearing immediately, there will be insufficient time for this court to rule and for the parties to obtain appellate review before the claims asserted become moot.

8) All parties are on notice of the current date for arguments.

9) The parties met to confer on December 6, 2020, and discussed merit-based hearing issues and have exchanged exhibits and witness lists.

10) There is no prejudice to Defendants since the Plaintiffs' Motion is fully briefed on the preliminary injunctive relief.

11) Accordingly, Plaintiffs respectfully request the Court to schedule a hearing on their motion for a preliminary injunction commencing December 8, 2020, after oral arguments on the motions to dismiss.

Respectfully submitted this 7th day of December, 2020

/s/ Howard Kleinhendler

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CERTIFICATE OF SERVICE

I hereby certify that on December 5th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Records;

Intervenors.

Case No. 2:20-cv-02321-DJH

PROPOSED ORDER GRANTING PLAINTIFFS' MOTION FOR HEARING ON MOTION FOR PRELIMINARY INJUNCTION

THE COURT has before it Plaintiffs' Motion for Hearing on Motion for Preliminary Injunction filed December 7, 2020.

For the reasons set forth in Plaintiffs' Motion for Hearing on Motion for Preliminary Injunction and good cause appearing:

IT IS HEREBY ORDERED THAT:

1. A hearing on Plaintiffs' Motion for Preliminary Injunction be held on December 8, 2020 after oral arguments on the Motions to Dismiss.

DATED this _____ day of _____, 2020.

Honorable _____

United States District Judge

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE HOBBS' SECOND NOTICE OF SUPPLEMENTAL AUTHORITY

Secretary Hobbs submits this Second Notice of Supplemental Authority to alert the Court of an important development in the nearly-identical case filed in Michigan by Plaintiffs' counsel on behalf of the proposed presidential electors for the Republican Party in that State. *King v. Whitmer*, No. 2:20-cv-13134 (E.D. Mich.).

This morning, the court in *King* rejected plaintiffs' arguments. The opinion is attached as Exhibit A. *First*, the court ruled that Eleventh Amendment immunity applied. *Id.* at 8-13. *Second*, the court held that the matter was moot. *Id.* at 13-16. *Third*, the court found that laches applied because plaintiffs "waited too long to knock on the Court's door." *Id.* at 16-19. *Fourth*, the court held that abstention applied. *Id.* at 20-23. *Fifth*, the court held that plaintiffs have no standing on any of their claims, rejecting their vote dilution theory under the Equal Protection Clause and their alleged standing as electors on the Election/Electors Clause claim and specifically rejecting plaintiffs' argument that the *Carson* decision applies. *Id*. at 23-30. *Sixth*, the court concluded that plaintiffs were unlikely to succeed on the merits because (a) the Electors Clause claim was premised on state law, *id.* at 30-31; and (b) plaintiffs' "equal protection claim is not supported by any allegation that Defendants' alleged schemes caused votes for President Trump to be changed to votes for Vice President Biden," *id.* at 32, and that the allegations are "an amalgamation of theories, conjecture, and speculation that such alterations were *possible*," *id.* at 34. *Seventh*, the court found plaintiffs did not show the remaining injunction factors. *Id.* at 35.

The court issued its decision on the papers and without argument or hearing. *Id.* at 6; *see also* Doc. 55, Hobbs Reply to MTD, at 1 n.1 (noting no hearing necessary here).

Respectfully submitted this 7th day of December, 2020.

SUSMAN GODFREY L.L.P.

By s/ Justin A. Nelson
Justin A. Nelson
Stephen E. Morrissey
Stephen Shackelford

Davida Brook

COPPERSMITH BROCKELMAN PLC

Roopali H. Desai
D. Andrew Gaona
Kristen Yost

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

EXHIBIT
A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH,

Plaintiffs,

v.

Civil Case No. 20-13134
Honorable Linda V. Parker

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants,

and

CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS,

Intervenor-Defendants.
_____/

OPINION AND ORDER DENYING PLAINTIFFS' "EMERGENCY MOTION FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF" (ECF NO. 7)

The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans. The struggle to achieve the right to vote is

one that has been both hard fought and cherished throughout our country's history. Local, state, and federal elections give voice to this right through the ballot. And elections that count each vote celebrate and secure this cherished right.

These principles are the bedrock of American democracy and are widely revered as being woven into the fabric of this country. In Michigan, more than 5.5 million citizens exercised the franchise either in person or by absentee ballot during the 2020 General Election. Those votes were counted and, as of November 23, 2020, certified by the Michigan Board of State Canvassers (also "State Board"). The Governor has sent the slate of Presidential Electors to the Archivist of the United States to confirm the votes for the successful candidate.

Against this backdrop, Plaintiffs filed this lawsuit, bringing forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.

I. Background

In the weeks leading up to, and on, November 3, 2020, a record 5.5 million Michiganders voted in the presidential election ("2020 General Election"). (ECF

No. 36-4 at Pg ID 2622.) Many of those votes were cast by absentee ballot. This was due in part to the coronavirus pandemic and a ballot measure the Michigan voters passed in 2018 allowing for no-reason absentee voting. When the polls closed and the votes were counted, Former Vice President Joseph R. Biden, Jr. had secured over 150,000 more votes than President Donald J. Trump in Michigan. (*Id.*)

Michigan law required the Michigan State Board of Canvassers to canvass results of the 2020 General Election by November 23, 2020. Mich. Comp. Laws § 168.842. The State Board did so by a 3-0 vote, certifying the results "for the Electors of President and Vice President," among other offices. (ECF No. 36-5 at Pg ID 2624.) That same day, Governor Gretchen Whitmer signed the Certificates of Ascertainment for the slate of electors for Vice President Biden and Senator Kamala D. Harris. (ECF No. 36-6 at Pg ID 2627-29.) Those certificates were transmitted to and received by the Archivist of the United States. (*Id.*)

Federal law provides that if election results are contested in any state, and if the state, prior to election day, has enacted procedures to decide controversies or contests over electors and electoral votes, and if these procedures have been applied, and the decisions are made at least six days before the electors' meetings, then the decisions are considered conclusive and will apply in counting the electoral votes. 3 U.S.C. § 5. This date (the "Safe Harbor" deadline) falls on

December 8, 2020. Under the federal statutory timetable for presidential elections, the Electoral College must meet on "the first Monday after the second Wednesday in December," 3 U.S.C. § 7, which is December 14 this year.

Alleging widespread fraud in the distribution, collection, and counting of ballots in Michigan, as well as violations of state law as to certain election challengers and the manipulation of ballots through corrupt election machines and software, Plaintiffs filed the current lawsuit against Defendants at 11:48 p.m. on November 25, 2020—the eve of the Thanksgiving holiday. (ECF No. 1.) Plaintiffs are registered Michigan voters and nominees of the Republican Party to be Presidential Electors on behalf of the State of Michigan. (ECF No. 6 at Pg ID 882.) They are suing Governor Whitmer and Secretary of State Jocelyn Benson in their official capacities, as well as the Michigan Board of State Canvassers.

On November 29, a Sunday, Plaintiffs filed a First Amended Complaint (ECF No. 6), "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief and Memorandum in Support Thereof" (ECF No. 7), and Emergency Motion to Seal (ECF No. 8). In their First Amended Complaint, Plaintiffs allege three claims pursuant to 42 U.S.C. § 1983: (Count I) violation of the Elections and Electors Clauses; (Count II) violation of the Fourteenth Amendment Equal Protection Clause; and, (Count III) denial of the Fourteenth

Amendment Due Process Clause. (ECF No. 6.) Plaintiffs also assert one count alleging violations of the Michigan Election Code. (*Id*.)

By December 1, motions to intervene had been filed by the City of Detroit (ECF No. 15), Robert Davis (ECF No. 12), and the Democratic National Committee and Michigan Democratic Party ("DNC/MDP") (ECF No. 14). On that date, the Court entered a briefing schedule with respect to the motions. Plaintiffs had not yet served Defendants with their pleading or emergency motions as of December 1. Thus, on December 1, the Court also entered a text-only order to hasten Plaintiffs' actions to bring Defendants into the case and enable the Court to address Plaintiffs' pending motions. Later the same day, after Plaintiffs filed certificates of service reflecting service of the summons and Amended Complaint on Defendants (ECF Nos. 21), the Court entered a briefing schedule with respect to Plaintiffs' emergency motions, requiring response briefs by 8:00 p.m. on December 2, and reply briefs by 8:00 p.m. on December 3 (ECF No. 24).

On December 2, the Court granted the motions to intervene. (ECF No. 28.) Response and reply briefs with respect to Plaintiffs' emergency motions were thereafter filed. (ECF Nos. 29, 31, 32, 34, 35, 36, 37, 39, 49, 50.) Amicus curiae Michigan State Conference NAACP subsequently moved and was granted leave to file a brief in support of Defendants' position. (ECF Nos. 48, 55.) Supplemental briefs also were filed by the parties. (ECF Nos. 57, 58.)

In light of the limited time allotted for the Court to resolve Plaintiffs' emergency motion for injunctive relief—which Plaintiffs assert "must be granted in advance of December 8, 2020" (ECF No. 7 at Pg ID 1846)—the Court has disposed of oral argument with respect to their motion pursuant to Eastern District of Michigan Local Rule 7.1(f).[1]

II. Standard of Review

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation omitted). The plaintiff bears the burden of demonstrating entitlement to preliminary injunctive relief. *Leary v. Daeschner*, 228 F.3d 729, 739 (6th Cir. 2000). Such relief will only be granted where "the movant carries his or her burden of proving that the circumstances clearly demand it." *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). "Evidence that goes beyond the unverified allegations of the pleadings and motion papers must be presented to

[1] "'[W]here material facts are not in dispute, or where facts in dispute are not material to the preliminary injunction sought, district courts generally need not hold an evidentiary hearing.'" *Nexus Gas Transmission, LLC v. City of Green, Ohio*, 757 Fed. Appx. 489, 496-97 (6th Cir. 2018) (quoting *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 553 (6th Cir. 2007)) (citation omitted).

support or oppose a motion for a preliminary injunction." 11A Mary Kay Kane, Fed. Prac. & Proc. § 2949 (3d ed.).

Four factors are relevant in deciding whether to grant preliminary injunctive relief: "'(1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury absent the injunction; (3) whether the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of an injunction.'" *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020) (quoting *Bays v. City of Fairborn*, 668 F.3d 814, 818-19 (6th Cir. 2012)). "At the preliminary injunction stage, 'a plaintiff must show more than a mere possibility of success,' but need not 'prove his case in full.'" *Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 591 (6th Cir. 2012) (quoting *Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp.*, 511 F.3d 535, 543 (6th Cir. 2007)). Yet, "the proof required for the plaintiff to obtain a preliminary injunction is much more stringent than the proof required to survive a summary judgment motion …." *Leary*, 228 F.3d at 739.

III. Discussion

The Court begins by discussing those questions that go to matters of subject matter jurisdiction or which counsel against reaching the merits of Plaintiffs' claims. While the Court finds that any of these issues, alone, indicate that Plaintiffs' motion should be denied, it addresses each to be thorough.

A. Eleventh Amendment Immunity

The Eleventh Amendment to the United States Constitution provides:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. This immunity extends to suits brought by citizens against their own states. *See, e.g., Ladd v. Marchbanks*, 971 F.3d 574, 578 (6th Cir. 2020) (citing *Hans v. Louisiana*, 134 U.S. 1, 18-19 (1890)). It also extends to suits against state agencies or departments, *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984) (citations omitted), and "suit[s] against state officials when 'the state is the real, substantial party in interest[,]'" *id.* at 101 (quoting *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 464 (1945)).

A suit against a State, a state agency or its department, or a state official is in fact a suit against the State and is barred "regardless of the nature of the relief sought." *Pennhurst State Sch. & Hosp.*, 465 U.S. at 100-02 (citations omitted). "'The general rule is that a suit is against the sovereign if the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act.'" *Id*. at 101 n.11 (quoting *Dugan v. Rank*, 372 U.S. 609, 620 (1963)) (internal quotation marks omitted).

Eleventh Amendment immunity is subject to three exceptions: (1) congressional abrogation; (2) waiver by the State; and (3) "a suit against a state official seeking prospective injunctive relief to end a continuing violation of federal law." *See Carten v. Kent State Univ.*, 282 F.3d 391, 398 (6th Cir. 2002) (citations omitted). Congress did not abrogate the States' sovereign immunity when it enacted 42 U.S.C. § 1983. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989). "The State of Michigan has not consented to being sued in civil rights actions in the federal courts." *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 545 (6th Cir. 2004) (citing *Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986)). The Eleventh Amendment therefore bars Plaintiffs' claims against the Michigan Board of State Canvassers. *See McLeod v. Kelly*, 7 N.W.2d 240, 242 (Mich. 1942) ("The board of State canvassers is a State agency …"); *see also Deleeuw v. State Bd. of Canvassers*, 688 N.W.2d 847, 850 (Mich. Ct. App. 2004). Plaintiffs' claims are barred against Governor Whitmer and Secretary Benson unless the third exception applies.

The third exception arises from the Supreme Court's decision in *Ex parte Young*, 209 U.S. 123 (1908). But as the Supreme Court has advised:

> To interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to an empty formalism and to undermine the principle … that Eleventh Amendment immunity represents a real

> limitation on a federal court's federal-question jurisdiction. The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleading. Application of the *Young* exception must reflect a proper understanding of its role in our federal system and respect for state courts instead of a reflexive reliance on an obvious fiction.

Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 270 (1997). Further, "the theory of *Young* has not been provided an expansive interpretation." *Pennhurst State Sch. & Hosp.*, 465 U.S. at 102. "'In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002) (quoting *Coeur d'Alene Tribe of Idaho*, 521 U.S. 296 (O'Connor, J., concurring)).

Ex parte Young does not apply, however, to *state law* claims against state officials, regardless of the relief sought. *Pennhurst State Sch. & Hosp.*, 465 U.S. at 106 ("A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law."); *see also In re Ohio Execution Protocol Litig.*, 709 F. App'x 779, 787 (6th Cir. 2017) ("If the plaintiff sues a state official under state law

in federal court for actions taken within the scope of his authority, sovereign immunity bars the lawsuit regardless of whether the action seeks monetary or injunctive relief."). Unquestionably, Plaintiffs' state law claims against Defendants are barred by Eleventh Amendment immunity.

The Court then turns its attention to Plaintiffs' § 1983 claims against Defendants. Defendants and Intervenor DNC/MDP contend that these claims are not in fact federal claims as they are premised entirely on alleged violations of *state* law. (ECF No. 31 at Pg ID 2185 ("Here, each count of Plaintiffs' complaint—even Counts I, II, and III, which claim to raise violations of federal law—is predicated on the election being conducted contrary to Michigan law."); ECF No. 36 at Pg ID 2494 ("While some of [Plaintiffs'] allegations concern fantastical conspiracy theories that belong more appropriately in the fact-free outer reaches of the Internet[,] … what Plaintiffs assert at bottom are violations of the Michigan Election Code.") Defendants also argue that even if properly stated as federal causes of action, "it is far from clear whether Plaintiffs' requested injunction is actually prospective in nature, as opposed to retroactive." (ECF No. 31 at Pg ID 2186.)

The latter argument convinces this Court that *Ex parte Young* does not apply. As set forth earlier, "'[i]n order to fall with the *Ex parte Young* exception, a claim must seek prospective relief to end a continuing violation of federal law.'"

Russell v. Lundergan-Grimes, 784 F.3d 1037, 1047 (6th Cir. 2015) (quoting *Diaz v. Mich. Dep't of Corr.*, 703 F.3d 956, 964 (6th Cir. 2013)). Unlike *Russell*, which Plaintiffs cite in their reply brief, this is not a case where a plaintiff is seeking to enjoin the continuing enforcement of a statute that is allegedly unconstitutional. *See id*. at 1044, 1047 (plaintiff claimed that Kentucky law creating a 300-foot no-political-speech buffer zone around polling location violated his free-speech rights). Instead, Plaintiffs are seeking to undo what has already occurred, as their requested relief reflects.[2] (*See* ECF No. 7 at Pg ID 1847; *see also* ECF No. 6 at Pg 955-56.)

Before this lawsuit was filed, the Michigan Board of State Canvassers had already certified the election results and Governor Whitmer had transmitted the State's slate of electors to the United States Archivist. (ECF Nos. 31-4, 31-5.) There is no continuing violation to enjoin. *See Rios v. Blackwell*, 433 F. Supp. 2d 848 (N.D. Ohio Feb. 7, 2006); *see also King Lincoln Bronzeville Neighborhood Ass'n v. Husted*, No. 2:06-cv-00745, 2012 WL 395030, at *4-5 (S.D. Ohio Feb. 7, 2012); *cf. League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 475 (6th Cir. 2008) (finding that the plaintiff's claims fell within the *Ex parte Young* doctrine

[2] To the extent Plaintiffs ask the Court to certify the results in favor of President Donald J. Trump, such relief is beyond its powers.

where it alleged that the problems that plagued the election "are chronic and will continue absent injunctive relief").

For these reasons, the Court concludes that the Eleventh Amendment bars Plaintiffs' claims against Defendants.

B. Mootness

This case represents well the phrase: "this ship has sailed." The time has passed to provide most of the relief Plaintiffs request in their Amended Complaint; the remaining relief is beyond the power of any court. For those reasons, this matter is moot.

"'Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies.'" *Kentucky v. U.S. ex rel. Hagel*, 759 F.3d 588, 595 (6th Cir. 2014) (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). A case may become moot "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 396, 410 (1980) (internal quotation marks and citation omitted). Stated differently, a case is moot where the court lacks "the ability to give meaningful relief[.]" *Sullivan v. Benningfield*, 920 F.3d 401, 410 (6th Cir. 2019). This lawsuit was moot well before it was filed on November 25.

In their prayer for relief, Plaintiffs ask the Court to: (a) order Defendants to decertify the results of the election; (b) enjoin Secretary Benson and Governor

Whitmer from transmitting the certified election results to the Electoral College; (c) order Defendants "to transmit certified election results that state that President Donald Trump is the winner of the election"; (d) impound all voting machines and software in Michigan for expert inspection; (e) order that no votes received or tabulated by machines not certified as required by federal and state law be counted; and, (f) enter a declaratory judgment that mail-in and absentee ballot fraud must be remedied with a manual recount or statistically valid sampling.[3] (ECF No. 6 at Pg ID 955-56, ¶ 233.) What relief the Court could grant Plaintiffs is no longer available.

Before this lawsuit was filed, all 83 counties in Michigan had finished canvassing their results for all elections and reported their results for state office races to the Secretary of State and the Michigan Board of State Canvassers in accordance with Michigan law. *See* Mich. Comp. Laws § 168.843. The State Board had certified the results of the 2020 General Election and Governor Whitmer had submitted the slate of Presidential Electors to the Archivists. (ECF

[3] Plaintiffs also seek an order requiring the impoundment of all voting machines and software in Michigan for expert inspection and the production of security camera footage from the TCF Center for November 3 and 4. (ECF No. 6 at Pg ID 956, ¶ 233.) This requested relief is not meaningful, however, where the remaining requests are no longer available. In other words, the evidence Plaintiffs seek to gather by inspecting voting machines and software and security camera footage only would be useful if an avenue remained open for them to challenge the election results.

No. 31-4 at Pg ID 2257-58; ECF No. 31-5 at Pg ID 2260-63.) The time for requesting a special election based on mechanical errors or malfunctions in voting machines had expired. *See* Mich. Comp. Laws §§ 168.831, 168.832 (petitions for special election based on a defect or mechanical malfunction must be filed "no later than 10 days after the date of the election"). And so had the time for requesting a recount for the office of President. *See* Mich. Comp. Laws § 168.879.

The Michigan Election Code sets forth detailed procedures for challenging an election, including deadlines for doing so. Plaintiffs did not avail themselves of the remedies established by the Michigan legislature. The deadline for them to do so has passed. Any avenue for this Court to provide meaningful relief has been foreclosed. As the Eleventh Circuit Court of Appeals recently observed in one of the many other post-election lawsuits brought to specifically overturn the results of the 2020 presidential election:

> "We cannot turn back the clock and create a world in which" the 2020 election results are not certified. *Fleming v. Gutierrez*, 785 F.3d 442, 445 (10th Cir. 2015). And it is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified.

Wood v. Raffensperger, -- F.3d -- , 2020 WL 7094866 (11th Cir. Dec. 5, 2020). And as one Justice of the Supreme Court of Pennsylvania advised in another 2020 post-election lawsuit: "there is no basis in law by which the courts may grant Petitioners' request to ignore the results of an election and recommit the choice to

the General Assembly to substitute its preferred slate of electors for the one chosen by a majority of Pennsylvania's voters." *Kelly v. Commonwealth*, No. 68 MAP 2020, 2020 WL 7018314, at *3 (Pa. Nov. 28, 2020) (Wecht, J., concurring); *see also Wood v. Raffensperger*, No. 1:20-cv-04651, 2020 WL 6817513, at *13 (N.D. Ga. Nov. 20, 2020) (concluding that "interfer[ing] with the result of an election that has already concluded would be unprecedented and harm the public in countless ways").

In short, Plaintiffs' requested relief concerning the 2020 General Election is moot.

C. Laches

Defendants argue that Plaintiffs are unlikely to succeed on the merits because they waited too long to knock on the Court's door. (ECF No. 31 at Pg ID 2175-79; ECF No. 39 at Pg ID 2844.) The Court agrees.

The doctrine of laches is rooted in the principle that "equity aids the vigilant, not those who slumber on their rights." *Lucking v. Schram*, 117 F.2d 160, 162 (6th Cir. 1941); *see also United States v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 9 (2008) ("A constitutional claim can become time-barred just as any other claim can."). An action may be barred by the doctrine of laches if: (1) the plaintiff delayed unreasonably in asserting his rights and (2) the defendant is prejudiced by this delay. *Brown-Graves Co. v. Central States, Se. and Sw. Areas Pension Fund*,

206 F.3d 680, 684 (6th Cir. 2000); *Ottawa Tribe of Oklahoma v. Logan*, 577 F.3d 634, 639 n.6 (6th Cir. 2009) ("Laches arises from an extended failure to exercise a right to the detriment of another party."). Courts apply laches in election cases. *Detroit Unity Fund v. Whitmer*, 819 F. App'x 421, 422 (6th Cir. 2020) (holding that the district court did not err in finding plaintiff's claims regarding deadline for local ballot initiatives "barred by laches, considering the unreasonable delay on the part of [p]laintiffs and the consequent prejudice to [d]efendants"). *Cf. Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) ("[A] party requesting a preliminary injunction must generally show reasonable diligence. That is as true in election law cases as elsewhere.").

First, Plaintiffs showed no diligence in asserting the claims at bar. They filed the instant action on November 25—more than 21 days after the 2020 General Election—and served it on Defendants some five days later on December 1. (ECF Nos. 1, 21.) If Plaintiffs had legitimate claims regarding whether the treatment of election challengers complied with state law, they could have brought their claims well in advance of or on Election Day—but they did not. Michigan's 83 Boards of County Canvassers finished canvassing by no later than November 17 and, on November 23, both the Michigan Board of State Canvassers and Governor Whitmer certified the election results. Mich. Comp. Laws §§ 168.822, 168.842.0. If Plaintiffs had legitimate claims regarding the manner by which

ballots were processed and tabulated on or after Election Day, they could have brought the instant action on Election Day or during the weeks of canvassing that followed—yet they did not. Plaintiffs base the claims related to election machines and software on "expert and fact witness" reports discussing "glitches" and other alleged vulnerabilities that occurred as far back as 2010. (*See e.g.,* ECF No. 6 at Pg ID 927-933, ¶¶ 157(C)-(E), (G), 158, 160, 167.) If Plaintiffs had legitimate concerns about the election machines and software, they could have filed this lawsuit well before the 2020 General Election—yet they sat back and did nothing.

Plaintiffs proffer no persuasive explanation as to why they waited so long to file this suit. Plaintiffs concede that they "would have preferred to file sooner, but [] needed some time to gather statements from dozens of fact witnesses, retain and engage expert witnesses, and gather other data supporting their Complaint." (ECF No. 49 at Pg ID 3081.) But according to Plaintiffs themselves, "[m]anipulation of votes was apparent *shortly after the polls closed on November 3, 2020*." (ECF No. 7 at Pg ID 1837 (emphasis added).) Indeed, where there is no reasonable explanation, there can be no true justification. *See Crookston v. Johnson*, 841 F.3d 396, 398 (6th Cir. 2016) (identifying the "first and most essential" reason to issue a stay of an election-related injunction is plaintiff offering "no reasonable explanation for waiting so long to file this action"). Defendants satisfy the first element of their laches defense.

Second, Plaintiffs' delay prejudices Defendants. *See Kay v. Austin*, 621 F.2d 809, 813 (6th Cir. 1980) ("As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the candidate's claim to be a serious candidate who has received a serious injury becomes less credible by his having slept on his rights.") This is especially so considering that Plaintiffs' claims for relief are not merely last-minute—they are after the fact. While Plaintiffs delayed, the ballots were cast; the votes were counted; and the results were certified. The rationale for interposing the doctrine of laches is now at its peak. *See McDonald v. Cnty. of San Diego*, 124 F. App'x 588 (9th Cir. 2005) (citing *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1180 (9th Cir. 1988)); *Soules*, 849 F.2d at 1180 (quoting *Hendon v. N.C. State Bd. Of Elections*, 710 F.2d 177, 182 (4th Cir. 1983)) (applying doctrine of laches in post-election lawsuit because doing otherwise would, "permit, if not encourage, parties who could raise a claim to lay by and gamble upon receiving a favorable decision of the electorate and then, upon losing, seek to undo the ballot results in a court action").

Plaintiffs could have lodged their constitutional challenges much sooner than they did, and certainly not three weeks after Election Day and one week after certification of almost three million votes. The Court concludes that Plaintiffs' delay results in their claims being barred by laches.

D. Abstention

As outlined in several filings, when the present lawsuit was filed on November 25, 2020, there already were multiple lawsuits pending in Michigan state courts raising the same or similar claims alleged in Plaintiffs' Amended Complaint. (*See, e.g.*, ECF No. 31 at Pg ID 2193-98 (summarizing five state court lawsuits challenging President Trump's defeat in Michigan's November 3, 2020 General Election).) Defendants and the City of Detroit urge the Court to abstain from deciding Plaintiffs' claims in deference to those proceedings under various abstention doctrines. (*Id.* at Pg ID 2191-2203; ECF No. 39 at Pg ID 2840-44.) Defendants rely on the abstention doctrine outlined by the Supreme Court in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). The City of Detroit relies on the abstention doctrines outlined in *Colorado River*, as well as those set forth in *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 500-01 (1941), and *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). The City of Detroit maintains that abstention is particularly appropriate when resolving election disputes in light of the autonomy provided to state courts to initially settle such disputes.

The abstention doctrine identified in *Colorado River* permits a federal court to abstain from exercising jurisdiction over a matter in deference to parallel state-court proceedings. *Colorado River*, 424 U.S. at 813, 817. The exception is found

warranted "by considerations of 'proper constitutional adjudication,' 'regard for federal-state relations,' or 'wise judicial administration.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (quoting *Colorado River*, 424 U.S. at 817). The Sixth Circuit has identified two prerequisites for abstention under this doctrine. *Romine v. Compuserve Corp.*, 160 F.3d 337, 339-40 (6th Cir. 1998).

First, the court must determine that the concurrent state and federal actions are parallel. *Id*. at 339. Second, the court must consider the factors outlined by the Supreme Court in *Colorado River* and subsequent cases:

> (1) whether the state court has assumed jurisdiction over any res or property; (2) whether the federal forum is less convenient to the parties; (3) avoidance of piecemeal litigation; … (4) the order in which jurisdiction was obtained; … (5) whether the source of governing law is state or federal; (6) the adequacy of the state court action to protect the federal plaintiff's rights; (7) the relative progress of the state and federal proceedings; and (8) the presence or absence of concurrent jurisdiction.

Romine, 160 F.3d at 340-41 (internal citations omitted). "These factors, however, do not comprise a mechanical checklist. Rather, they require 'a careful balancing of the important factors as they apply in a give[n] case' depending on the particular facts at hand." *Id*. (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983)).

As summarized in Defendants' response brief and reflected in their exhibits (*see* ECF No. 31 at Pg ID 2193-97; *see also* ECF Nos. 31-7, 31-9, 31-11, 31-12,

31-14), the allegations and claims in the state court proceedings and the pending matter are, at the very least, substantially similar, *Romine*, 160 F.3d at 340 ("Exact parallelism is not required; it is enough if the two proceedings are substantially similar." (internal quotation marks and citation omitted)). A careful balancing of the factors set forth by the Supreme Court counsel in favor of deferring to the concurrent jurisdiction of the state courts.

The first and second factor weigh against abstention. *Id.* (indicating that the weight is against abstention where no property is at issue and neither forum is more or less convenient). While the Supreme Court has stated that "'the presence of federal law issues must always be a major consideration weighing against surrender of federal jurisdiction in deference to state proceedings[,]'" *id*. at 342 (quoting *Moses H. Cone*, 460 U.S. at 26), this "'factor has less significance where the federal courts' jurisdiction to enforce the statutory rights in question is concurrent with that of the state courts.'"[4] *Id*. (quoting *Moses H. Cone*, 460 U.S. at 25). Moreover, the Michigan Election Code seems to dominate even Plaintiffs' federal claims. Further, the remaining factors favor abstention.

"Piecemeal litigation occurs when different courts adjudicate the identical issue, thereby duplicating judicial effort and potentially rendering conflicting

[4] State courts have concurrent jurisdiction over § 1983 actions. *Felder v. Casey*, 487 U.S. 131, 139 (1988).

results." *Id.* at 341. The parallel proceedings are premised on similar factual allegations and many of the same federal and state claims. The state court proceedings were filed well before the present matter and at least three of those matters are far more advanced than this case. Lastly, as Congress conferred concurrent jurisdiction on state courts to adjudicate § 1983 claims, *Felder v. Casey*, 487 U.S. 131, 139 (1988), "[t]here can be no legitimate contention that the [Michigan] state courts are incapable of safeguarding [the rights protected under this statute]," *Romine*, 160 F.3d at 342.

For these reasons, abstention is appropriate under the *Colorado River* doctrine. The Court finds it unnecessary to decide whether abstention is appropriate under other doctrines.

E. Standing

Under Article III of the United States Constitution, federal courts can resolve only "cases" and "controversies." U.S. Const. art. III § 2. The case-or-controversy requirement is satisfied only where a plaintiff has standing to bring suit. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), *as revised* (May 24, 2016). Each plaintiff must demonstrate standing for each claim he seeks to press.[5]

[5] Plaintiffs assert a due process claim in their Amended Complaint and twice state in their motion for injunctive relief that Defendants violated their due process rights. (*See* ECF No. 7 at Pg ID 1840, 1844.) Plaintiffs do not pair either statement with anything the Court could construe as a developed argument. (*Id.*) The Court finds it unnecessary, therefore, to further discuss the due process claim.

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352 (2006) (citation omitted) ("[A] plaintiff must demonstrate standing separately for each form of relief sought."). To establish standing, a plaintiff must show that: (1) he has suffered an injury in fact that is "concrete and particularized" and "actual or imminent"; (2) the injury is "fairly . . . trace[able] to the challenged action of the defendant"; and (3) it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-62 (1992) (internal quotation marks and citations omitted).

1. Equal Protection Claim

Plaintiffs allege that Defendants engaged in "several schemes" to, among other things, "destroy," "discard," and "switch" votes for President Trump, thereby "devalu[ing] Republican votes" and "diluting" the influence of their individual votes. (ECF No. 49 at Pg ID 3079.) Plaintiffs contend that "the vote dilution resulting from this systemic and illegal conduct did not affect all Michigan voters equally; it had the intent and effect of inflating the number of votes for Democratic candidates and reducing the number of votes for President Trump and Republican candidates." (ECF No. 49 at Pg ID 3079.) Even assuming that Plaintiffs establish

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McPherson v. Kelsey, 125 F.3d 989, 995 (6th Cir. 1997) ("Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

injury-in-fact and causation under this theory,[6] their constitutional claim cannot stand because Plaintiffs fall flat when attempting to clear the hurdle of redressability.

Plaintiffs fail to establish that the alleged injury of vote-dilution can be redressed by a favorable decision from this Court. Plaintiffs ask this Court to de-certify the results of the 2020 General Election in Michigan. But an order de-certifying the votes of approximately 2.8 million people would not reverse the dilution of Plaintiffs' vote. To be sure, standing is not "dispensed in gross: A plaintiff's remedy must be tailored to redress the plaintiff's particular injury." *Gill*, 138 S. Ct. at 1934 (citing *Cuno*, 547 U.S. at 353); *Cuno*, 547 U.S. at 353 ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established." (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). Plaintiffs' alleged injury does not entitle them to seek their requested remedy because the harm of having one's vote invalidated or diluted is not remedied by denying millions of others *their* right to vote. Accordingly, Plaintiffs have failed to show that their injury can be redressed by the relief they seek and thus possess no standing to pursue their equal protection claim.

[6] To be clear, the Court does not find that Plaintiffs satisfy the first two elements of the standing inquiry.

2. Elections Clause & Electors Clause Claims

The provision of the United States Constitution known as the Elections Clause states in part: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]" U.S. Const. art. I, § 4, cl. 1. "The Elections Clause effectively gives state governments the 'default' authority to regulate the mechanics of federal elections, *Foster v. Love*, 522 U.S. 67, 69, 118 S. Ct. 464, 139 L.Ed.2d 369 (1997), with Congress retaining 'exclusive control' to 'make or alter' any state's regulations, *Colegrove v. Green*, 328 U.S. 549, 554, 66 S. Ct. 1198, 90 L.Ed. 1432 (1946)." *Bognet*, 2020 WL 6686120, *1. The "Electors Clause" of the Constitution states: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors …." U.S. Const. art. II, § 1, cl. 2.

Plaintiffs argue that, as "nominees of the Republican Party to be Presidential Electors on behalf of the State of Michigan, they have standing to allege violations of the Elections Clause and Electors Clause because "a vote for President Trump and Vice-President Pence in Michigan … is a vote for each Republican elector[], and … illegal conduct aimed at harming candidates for President similarly injures Presidential Electors." (ECF No. 7 at Pg ID 1837-38; ECF No. 49 at Pg ID 3076-78.)

But where, as here, the only injury Plaintiffs have alleged is that the Elections Clause has not been followed, the United States Supreme Court has made clear that "[the] injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance."[7] *Lance v. Coffman*, 549 U.S. 437, 442 (2007). Because Plaintiffs "assert no particularized stake in the litigation," Plaintiffs fail to establish injury-in-fact and thus standing to bring their Elections Clause and Electors Clause claims. *Id.*; *see also Johnson v. Bredesen*, 356 F. App'x 781, 784 (6th Cir. 2009) (citing *Lance*, 549 U.S. at 441-42) (affirming district court's conclusion that citizens did not allege injury-in-fact to support standing for claim that the state of Tennessee violated constitutional law).

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[7] Although separate constitutional provisions, the Electors Clause and Elections Clause share "considerable similarity," *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839, (2015) (Roberts, C.J., dissenting), and Plaintiffs do not at all distinguish the two clauses in their motion for injunctive relief or reply brief (ECF No. 7; ECF No. 49 at Pg ID 3076-78). *See also Bognet v. Sec'y Commonwealth of Pa.*, No. 20-3214, 2020 WL 6686120, at *7 (3d Cir. Nov. 13, 2020) (applying same test for standing under both Elections Clause and Electors Clause); *Wood*, 2020 WL 6817513, at *1 (same); *Foster*, 522 U.S. at 69 (characterizing Electors Clause as Elections Clauses' "counterpart for the Executive Branch"); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804-05 (1995) (noting that state's "duty" under Elections Clause "parallels the duty" described by Electors Clause).

This is so because the Elections Clause grants rights to "the Legislature" of "each State." U.S. Const. art. I, § 4, cl. 1. The Supreme Court interprets the words "the Legislature," as used in that clause, to mean the lawmaking bodies of a state. *Ariz. State Legislature*, 135 S.Ct. at 2673. The Elections Clause, therefore, grants rights to state legislatures and to other entities to which a State may delegate lawmaking authority. *See id.* at 2668. Plaintiffs' Elections Clause claims thus belong, if to anyone, Michigan's state legislature. *Bognet v. Secy. Commonwealth of Pa.*, -- F.3d. --, 2020 WL 6686120, *7 (3d Cir. Nov. 13, 2020). Plaintiffs here are six presidential elector nominees; they are not a part of Michigan's lawmaking bodies nor do they have a relationship to them.

To support their contention that they have standing, Plaintiffs point to *Carson v. Simon*, 78 F.3d 1051 (8th Cir. 2020), a decision finding that electors had standing to bring challenges under the Electors Clause. (ECF No. 7 at Pg ID 1839 (citing *Carson*, 978 F.3d at 1057).) In that case, which was based on the specific content and contours of Minnesota state law, the Eighth Circuit Court of Appeals concluded that because "the plain text of Minnesota law treats prospective electors as candidates," it too would treat presidential elector nominees as candidates. *Carson*, 78 F.3d at 1057. This Court, however, is as unconvinced about the majority's holding in *Carson* as the dissent:

> I am not convinced the Electors have Article III standing to assert claims under the Electors Clause. Although

> Minnesota law at times refers to them as "candidates," *see, e.g.*, Minn. Stat. § 204B.03 (2020), the Electors are not candidates for public office as that term is commonly understood. Whether they ultimately assume the office of elector depends entirely on the outcome of the state popular vote for president. *Id.* § 208.04 subdiv. 1 ("[A] vote cast for the party candidates for president and vice president shall be deemed a vote for that party's electors."). They are not presented to and chosen by the voting public for their office, but instead automatically assume that office based on the public's selection of entirely different individuals.

78 F.3d at 1063 (Kelly, J., dissenting).[8]

Plaintiffs contend that the Michigan Election Code and relevant Minnesota law are similar. (See ECF No. 49 at Pg ID 3076-78.) Even if the Court were to

[8] In addition, at least one Circuit Court, the Third Circuit Court of Appeals, has distinguished *Carson*'s holding, noting:

> Our conclusion departs from the recent decision of an Eighth Circuit panel which, over a dissent, concluded that candidates for the position of presidential elector had standing under *Bond* to challenge a Minnesota state-court consent decree that effectively extended the receipt deadline for mailed ballots. . . . The *Carson* court appears to have cited language from *Bond* without considering the context—specifically, the Tenth Amendment and the reserved police powers—in which the U.S. Supreme Court employed that language. There is no precedent for expanding *Bond* beyond this context, and the *Carson* court cited none.

Bognet, 2020 WL 6686120, at *8 n.6.

agree, it finds that Plaintiffs lack standing to sue under the Elections and Electors Clauses.

F. The Merits of the Request for Injunctive Relief

1. Likelihood of Success on the Merits

The Court may deny Plaintiffs' motion for injunctive relief for the reasons discussed above. Nevertheless, the Court will proceed to analyze the merits of their claims.

a. Violation of the Elections & Electors Clauses

Plaintiffs allege that Defendants violated the Elections Clause and Electors Clause by deviating from the requirements of the Michigan Election Code. (*See, e.g.,* ECF No. 6 at Pg ID 884-85, ¶¶ 36-40, 177-81, 937-38.) Even assuming Defendants did not follow the Michigan Election Code, Plaintiffs do not explain how or why such violations of state election procedures automatically amount to violations of the clauses. In other words, it appears that Plaintiffs' claims are in fact state law claims disguised as federal claims.

A review of Supreme Court cases interpreting these clauses supports this conclusion. In *Cook v. Gralike*, the Supreme Court struck down a Missouri law that required election officials to print warnings on the ballot next to the name of any congressional candidate who refused to support term limits after concluding that such a statute constituted a "'regulation' of congressional elections," as used in

the Elections Clause. 531 U.S. 510, 525-26 (2001) (quoting U.S. Const. art. I, § 4, cl. 1). In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, the Supreme Court upheld an Arizona law that transferred redistricting power from the state legislature to an independent commission after concluding that "the Legislature," as used in the Elections Clause, includes any official body with authority to make laws for the state. 576 U.S. 787, 824 (2015). In each of these cases, federal courts measured enacted state election laws against the federal mandates established in the clauses—they did not measure *violations* of enacted state elections law against those federal mandates.

By asking the Court to find that they have made out claims under the clauses due to alleged violations of the Michigan Election Code, Plaintiffs ask the Court to find that any alleged deviation from state election law amounts to a modification of state election law and opens the door to federal review. Plaintiffs cite to no case—and this Court found none—supporting such an expansive approach.

b. Violation of the Equal Protection Clause

Most election laws will "impose some burden upon individual voters." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). But "[o]ur Constitution leaves no room for classification of people in a way that unnecessarily abridges this right [to vote]." *Reynolds v. Sims*, 377 U.S. 533, 559 (1964) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)). Voting rights can be impermissibly burdened "by a

debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id*. (quoting *Reynolds*, 377 U.S. at 555).

Plaintiffs attempt to establish an Equal Protection claim based on the theory that Defendants engaged in "several schemes" to, among other things, "destroy," "discard," and "switch" votes for President Trump, thereby "devalu[ing] Republican votes" and "diluting" the influence of their individual votes. (ECF No. 49 at Pg ID 3079.)

But, to be perfectly clear, Plaintiffs' equal protection claim is not supported by any allegation that Defendants' alleged schemes caused votes for President Trump to be changed to votes for Vice President Biden. For example, the closest Plaintiffs get to alleging that physical ballots were altered in such a way is the following statement in an election challenger's sworn affidavit: "I believe some of these workers were changing votes that had been cast for Donald Trump and other Republican candidates."[9] (ECF No. 6 at Pg ID 902 ¶ 91 (citing Aff. Articia

[9] Plaintiffs allege in several portions of the Amended Complaint that election officials improperly tallied, counted, or marked ballots. But some of these allegations equivocate with words such as "believe" and "may" and none of these allegations identify which presidential candidate the ballots were allegedly altered to favor. (*See, e.g.,* ECF No. 6 at Pg ID 902, ¶ 91 (citing Aff. Articia Bomer, ECF No. 6-3 at Pg ID 1008-10 ("I *believe* some of these ballots *may* not have been properly counted." (emphasis added))); Pg ID 902-03, ¶ 92 (citing Tyson Aff. ¶ 17) ("At least one challenger observed poll workers adding marks to a ballot where there was no mark for any candidate.").

Bomer, ECF No. 6-3 at Pg ID 1008-1010).) But of course, "[a] belief is not evidence" and falls far short of what is required to obtain any relief, much less the extraordinary relief Plaintiffs request. *United States v. O'Connor*, No. 96-2992, 1997 WL 413594, at *1 (7th Cir. 1997); *see Brown v. City of Franklin*, 430 F. App'x 382, 387 (6th Cir. 2011) ("Brown just submits his belief that Fox's 'protection' statement actually meant "protection from retaliation. . . . An unsubstantiated belief is not evidence of pretext."); *Booker v. City of St. Louis*, 309 F.3d 464, 467 (8th Cir. 2002) ("Booker's "belief" that he was singled out for testing is not evidence that he was.").[10] The closest Plaintiffs get to alleging that election machines and software changed votes for President Trump to Vice

[10] As stated by the Circuit Court for the District of Columbia Circuit:

> The statement is that the complainant believes and expects to prove some things. Now his belief and expectation may be in good faith; but it has been repeatedly held that suspicion is not proof; and it is equally true that belief and expectation to prove cannot be accepted as a substitute for fact. The complainant carefully refrains from stating that he has any information upon which to found his belief or to justify his expectation; and evidently he has no such information. But belief, without an allegation of fact either upon personal knowledge or upon information reasonably sufficient upon which to base the belief, cannot justify the extraordinary remedy of injunction.

Magruder v. Schley, 18 App. D.C. 288, 292, 1901 WL 19131, at *2 (D.C. Cir. 1901).

President Biden in Wayne County is an amalgamation of theories, conjecture, and speculation that such alterations were *possible*. (*See e.g.,* ECF No. 6 at ¶¶ 7-11, 17, 125, 129, 138-43, 147-48, 155-58, 160-63, 167, 171.) And Plaintiffs do not at all explain how the question of whether the treatment of election challengers complied with state law bears on the validity of votes, or otherwise establishes an equal protection claim.

With nothing but speculation and conjecture that votes for President Trump were destroyed, discarded or switched to votes for Vice President Biden, Plaintiffs' equal protection claim fails.[11] *See Wood*, 2020 WL 7094866 (quoting *Bognet*, 2020 WL 6686120, at *12) ("'[N]o single voter is specifically disadvantaged' if a vote is counted improperly, even if the error might have a 'mathematical impact on the final tally and thus on the proportional effect of every vote.'").

[11] "[T]he Voter Plaintiffs cannot analogize their Equal Protection claim to gerrymandering cases in which votes were weighted differently. Instead, Plaintiffs advance an Equal Protection Clause argument based solely on state officials' alleged violation of state law that does not cause unequal treatment. And if dilution of lawfully cast ballots by the 'unlawful' counting of invalidly cast ballots were a true equal-protection problem, then it would transform every violation of state election law (and, actually, every violation of every law) into a potential federal equal-protection claim requiring scrutiny of the government's 'interest' in failing to do more to stop the illegal activity. That is not how the Equal Protection Clause works." *Bognet*, 2020 WL 6686120, at *11.

2. Irreparable Harm & Harm to Others

Because "a finding that there is simply no likelihood of success on the merits is usually fatal[,]" *Gonzales v. Nat'l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000) (citing *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1249 (6th Cir. 1997), the Court will not discuss the remaining preliminary injunction factors extensively.

As discussed, Plaintiffs fail to show that a favorable decision from the Court would redress their alleged injury. Moreover, granting Plaintiffs' injunctive relief would greatly harm the public interest. As Defendants aptly describe, Plaintiffs' requested injunction would "upend the statutory process for election certification and the selection of Presidential Electors. Moreover, it w[ould] disenfranchise millions of Michigan voters in favor [of] the preferences of a handful of people who [are] disappointed with the official results." (ECF No. 31 at Pg ID 2227.)

In short, none of the remaining factors weigh in favor of granting Plaintiffs' request for an injunction.

IV. Conclusion

For these reasons, the Court finds that Plaintiffs are far from likely to succeed in this matter. In fact, this lawsuit seems to be less about achieving the relief Plaintiffs seek—as much of that relief is beyond the power of this Court—and more about the impact of their allegations on People's faith in the democratic

process and their trust in our government. Plaintiffs ask this Court to ignore the orderly statutory scheme established to challenge elections and to ignore the will of millions of voters. This, the Court cannot, and will not, do.

The People have spoken.

The Court, therefore, **DENIES** Plaintiffs' "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief" (ECF No. 7.)

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: December 7, 2020

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

NO. CV20-02321-PHX-DJH

INTERVENOR-DEFENDANT MARICOPA COUNTY'S MOTION FOR JUDICIAL NOTICE

Pursuant to Rule 7, Fed. R. Civ. P., the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes ("Maricopa County Intervenors") respectfully

request that this Court take judicial notice of the following decisions issued by the Maricopa County Superior Court.

- Exhibit A, *Aguilera v. Fontes*, CV2020-014562 (Case Dismissed, November 29, 2020).
- Exhibit B, *Ward v. Jackson*, CV2020-015285 (Minute Entry Ruling, December 4, 2020).

Each of these decisions involved a challenge to the November 3, 2020, General Election results in Maricopa County. Their findings of fact and conclusions of law discuss the County's processes and procedures for conducting the election.

RESPECTFULLY submitted this 7th day of December, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: */s/Thomas P. Liddy*
Thomas P. Liddy
Emily Craiger
Joseph I. Vigil
Joseph J. Branco
Joseph E. LaRue
Attorneys for Maricopa County Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 3rd, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/ V. Sisneros

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EXHIBIT A

Clerk of the Superior Court
*** Filed ***
11/30/2020 2:50 PM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014562

11/29/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT
K. Ballard
Deputy

LAURIE AGUILERA, et al.

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, et al.

THOMAS PURCELL LIDDY

DANIEL A ARELLANO
SARAH R GONSKI
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MAHONEY

CASE DISMISSED

"There's nothing perfect in this world, including voting systems."

So testified Plaintiffs' voting systems expert Dr. Sneeringer[1] during the Hearing[2] in response to the question "To your knowledge, does a perfect voting system exist?" Dr.

[1] W. James Sneeringer received his B.S. in Mathematics from Duke University, and his Ph.D. in Computer Science from University of North Carolina at Chapel Hill. He testified to having 20 years of experience examining voting systems for the state of Texas. (Hearing Exh. "32".) Over those years, Dr. Sneeringer conducted 60 to 70 examinations of 10 different voting systems, although he never examined either Maricopa County's actual voting system, or the Dominion Voting Systems, Democracy Suite 5.5-B, which Maricopa County uses in its elections. Dr. Sneeringer testified that in the course of conducting those 60 to 70 voting systems examinations, he had never come across a perfect voting system.

[2] On 11/20/2020, from approximately 9:00 AM to 5:00 PM, by agreement of the parties, this Court held a proceeding (the "Hearing") which combined (1) the evidentiary hearing on Plaintiffs' Complaint; and (2) oral argument on two Motions to Dismiss, one filed by the Maricopa County Defendants (collectively, "Defendants") and the other filed by Intervenor Arizona Democratic Party ("Intervenor" or "ADP").

Sneeringer's opinion, while seemingly neither controversial nor original as to the lack of perfection in the world, directly contradicts the linchpin of Plaintiffs' Complaint[3].

Plaintiffs' Complaint, stating six causes of action, contains a modest 13.5 pages of explanatory text. Within those pages, Plaintiffs assert 13 separate times that Arizona law requires and guarantees to its voters perfection in the voting process in this State, and that Plaintiffs were harmed as a legal matter by being deprived of a perfect process.

Specifically, Plaintiffs claim:

- the ballot casting and tabulating process did not occur with "perfect accuracy";
- the tabulation machines did not "both automatically and perfectly read and record" all ballots and did not count votes "perfectly";
- every tabulator was not a "perfectly accurate machine"; and
- all votes were not "counted via a fully automated and perfect process."

(Complaint at 2:8, 4:28, 6:15, 7:6, 7:21, 7:28, 8:18-19, 8:21, 9:9, 11:23-24, 11:25-26, 12:2, and 12:23-24.)

THE COURT FINDS the law cannot provide, nor does it guarantee, perfection.

This Court could not locate the word "perfect," or a derivative thereof, in the Arizona Secretary of State's 2019 Elections Procedures Manual ("EPM") (Hearing Exh.[4] "23"). Likewise, the Court is not aware of, and no party has brought to the Court's attention, any Arizona elections or voting statute containing the word "perfect" or a variation thereof.

The Complaint states that it is brought by "two individuals who experienced difficulties voting on election day." (Complaint ¶ 1.1.)

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[3] Plaintiffs Laurie Aguilera ("Aguilera") and Donovan Drobina ("Drobina") (collectively, "Plaintiffs") filed a Verified Complaint ("Complaint") on 11/12/2020. Although the Complaint is required to be verified, only Aguilera verified the Complaint; Drobina did not. Aguilera explicitly limits her Verification as follows: "My knowledge of course being limited to the facts of my particular circumstances." (*Id.*, second sentence.) Aguilera's particular circumstances are not the same circumstances Drobina experienced. In addition, Drobina's Declaration (Exh. "D" to Complaint) does not verify the Complaint, and was dated 11/4/2020 which date is well before 11/12/2020 when the Complaint herein was both dated and filed, but 11/4/2020 is consistent with the date these Plaintiffs filed an earlier Complaint in CV2020-014083 (*"Aguilera I"*). Further, in the final paragraph of both of Drobina's Declarations (attached to Plaintiffs' Amended Complaint in *Aguilera I* and Exh. "D" to the Complaint herein), Drobina states expressly that "Kolodin Law Group PLLC is not my attorney," yet Kolodin Law Group PLLC appears in the Complaint herein as counsel representing Drobina and likewise Kolodin Law Group PLLC has appeared on Drobina's behalf at all proceedings throughout the entirety of both this matter and *Aguilera I*.

[4] Unless otherwise noted, all exhibits referenced hereinafter are to exhibits received in evidence during the Hearing.

Plaintiff Aguilera asserts that she was unable to successfully cast her ballot in person at the polls on 11/3/2020, Election Day. (*Id.* ¶ 1.2.) Aguilera testified[5] that on Election Day, she and her husband Damian Aguilera went together to vote in person at the Sheraton Hotel at 26th Avenue and Dunlap in Phoenix. Aguilera's husband testified that he voted without incident just ahead of his wife. Aguilera testified that when she inserted her completed ballot into the tabulator machine, the tabulator screen did not light up or make any noise. Poll workers who came to assist Aguilera thought the tabulator looked as though it was ready to receive another ballot and told Aguilera she needed to vote again. When Aguilera began the process of doing so by scanning in her identification at the check-in kiosk, the kiosk indicated that she had already cast her ballot and gave her the option to cancel the ballot.

Aguilera elected to do so, but before she could proceed further, a poll worker returned and told Aguilera and the other poll worker attending Aguilera: "I just got off the phone. Her ballot's in the box. It will be counted tonight." Consequently, Aguilera was not permitted to cast a second ballot as her first ballot "was in the box" and would be counted later.

Aguilera's husband later checked the Maricopa County Recorder's website for his ballot status which, under the heading "My Ballot Status," showed a message reading "11/3/2020. You voted on Election Day. Your vote was counted." (Exh. "2".) Aguilera checked her ballot status on the website and the section under "My Ballot Status" was blank. (*Id.*) When asked what date she checked the website and took the screenshot that is Exhibit "2," Aguilera testified "I don't remember the date. A couple of weeks maybe. A week – I don't know. A couple of weeks ago." She had not checked the website on the day of the Hearing.

Aguilera is concerned that perhaps her ballot in fact was not processed and counted, contrary to what the poll workers told her would happen. Further, Aguilera also testified that even if her ballot was in fact counted, but was counted by a human being rather than a machine, she would not be satisfied because she has "no way of verifying that."

Plaintiff Drobina described a different scenario. Drobina acknowledges that he cast his ballot in person at the polls on Election Day at Arrowhead Town Center in Glendale, but the "tabulation machine ['tabulator'] was unable to automatically read and tabulate his ballot with perfect accuracy as the law required." (*Id.* ¶ 1.3.) The tabulator did not automatically accept Drobina's completed ballot the first two times he inserted it into the tabulator and therefore, he deposited his completed ballot into Tray 3 of the tabulator. Ballots from Tray 3[6] are processed later

[5] No poll worker or other witness testified to any of the details relating to Aguilera's or Drobina's specific experiences on Election Day, such that the descriptions provided of same are all from Plaintiffs' memories alone.

[6] Witness Scott Jarrett, Director of Election Day and Emergency Voting for the Maricopa County Election Department, referred to "misread ballots" as ballots that a tabulator would not accept, in which case the tabulator would feed the

and if further attempts at a tabulator reading a ballot are unsuccessful, then a human being manually reviews the ballot to determine voter intent and count the ballot ("Adjudication"). Drobina objects to a human review of his ballot as inferior to a machine review.

Drobina acknowledges that he did in fact receive confirmation on the County Recorder's website that his ballot had been counted. (Exh. "3".)

The evidence established that any number of issues may cause a tabulator to not be able to read a ballot, including stray marks, overvotes[7], blanks, unclear marks, tears, wrinkles, stains, or other damage. (*E.g.*, Exhs. "51" and "24".) If this occurs, the voter is given the option to "spoil[8]" her ballot and cast a new ballot, or she may decline to spoil her ballot and choose instead to let the original ballot go forward as is. (Exh. "51".)

Drobina complains that he prefers that a tabulator machine, rather than a human, reads his ballot and he asserts that Arizona law requires that to happen as Arizona uses tabulator machines. There is no contention that a human reviewing a ballot would ever know ***who*** cast the ballot as the parties all agree that a ballot contains no information as to the voter's identity, consistent with Arizona law requiring that ballots be secret. A.R.S. § 16-446(B)(1). Consequently, once a ballot has been cast, given the absence of any voter identification information on a ballot, the ballot cannot be "married" to, or tied back to, a specific voter. No party disputes this fact which the evidence established fully. Thus, it is physically impossible to locate, for any purpose, the ballots that were cast by Aguilera and Drobina on 11/3/2020.

In the normal course, Arizona law provides for ballots that cannot be read by tabulators for various reasons to be "adjudicated" by humans. An alternative to such human involvement is of course that a ballot which the machine cannot read will simply not be counted. That result disadvantages everyone, primarily the disenfranchised voter, but also the electorate, the candidates on the ballot, and the election process. Plaintiffs assert however that "[h]uman beings are by nature fallible and imperfect" (Complaint ¶ 4.14) and therefore inferior to machines, which Plaintiffs assert are infallible and "perfectly accurate."

THE COURT FURTHER FINDS no evidence established that machines are infallible or perfectly accurate. In fact, Plaintiffs' assertions in this respect are starkly disproven by the very events that bring Plaintiffs to this Court, i.e., Plaintiffs' claims that the ballots they completed and cast could not be read by the tabulator machines into which Plaintiffs inserted their completed ballots. Either Plaintiffs marked or handled their ballots in a manner that caused the tabulators to

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ballot back out of the machine to the voter. The voter then could opt to spoil his ballot or have it fed into Drawer 3, also referred to as the "misread bin" by witness Joshua Banko, a former Elections Department clerk.

[7] An "overvote" results when a voter marks more votes than allowed. (Exh. "51".)

[8] A "spoiled" ballot is one a voter chooses not to have counted. (Exh. "51".)

not be able to read them, or the tabulators experienced some problem that interfered with the machines' ability to do so. It is after all the fallible and imperfect humans who complete ballots, providing opportunity for the voter him or herself to cause inadvertently the very situation that prevents the ballot from being readable by the machine[9]. Similarly, it is not genuinely debatable that machines at times can and do malfunction, break down, and experience problems operating as designed and expected. In sum, Plaintiffs' underlying, explicitly asserted premise that voting machines are, or are required by law to be, always perfectly accurate is simply not credible, reasonable or provable.

THE COURT FURTHER FINDS Plaintiffs' failure to establish the core premise of their Complaint – that machines are always infallible and perfect, and that the law requires same – defeats Plaintiffs' claim that they were deprived of a perfect process when the tabulators could not read their ballots automatically and with perfect accuracy. A flawless election process is not a legal entitlement under any statute, EPM rule, or other authority identified by the parties or otherwise known to the Court. Rather, a perfect process is an illusion.

Plaintiffs' first sentence of their Complaint states "Plaintiffs are two individuals who experienced difficulties voting on election day." Plaintiffs thereafter contradict themselves in footnote 1 on page 8 ("Footnote 1") which reads "References to plaintiffs should also be taken to refer to those Maricopa County voters who experienced similar issues." In *Aguilera I*, Plaintiffs Aguilera and Drobina indicated an intention to certify a class of voters purportedly harmed by using Sharpie markers on their ballots and to proceed with that matter as a class action. No such certification occurred as Plaintiffs voluntarily and shortly dismissed *Aguilera I*. In this matter, class certification has not been requested. Therefore, in this cause, contrary to Footnote 1, no evidence or claims are properly before the Court concerning possible grievances of any unidentified voters.

Perhaps related to Footnote 1, Plaintiffs called as a Hearing witness Joshua Banko ("Banko"), a former Elections Department clerk who worked on Election Day at the polling location at the Paradise Valley Mall, Entrance 4, in Phoenix. The crux of Banko's testimony was that during the voting at the Paradise Valley Mall on Election Day, he observed issues with the two tabulator machines used at that site accepting ballots from "approximately 80%" of the voters at that location.

THE COURT FURTHER FINDS Banko's testimony unhelpful to the issues before the Court for two primary reasons.

[9] Plaintiffs both testified that they completed their respective ballots perfectly, dismissing the possibility that anything they may have done or not done to their ballots caused the problems they experienced. **THE COURT FINDS** such uncorroborated testimony unpersuasive as both wholly conclusory and self-serving.

First, the two specific tabulator machines that Banko testified had issues were not the same tabulators either Aguilera or Drobina used because Banko, Aguilera and Drobina were at three different polling sites on Election Day, each of which location had its own separate tabulator machines.

Second, Banko's description of what he saw and how clearly he could see the marks on various ballots of voters was unreliable. During Election Day, Banko's various assignments included manning the drop box for early voting ballots, acting as a registration clerk, and handling the on-demand ballot printers. Banko contends that he could see, often from a distance, that there were no extraneous votes or lines on the ballots and that the bubbles seemed to be filled in completely and appropriately by the voters who nevertheless were having issues. Banko also assumed he knew which portions of the voters' ballots allowed one or more votes because he himself lived "in proximity" to this polling location and many of the voters' residences were also "in proximity" to this site. While acknowledging that he was "obviously doing other tasks," Banko thinks he got a "good look" at 10 ballots and "a look" at another 15 ballots at least, while he was stationed throughout the polling site. Banko testified that voters having issues were showing their ballots to the Marshall or the Inspector, whose jobs involved addressing such issues. It was not Banko's job to examine the ballot of a voter with an issue. Despite Banko's limited exposure to the voters' ballots, Banko testified that all of "[t]he ballots were in pristine condition."

THE COURT FURTHER FINDS no probative value to Banko's testimony which was unspecific, categorical, appeared largely speculative and untrustworthy, and was not material to the voting experiences Aguilera and Drobina had at their separate voting locations.

THE COURT FURTHER FINDS to the extent Banko's testimony was intended to show that the tabulators at one site, different from the polling locations where Plaintiffs voted, experienced problems on Election Day, such evidence directly undercuts Plaintiffs' claims that voting machines are reliably perfect. In addition, the uncontroverted Certificates of Accuracy (Exhs. "45" and "46") verified that successful Logic and Accuracy Tests of the 2020 General Election Combined Voting Equipment were conducted in Phoenix on 10/6/2020, in accordance with A.R.S. § 16-449, and post-election on 11/18/2020.

A.R.S. § 16-446, *Specifications of electronic voting system,* provides in pertinent part:

> **A.** An electronic voting system consisting of a voting or marking device in combination with vote tabulating equipment shall provide facilities for voting for candidates at both primary and general elections.
> **B.** An electronic voting system shall:
> 1. **Provide for voting in secrecy** when used with voting booths.

2. Permit each elector to vote at any election for any person for any office whether or not nominated as a candidate, to vote for as many persons for an office as the elector is entitled to vote for and to vote for or against any question on which the elector is entitled to vote, **and the vote tabulating equipment shall reject choices recorded on the elector's ballot if the number of choices exceeds the number that the elector is entitled to vote for the office or on the measure.**
3. **Prevent the elector from voting for the same person more than once for the same office.**
4. Be suitably designed for the purpose used and be of durable construction, and **may be used** safely, efficiently and **accurately in the conduct of elections and counting ballots.**
5. **Be provided with means for sealing the voting or marking device against any further voting after the close of the polls and the last voter has voted.**
6. **When properly operated, record correctly and count accurately every vote cast.**
7. **Provide a durable paper document that visually indicates the voter's selections, that the voter may use to verify the voter's choices, that may be spoiled by the voter if it fails to reflect the voter's choices and that permits the voter to cast a new ballot. This paper document shall be used in manual audits and recounts.**

(Emphasis added.)

As to relief requested, Aguilera requests to be able "to cast a new ballot." (Complaint at 12:10-11.) Such relief is not legally available to Aguilera. Aguilera cast one ballot and cannot lawfully cast another. In addition, once the polls have closed on Election Day, further voting is prohibited. A.R.S. § 16-446(B)(5).

Plaintiffs both seek as part of their requested relief the opportunity to attend the tabulation/adjudication process in person to watch it live and up close now and possibly in the future. Plaintiffs seek an injunction that "require[es] the opening [of] the location where electronic adjudication is taking place to the public in further elections, as well as during any additional electronic adjudication that takes place this election (e.g., as a result of a recount)." (Complaint at 15:4-7.) Plaintiffs contend that the Electronic Adjudication Addendum to the 2019 EPM[10] (Exh. "24") at § (D), entitled *Electronic Vote Adjudication Procedures,* justifies such an Injunction where it states "1. The electronic adjudication of votes must be performed in a secure location, preferably in the same location as the EMS[11] system, but **open to public viewing**." (Complaint ¶

[10] As agreed by all parties, the EPM has the force of law. A.R.S. § 16-452(C); *Arizona Public Integrity Alliance v. Fontes,* 2020 WL 6495694 (Ariz. Nov. 5, 2020 ¶ 16).
[11] "EMS" is the election management system.

4.42, emphasis added.) Specifically, Plaintiffs assert that "Defendants failed to open the location where electronic adjudication occurs to the public." (Complaint, ¶ 4.43.)

THE COURT FURTHER FINDS the relief requested is not appropriate or feasible for several reasons. First, the adjudication of votes had been completed by or on the date of the Hearing. Second, the uncontested evidence established that the public is able to view the adjudication process on an Elections Department website which broadcasts to the public these very Election Department activities, yet both Plaintiffs testified that they had not even looked at the website. Although Plaintiffs' counsel argued that the website's camera view was distant or in some fashion inadequate to satisfy Plaintiffs, this was argument of counsel since Plaintiffs had never actually availed themselves of the website viewing opportunity to know personally what was visible or whether it was satisfactory.

Third, the Court questions a process which permits anyone other than the authorized personnel hired/appointed to do so, to view a ballot in the fine detail Plaintiffs desire. Disclosing the details of another voter's ballot to a member of the public offends ballot secrecy. If Aguilera or Drobina had asked to watch closely in some manner the adjudication or processing of *her or his own ballot*, secrecy would not be an issue. However, because, as all parties agree, it is impossible to associate a ballot, once cast, with any specific voter, neither Plaintiff could have watched her/his own ballot being processed or adjudicated. Furthermore, **THE COURT FINDS** Plaintiffs did not establish that the public website fails to satisfy the Electronic Adjudication Addendum § (D)(1) requirement that adjudication be "open to public viewing".

In the Motions to Dismiss, Defendants and Intervenor contend that the Complaint should be dismissed under the doctrine of laches. The Court disagrees.

> The defense of laches is available in election challenges. *Harris v. Purcell,* 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998); *Mathieu v. Mahoney,* 174 Ariz. 456, 458-59, 851 P.2d 81, 83–84 (1993). This doctrine is an equitable counterpart to the statute of limitations, designed to discourage dilatory conduct. *Harris,* 193 Ariz. at 410 n. 2, 973 P.2d at 1167 n. 2. Laches will generally bar a claim when the delay is unreasonable and results in prejudice to the opposing party. *Id.* at 412, 973 P.2d at 1169. … A laches defense, however, cannot stand on unreasonable conduct alone. *Harris,* 193 Ariz. at 412, 973 P.2d at 1169. A showing of prejudice is also required. *Id.; Mathieu,* 174 Ariz. at 459, 851 P.2d at 84. … The real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance. *Mathieu,* 174 Ariz. at 460, 851 P.2d at 85. The effects of such delay extend far beyond the interests of the parties. Waiting until the last minute to file an election challenge "places the court in a position of having to steamroll through the delicate legal issues in order to meet the deadline for measures to be placed on

> the ballot." *Id.* at 459, 851 P.2d at 84 (citation omitted). We repeat our caution that litigants and lawyers in election cases "must be keenly aware of the need to bring such cases with all deliberate speed or else the quality of judicial decision making is seriously compromised." *Id.* at 460, 851 P.2d at 85. Late filings "deprive judges of the ability to fairly and reasonably process and consider the issues ... and rush appellate review, leaving little time for reflection and wise decision making." *Id.* at 461, 851 P.2d at 86. It is imperative that we consider fairness not only to those who challenge a ballot initiative, but also to the sponsors who place a measure on the ballot, the citizens who sign petitions, the election officials, and the voters of Arizona. *Harris,* 193 Ariz. at 414, 973 P.2d at 1171.

Sotomayor v. Burns, 199 Ariz. 81, 82-83 ¶¶ 6, 8 and 9 (2000).

THE COURT FURTHER FINDS under the circumstances presented that although Plaintiffs could have proceeded more expeditiously, substantial prejudice is not shown and the Court therefore proceeds on the merits[12].

"To gain standing to bring an action, a plaintiff must allege a distinct and palpable injury. *Warth v. Seldin,* 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975). An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing. *Id.* at 499, 95 S.Ct. at 2205." *Sears v. Hull,* 192 Ariz. 65, 69 ¶ 16 (1998).

THE COURT FURTHER FINDS Plaintiffs fail to allege harm of the nature required to achieve standing. Plaintiffs both cast their ballots. Plaintiffs both allege that they would prefer the process to be different. A change in the established process goes to the process used with and available to all voters, not uniquely to Aguilera and Drobina.

Recognizing federal law as instructive, the Court in *Arizonans for Second Chances, Rehab., and Pub. Safety v. Hobbs,* 249 Ariz. 396, 471 P.3d 607, 616 ¶ 22 (2020), analyzed redressability, noting that "a party must show that their requested relief would alleviate their alleged injury." (*Id.* ¶ 25, *citing Bennett v. Napolitano,* 206 Ariz. 520, 525 ¶ 18 (2003).)

For the reasons discussed above, the relief sought by Plaintiffs would not alleviate their alleged injuries in how their ballots were processed and handled. That fully complete process is a locked box, in effect. It is impossible to open the box, to identify or locate Plaintiffs' ballots, to review or change those ballots, and equally impossible for either Plaintiff to cast another ballot as doing so would contravene Arizona law.

---

[12] Given the urgency of the compressed time constraints in this and similar election matters, this Court elected, with the parties' agreement, to hear argument on the Motions to Dismiss simultaneously with hearing the evidence on the relief sought by Plaintiffs in the Complaint. The Court determined that doing otherwise could negatively impact or potentially preclude a timely resolution including appeal for the parties.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014562 11/29/2020

Plaintiffs have alleged six causes of action, and Defendants and Intervenor have moved to dismiss all of them. The Court has not expressly and individually called out above each of those claims because Plaintiffs' underlying allegations and asserted injuries are one nucleus, on which all claims are founded. None of Plaintiffs' claims survive dismissal for the reasons addressed above. Furthermore, were none of the grounds warranting dismissal of the Complaint on its face upheld, Plaintiffs' evidence did not meet the burden of proof necessary to establish that (1) the tabulators' inability to automatically read Plaintiffs' ballots was caused by Defendants and by the tabulators malfunctioning as opposed to Plaintiffs' completion and/or handling of their ballots; (2) Plaintiffs actually suffered an injury; and (3) Plaintiffs' requested relief is both possible and addresses their perceived injuries.

IT IS ORDERED therefore dismissing with prejudice this action for failure to state a claim upon which relief can be granted, or alternatively, denying the relief sought by Plaintiffs given their failure to produce evidence demonstrating entitlement to same.

As no further matters remain pending, the Court signs this minute entry as a final Judgment entered under Ariz. R. Civ. P. 54(c).

HONORABLE MARGARET R. MAHONEY
JUDGE OF THE SUPERIOR COURT

* * * *

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 ***
12/4/2020 4:05 p m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

KELLI WARD

DENNIS I WILENCHIK

v.

CONSTANCE JACKSON, et al.

SARAH R GONSKI

ROOPALI HARDIN DESAI
JOSEPH EUGENE LA RUE
DAVID SPILSBURY
ROY HERRERA
DANIEL A ARELLANO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE WARNER
BRUCE SPIVA
PERKINS COIE LLP
700 THIRTEENTH STREET NW
SUITE 600
WASHINGTON DC 20005

MINUTE ENTRY

East Court Building – Courtroom 414

9:15 a.m. This is the time set for a continued Evidentiary Hearing on Plaintiff's anticipated election contest petition via GoToMeeting.

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The following parties/counsel are present virtually through GoToMeeting and/or telephonically:

- Plaintiff Kelli Ward is represented by counsel, John D. Wilenchik.

- Defendants Constance Jackson, Felicia Rotellini, Fred Yamashita, James McLaughlin, Jonathan Nez, Luis Alberto Heredia, Ned Norris, Regina Romero, Sandra D. Kennedy, Stephen Roe Lewis, and Steve Gallardo (collectively, the "Biden Elector Defendants") are represented by counsel, Sarah Gonski, Bruce Spiva (*pro hac vice*), Daniel Arellano, and Roy Herrera.

- Intervenors Adrian Fontes (in his official capacity as Maricopa County Recorder) and Maricopa County Board of Supervisors (collectively, "County Intervenors") and are represented by counsel, Thomas Liddy, Emily Craiger, and Joseph La Rue.

- Intervenor Katie Hobbs (in her official capacity as the Arizona Secretary of State) is represented by counsel, Rooplai Desai and Kristen Yost. State Election Director Sambo "Bo" Dul is also present.

Counsel for Biden Elector Defendants addresses the court as to the court's ruling denying any Rule 50 motion practice after the conclusion of Plaintiff's case. Discussion is held thereon and counsel for Biden Elector Defendants states his position on the record. The court affirms its prior ruling denying the request for any Rule 50 motion practice.

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

Biden Elector Defendants' Case:

Linton Mohammed is sworn and testifies.

Biden Elector Defendants' exhibit 16 is received in evidence.

Linton Mohammed is excused.

Biden Elector Defendants rest.

Intervenor Secretary of State's Case:

Sambo "Bo" Dul is sworn and testifies.

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Intervenor Secretary of State's exhibit 32 is received in evidence.

Sambo "Bo" Dul is excused.

Intervenor Secretary of State rests.

LET THE RECORD REFLECT that the court notes its prior acquaintance with County Intervenors' witness, Reynaldo Valenzuela, due to election matters while serving previously as the civil presiding judge.

County Intervenors' Case:

Reynaldo Valenzuela is sworn and testifies.

County Intervenors' exhibit 29 is received in evidence.

10:31 a.m. The court stands at recess.

10:41 a.m. Court reconvenes with the parties and respective counsel present.

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

Reynaldo Valenzuela continues to testify.

County Intervenors' exhibit 30 is received on evidence.

Reynaldo Venezuela is excused.

Scott Jarrett is recalled and testifies further.

Scott Jarrett is excused.

County Intervenors rest.

Plaintiff's Rebuttal:

Liesl Emerson is sworn and testifies.

Liesl Emerson is excused.

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Plaintiff rests.

11:30 a.m. The court stands at recess.

11:36 a.m. Court reconvenes with the parties and respective counsel present.

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

Closing arguments are presented.

Based on the testimony and evidence presented,

IT IS ORDERED taking this matter under advisement with a written ruling to be issued as a "**LATER**:" to this minute entry.

Pursuant to the orders entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of Court,

LET THE RECORD FURTHER REFLECT counsel indicate on the record that the courtroom clerk may dispose of Plaintiff's exhibits 2 through 13 and 15; County Intervenors' exhibit 21; and Intervenor Secretary of State's exhibits 33 and 34 not offered or received in evidence.

12:22 p.m. Matter concludes.

LATER:

Based on the evidence presented, the Court makes the following findings, conclusions, and orders. For reasons that follow, the relief requested in the Petition is denied.

1. Background.

On November 30, 2020, Governor Ducey certified the results of Arizona's 2020 general election, and the Biden/Harris ticket was declared the winner of Arizona's 11 electoral votes. The same day, Plaintiff filed this election challenge under A.R.S. § 16-672. In order to permit this matter to be heard and appealed (if necessary) to the Arizona Supreme Court before the Electoral College meets on December 14, 2020, the Court held an accelerated evidentiary hearing on December 3 and 4, 2020.

SUPERIOR COURT OF ARIZONA
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2. The Burden Of Proof In An Election Contest.

A.R.S. § 16-672 specifies five grounds on which an election may be contested, three of which are alleged here:

> A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:
>
> 1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.
>
> . . .
>
> 4. On account of illegal votes.
>
> 5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

A.R.S. § 16-672(A)(1). Arizona law provides two remedies for a successful election contest. One is setting aside the election. A.R.S. § 16-676(B). The other is to declare the other candidate the winner if "it appears that a person other than the contestee has the highest number of legal votes." A.R.S. § 16-676(C).

The Plaintiff in an election contest has a high burden of proof and the actions of election officials are presumed to be free from fraud and misconduct. *See Hunt v. Campbell*, 19 Ariz. 254, 268, 169 P. 596, 602 (1917) ("the returns of the election officers are prima facie correct and free from the imputation of fraud"); *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986) ("One who contests an election has the burden of proving that if illegal votes were cast the illegal votes were sufficient to change the outcome of the election."). A plaintiff alleging misconduct must prove that the misconduct rose to the level of fraud, or that the result would have been different had proper procedures been used. *Moore*, 148 Ariz. at 159, 713 P.2d

at 821. "[H]onest mistakes or mere omissions on the part of the election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269, 276 P. 843, 844 (1929).

These standards derive, in large part, from Arizona's constitutional commitment to separation of powers. Ariz. Const. Art. 3. The State Legislature enacts the statutes that set the rules for conducting elections. The Executive Branch, including the Secretary of State and county election officials, determine how to implement those legislative directives. These decisions are made by balancing policy considerations, including the need to protect against fraud and illegal voting, the need to preserve citizens' legitimate right to vote, public resource considerations, and—in 2020—the need to protect election workers' health. It is not the Court's role to second-guess these decisions. And for the Court to nullify an election that State election officials have declared valid is an extraordinary act to be undertaken only in extraordinary circumstances.

3. <u>The Evidence Does Not Show Fraud Or Misconduct</u>.

A.R.S. § 16-672(A)(1) permits an election contest "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." Plaintiff alleges misconduct in three respects. First is that insufficient opportunity was given to observe the actions of election officials. The Court previously dismissed that claim as untimely. *See Lubin v. Thomas*, 213 Ariz. 496, 497, 144 P.3d 510, 511 (2006) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice."). The observation procedures for the November general election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured.

Second, Plaintiff alleges that election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file. Under Arizona law, voters who vote by mail submit their ballot inside an envelope that is also an affidavit signed by the voter. Election officials review all mail-in envelope/affidavits to compare the signature on them with the signature in voter registration records. If the official is "satisfied that the signatures correspond," the unopened envelope is held until the time for counting votes. If not, officials attempt to contact the voter to validate the ballot. A.R.S. § 16-550(A).

This legislatively-prescribed process is elaborated on in the Secretary of State's Election Procedures Manual. The signature comparison is just one part of the verification process. Other

safeguards include the fact that mail-in ballots are mailed to the voter's address as listed in voter registration records, and that voters can put their phone number on the envelope/affidavit, which allows election officials to compare that number to the phone number on file from voter registration records or prior ballots.

Maricopa County election officials followed this process faithfully in 2020. Approximately 1.9 million mail-in ballots were cast and, of these, approximately 20,000 were identified that required contacting the voter. Of those, only 587 ultimately could not be validated.

The Court ordered that counsel and their forensic document examiners could review 100 randomly selected envelope/affidavits to do a signature comparison. These were envelope/affidavits as to which election officials had found a signature match, so the ballots were long ago removed and tabulated. Because voter names are on the envelope/affidavits, the Court ordered them sealed. But because the ballots were separated from the envelope/affidavits, there is no way to know how any particular voter voted. The secrecy of their votes was preserved.

Two forensic document examiners testified, one for Plaintiff and one for Defendants. The process forensic document examiners use to testify in court for purposes of criminal guilt or civil liability is much different from the review Arizona election law requires. A document examiner might take hours on a single signature to be able to provide a professional opinion to the required degree of certainty.

Of the 100 envelope/affidavits reviewed, Plaintiff's forensic document examiner found 6 signatures to be "inconclusive," meaning she could not testify that the signature on the envelope/affidavit matched the signature on file. She found no sign of forgery or simulation as to any of these ballots.

Defendants' expert testified that 11 of the 100 envelopes were inconclusive, mostly because there were insufficient specimens to which to compare them. He too found no sign of forgery or simulation, and found no basis for rejecting any of the signatures.

These ballots were admitted at trial and the Court heard testimony about them and reviewed them. None of them shows an abuse of discretion on the part of the reviewer. Every one of them listed a phone number that matched a phone number already on file, either through voter registration records or from a prior ballot. The evidence does not show that these affidavits are fraudulent, or that someone other than the voter signed them. There is no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots.

Third, Plaintiff alleges errors in the duplication of ballots. Arizona law requires election officials to duplicate a ballot under a number of circumstances. One is where the voter is overseas and submits a ballot under UOCAVA, the Uniformed And Overseas Citizens Absentee Voting Act. Another is where the ballot is damaged or otherwise cannot be machine-tabulated. When a duplicate is necessary, a bipartisan board creates a duplicate ballot based on the original. A.R.S. § 16-621(A). In 2020, Maricopa County had 27,869 duplicate ballots out of more than 2 million total ballots. The vast majority of these were either mail-in ballots or UOCAVA ballots. 999 of them came from polling places.

The Court ordered that counsel could review 100 duplicate ballots. Maricopa County voluntarily made another 1,526 duplicate ballots available for review. These ballots do not identify the voter so, again, there is no way to know how any individual voter voted. Of the 1,626 ballots reviewed, 9 had an error in the duplication of the vote for president.

Plaintiff called a number of witnesses who observed the duplication process as credentialed election observers. There was credible testimony that they saw errors in which the duplicated ballot did not accurately reflect the voter's apparent intent as reflected on the original ballot. This testimony is corroborated by the review of the 1,626 duplicate ballots in this case, and it confirms both that there were mistakes in the duplication process, and that the mistakes were few. When mistakes were brought to the attention of election workers, they were fixed.

The duplication process prescribed by the Legislature necessarily requires manual action and human judgment, which entail a risk of human error. Despite that, the duplication process for the presidential election was 99.45% accurate. And there is no evidence that the inaccuracies were intentional or part of a fraudulent scheme. They were mistakes. And given both the small number of duplicate ballots and the low error rate, the evidence does not show any impact on the outcome.

The Court finds no misconduct, no fraud, and no effect on the outcome of the election.

4. <u>The Evidence Does Not Show Illegal Votes</u>.

A.R.S. § 16-672(A)(2) permits an election contest "[o]n account of illegal votes." Based on the facts found above, the evidence did not prove illegal votes, much less enough to affect the outcome of the election. As a matter of law, mistakes in the duplication of ballots that do not affect the outcome of the election do not satisfy the burden of proof under Section 16-672(A)(2).

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5. The Evidence Does Not Show An Erroneous Vote Count.

A.R.S. § 16-672(A)(5) permits an election contest on the ground that, "by reason of erroneous count of votes" the candidate certified as the winner "did not in fact receive the highest number of votes." Plaintiff has not proven that the Biden/Harris ticket did not receive the highest number of votes.

6. Orders.

Based on the foregoing,

IT IS ORDERED denying the relief requested in the Petition.

IT IS FURTHER ORDERED denying the request to continue the hearing and permit additional inspection of ballots.

IT IS FURTHER ORDERED, as required by A.R.S. § 16-676(B), confirming the election.

IT IS FURTHER ORDERED that any request for costs and/or attorneys' fees be filed, and a form of final judgment be lodged, no later than January 5, 2020. If none of these is filed or lodged, the Court will issue a minute entry with Rule 54(c) language dismissing all remaining claims.

The Court finds no just reason for delay and enters this partial final judgment under Ariz. R. Civ. P. 54(b). The Court makes this finding for purposes of permitting an immediate appeal to the Arizona Supreme Court.

/ s / RANDALL H. WARNER

JUDGE OF THE SUPERIOR COURT

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Additional Counsel Listed on Signature Page

Attorneys for Proposed-Intervenor Defendant

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Bowyer, et al., Plaintiffs, vs. Ducey, et al., Defendants.	Case No: 2:20-cv-02321-DJH **ARIZONA DEMOCRATIC PARTY'S OBJECTIONS TO PLAINTIFFS' WITNESSES AND EXHIBITS**

Pursuant to this Court's order (Doc. 35), the Arizona Democratic Party ("ADP") submits its objections to Plaintiffs' (1) expert witnesses; (2) lay witnesses; and (3) exhibits.

Plaintiffs' Expert Witnesses

The ADP objects to each of the Plaintiffs' expert witnesses for the reasons set forth below. The ADP objects to Plaintiffs calling any expert witness not disclosed as Plaintiffs' disclosure of "[e]xperts anticipated for the [e]videntiary [h]earing" (Exhibit 1 at 2–3). *See* Doc. 35 ("[A]ny witness or exhibit not disclosed to the other party or to the Court will not be admitted at the hearing."). Further, because "Spider" has not been identified by name, the ADP also objects to the Plaintiffs calling the witness at trial based on this failure to timely disclose.[1]

No.	Expert Name	Objections
1	William Briggs	FRE 702, FRE 703, FRE 401, FRE 403
2	Brian Teasley	FRE 702, FRE 703, FRE 401, FRE 403
3	Russell James Ramsland, Jr.	FRE 702, FRE 703, FRE 401, FRE 403
4	"Spider"	FRE 702, FRE 703, FRE 401, FRE 403
5	Matthew Bromberg Ph.D.	FRE 702, FRE 401, FRE 403
6	Phillip Waldron	FRE 702, FRE 401, FRE 403

Plaintiffs' Lay Witnesses

The ADP objects to each of the Plaintiffs' lay witnesses for the reasons set forth below. The ADP objects to Plaintiffs calling any witness not disclosed as part of Plaintiffs' disclosure of "[f]act witnesses" (Exhibit 1 at 4–6). Further, to the extent that a witness has not been identified by name (*e.g.*, witnesses 10, 12, and 16), the ADP objects to the Plaintiffs calling the witness at trial because they have not been timely disclosed.[2]

No.	Witness Name	Objections
1	Anna Orth	FRE 401, FRE 403, FRE 701
2	Janese "Jan" Bryant	FRE 401, FRE 403, FRE 701
3	Greg Wodynski	FRE 401, FRE 403, FRE 701

[1] The ADP does not construe Plaintiffs' expert disclosure (Exhibit 1 at 2–3), which lists several documents, as purporting to disclose any of those documents as exhibits. Among other things, such evidence would be inadmissible hearsay and the ADP would object to their admission. *See* Fed. R. Evid. ("FRE") 801.

[2] The ADP does not construe Plaintiffs' disclosure of "[f]act witnesses" (Exhibit 1 at 4–6), which lists several documents, as purporting to disclose any of those documents as exhibits. Among other things, such evidence would be inadmissible hearsay and the ADP would object to the admission of such documents.

No.	Witness Name	Objections
4	Les Minkas	FRE 401, FRE 403, FRE 701
5	Diane Serra	FRE 401, FRE 403, FRE 701
6	Judith Burns	FRE 401, FRE 403, FRE 701
7	Kathleen Alvey	FRE 401, FRE 403, FRE 701
8	Linda Brickman	FRE 401, FRE 403, FRE 701
9	Mark Low	FRE 401, FRE 403, FRE 602, FRE 701
10	"Redacted Fact Witness, TM"	FRE 401, FRE 403, FRE 602, FRE 701
11	Senator Kelly Townsend	FRE 401, FRE 403, FRE 602, FRE 701
12	"Redacted - Venezuela Smartmatic Affidavit"	FRE 401, FRE 403, FRE 602, FRE 701
13	Joe Oltmann	FRE 401, FRE 403, FRE 602, FRE 701
14	Anna Mercedes Diaz Cardozo	FRE 401, FRE 403, FRE 602, FRE 701
15	Ronald Watkins	FRE 401, FRE 403, FRE 602, FRE 701
16	Jane Doe	FRE 401, FRE 403, FRE 701
17	Ryan Hartwig	FRE 401, FRE 403, FRE 701

Plaintiffs' Exhibits

The ADP objects to the Plaintiffs' documentary evidence for the reasons set forth below. Any exhibit not disclosed by Plaintiffs as part of their "Exhibit List for Witness Disclosure" (Exhibit 2) should be excluded. *See* Doc. 35.[3]

Plfs. Ex. No.	Description	Stipulate Auth. Y/N	Stipulate Admiss. Y/N	Objections
1	Redacted - Venezuela Smartmatic Affidavit 11.116.2020	N	N	FRE 401, FRE 403, FRE 802
2	Absentee Survey Analysis - Briggs Rpt.	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703

[3] Plaintiffs' exhibit disclosures are confusing, to say the least, apparently consisting of multiple attachments to emails that include CVs, declarations, and other inadmissible information. For these reasons, the ADP reserves the right to object to exhibits that plaintiffs have failed to identify clearly or that are identified after the disclosure deadline.

Plfs. Ex. No.	Description	Stipulate Auth. Y/N	Stipulate Admiss. Y/N	Objections
2A	Absentee Survey Wisconsin Analysis – Briggs Rpt. re Attachment AZ	N	N	FRE 401, FRE 403, FRE 802, FRE 703
2B	Briggs - attachment GA re 5 state Rpt. Absentee Live ID Topline	N	N	FRE 401, FRE 403, FRE 802, FRE 703
2C	Briggs - attachment PA re 5 state Rpt. Absentee Live ID Topline	N	N	FRE 401, FRE 403, FRE 802, FRE 703
2D	Briggs - Attachment WI Unreturned Live Agent Topline [26655]	N	N	FRE 401, FRE 403, FRE 802, FRE 703
2E	Briggs - Attachment MI Unreturned Live Agent Topline	N	N	FRE 401, FRE 403, FRE 802, FRE 703
2F	Briggs CV	N	N	FRE 401, FRE 403, FRE 802
3	Re Braynard	N	N	FRE 401, FRE 403, FRE 802
4	Brian Teasley - Statistician	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
5	Diane Serra Declaration (3 sep pdfs for pages 1-3)	N	N	FRE 401, FRE 403, FRE 802
6	Joseph Oltmann Affidavit	N	N	FRE 401, FRE 403, FRE 802

Plfs. Ex. No.	Description	Stipulate Auth. Y/N	Stipulate Admiss. Y/N	Objections
7	Harri Hursti Declaration Doc 809 US DIST CT 3 8-24-20	N	N	FRE 401, FRE 403, FRE 802
8	Affidavit of Anna Mercedes Diaz Cardozo in ENGLISH	N	N	FRE 401, FRE 403, FRE 802
9	Keshel Expert Affidavit	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
9A& B	Keshel Expert attachment	N	N	FRE 401, FRE 403, FRE 802, FRE 703
10	Andrew W. Appel, et al., "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019)	N	N	FRE 401, FRE 403, FRE 802
11	State of Texas Secretary of State Report of Review 20 //and 11B	N	N	FRE 401, FRE 403, FRE 802
12	"Spider" Affidavit Redacted	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
13	Declaration TPM 11 30 20 Redacted	N	N	FRE 401, FRE 403, FRE 802
14	Declaration of Ronald Watkins 11 26 20	N	N	FRE 401, FRE 403, FRE 802

Plfs. Ex. No.	Description	Stipulate Auth. Y/N	Stipulate Admiss. Y/N	Objections
15	Congresswoman Maloney letter re Smartmatica	N	N	FRE 401, FRE 403, FRE 802
16	Senators Warren etc. letter re Dominion Voting Systems	N	N	FRE 401, FRE 403, FRE 802
17	Ramsland Declaration	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
18	Joint FBI CISSA Cyber Security Advisory Exhibit [23058430092 25631231]	N	N	FRE 401, FRE 403, FRE 802
19	Matthew Bromberg, PhD Declaration 11 30 20	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
20	Mark Low Declaration	N	N	FRE 401, FRE 403, FRE 802
21	Burns Decl Declaration	N	N	FRE 401, FRE 403, FRE 802
22	Linda Brickman Declaration	N	N	FRE 401, FRE 403, FRE 802
23	Burns Decl Declaration	N	N	FRE 401, FRE 403, FRE 802
24	Dr. Briggs Rebuttal	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
25	Brian Teasley CV / Rebuttal	N	N	FRE 401, FRE 403, FRE 802, FRE 702, FRE 703
26	Ramsland CV and sources	N	N	FRE 401, FRE 403, FRE 802, FRE 703

Plfs. Ex. No.	Description	Stipulate Auth. Y/N	Stipulate Admiss. Y/N	Objections
27	Phil Waldron CV and sources	N	N	FRE 401, FRE 403, FRE 802, FRE 703
28	Spider Sources, 3 documents	N	N	FRE 401, FRE 403, FRE 802. FRE 703
29	Dominion Maricopa contract	N	N	FRE 401, FRE 403, FRE 802
30	Dominion User Manual	N	N	FRE 401, FRE 403, FRE 802
31	Staple street SEC Offering Form-D Report	N	N	FRE 401, FRE 403, FRE 802

Dated: December 7, 2020

/s/ Alexis E. Danneman

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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2020, I electronically transmitted the attached document to the Clerk's Office using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

/s/ Indy Fitzgerald

150408712.1

Exhibit 1

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TYLER BOYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOREHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD and MICHAEL WARD,

Plaintiffs.

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her capacity as the Arizona Secretary of State,

Defendants.

CASE NO. 20:cv-2321

EXPERT RULE 26(A)(2)(B) EXPERT DISCLOSURES AND FACT WITNESSES

COMES NOW Plaintiffs, Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmado, Kelli Ward, and Michael Ward, by and through their undersigned counsel, and file Expert and Fact Disclosure:

Experts anticipated for the Evidentiary Hearing:

a. William Briggs, is an expert witness that provided a declaration and statistical analysis for the present matter. Attached is his expert report in the attached Declaration. (See Complaint Exh. 2 and 2A-F).

i. Briggs' original expert report includes the only charts that he may refer to in live testimony.

ii. As stated in his expert report, the data relied on was created by Matt Braynard, and the topline reports of those data were attached as pdfs and submitted as part of his original report.

b. Dr. Briggs' rebuttal report in another case. (See Exh. 1, attached hereto).

c. In his rebuttal report, Dr. Briggs states that his work is entirely pro bono.

d. Attached is Dr. Briggs' CV, which includes a publications list. (See Exh.2F to the Complaint).

a. Dr. Briggs has submitted declaration in the Northern District of Georgia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

2. Brian Teasley, is an expert witness that provided a declaration and statistical analysis for the present matter.

a. His expert report is attached as Exh. 4 to the Complaint.

e. Teasley's' original expert report, declaration includes the charts that he may refer to in live testimony.

f. Mr. Teasley is appearing entirely pro bono.

g. Attached is Brian Teasley's CV is attached as Exh. 2, hereto.

a. He has submitted declarations in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

3. Russell James Ramsland, Jr.

a. Mr. Ramsland's report is attached to the Complaint as Ex. 17.

b. Mr. Ramsland's CV is attached hereto as EX. 3, hereto.

c. He has submitted declarations in the Northern District of Georgia 20-cv-04809; 20-cv-ED Michigan 20-cv-13134; ED Wisconsin 20-cv-0232.

4. Spider, whose identity is currently redacted for security reasons:

a. His testimony will be based on his report currently attached to the Complaint as Exh. 12; and in the attached declarations, EX. 4.

b. He is appearing pro bono, has not published in the prior 10 years.

c. He has the following background: Education: Texas A&M associate degree in robotics and engineering; Associates Degree ITT Tech, Texas in network systems; Experience: US Army 305th Military Intelligence; US Army (other) US Intelligence Agencies; Freelance computer security consultant

d. He has submitted declarations in the Northern District of Georgia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

5. Declaration of Matthew Bromberg Ph.D

a. Matt Bromberg's report is currently attached as a Declaration to the Complaint as Exh. 19, which includes his background and CV information;

b. He is appearing pro bono.

c. He has submitted declaration in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

6. Phillip Waldron. Mr. Waldron's background and the basis of his testimony is attached. Ex. 5. He is not getting paid for his appearance.

Fact witnesses

The following are fact witnesses that may be called at the hearing:

1. Anna Orth:
    a. Poll Observer
    b. Pima County
    c. 520-979-8330
    d. Anna Orth is anticipated testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

2. Janese "Jan" Bryant:
    a. Poll Observer,
    b. Maricopa County
    c. 208-859-3394
    d. Janese Jan Bryant will testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

3. Greg Wodynski:
    a. Digital Adjudication Observer
    b. Maricopa County
    c. 480-828-9425
    d. His declaration is attached to the Complaint as Exh. 22.

4. Les Minkas:
    a. Poll Observer
    b. Maricopa County
    c. 847-927-0856

5. Diane Serra:

a. Poll Observer
b. Maricopa County
c. 602-402-5836

d. Her Declaration is attached to the Compl., Ex. 5.

6. Judith Burns: Poll Observer,
   a. Maricopa County
   b. 810-923-5984
   c. Her Declaration is attached to the Compl. At Ex. 21.

7. Kathleen Alvey:
   a. Poll Observer
   b. Pima County
   c. 520-829-2117
   d. Kathleen Alvey is anticipated to testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

8. Linda Brickman:
   a. Maricopa County,
   b. GOP Chair
   c. 602-330-9422
   d. Her Declaration is attached to the Complaint as Ex. 23.

9. Mark Low:
   a. Poll Observer,
   b. Maricopa County
   c. 480-363-1154
   d. His Declaration is attached to the Complaint as Ex. 20.

10. Redacted Fact Witness, TM:
    a. Redacted witness TM's Declaration is attached to the Complaint as Ex. 13.

See Compl., Section I and Declarations attached thereto.

11. Senator Kelly Townsend:
    a. Senator in the AZ legislature
    b. Maricopa County
    c. kellyjtownsend@yahoo.com

    d. Senator Townsend is anticipated to information related to election violations.

12. Redacted - Venezuela Smartmatic Affidavit 11.116.2020, attached as Ex. 1 to the Complaint.

13. Joe Oltmann, his Declaration is attached to the Complaint as Exh. 6.Anna Mercedes Diaz Cardozo

14. Anna Mercedes Diaz Cardozo, her Affidavit is attached to the Complaint as Exh. 8.

15. Ronald Watkins, his Declaration is attached to the Complaint as Exh. 14.

16. Jane Doe. (name redacted) Will testify about illegal ballots being shipped around the United States including to Arizona on or about before Nov. 3, 2020.

17. Ryan Hartwig. Present at Phoenix airport and will testify about a suspicious airplane and activity at Phoenix airport on or around Nov. 3, 2020.

Respectfully submitted, this 1st day of December 2020.

/s Sidney Powell*
Sidney Powell PC
Texas Bar No. 16209700

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Exhibit 2

EXHIBIT NO.	PLAINTIFFS' EXHIBIT LIST
EXH 1	Redacted - Venezuela Smartmatic Affidavit 11.116.2020
EXH 2	Absentee Survey Analysis - Briggs Rpt.
EXH 2 A	Absentee Survey Wisconsin Analysis – Briggs Rpt. re Attachment AZ
EXH 2 B	Briggs - attachment GA re 5 state Rpt. Absentee Live ID Topline
EXH 2 C	Briggs - attachment PA re 5 state Rpt. Absentee Live ID Topline
EXH 2 D	Briggs - Attachment WI Unreturned Live Agent Topline [26655]
EXH 2 E	Briggs - Attachment MI Unreturned Live Agent Topline
EXH 2 F	Briggs CV
EXH 3	Re Braynard
EXH 4	Brian Teasley - Statistician
EXH 5	Diane Serra Declaration (3 sep pdfs for pages 1-3)
EXH 6	Joseph Oltmann Affidavit
EXH 7	Harri Hursti Declaration Doc 809 US DIST CT 3 8-24-20
EXH 8	Affidavit of Anna Mercedes Diaz Cardozo in ENGLISH
EXH 9	Keshel Expert Affidavit
EXH 9 A&B	Keshel Expert attachment
EXH 10	Andrew W. Appel, *et al.*, "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019)
EXH 11	State of Texas Secretary of State Report of Review 20 //and 11B
EXH 12	"Spider" Affidavit Redacted
EXH 13	Declaration TPM 11 30 20 Redacted
EXH 14	Declaration of Ronald Watkins 11 26 20
EXH 15	Congresswoman Maloney letter re Smartmatica
EXH 16	Senators Warren etc. letter re Dominion Voting Systems

EXH 17	Ramsland Declaration
EXH 18	Joint FBI CISSA Cyber Security Advisory Exhibit [2305843009225631231]
EXH 19	Matthew Bromberg, PhD Declaration 11 30 20
EXH 20	Mark Low Declaration
EXH 21	Burns Decl Declaration
EXH 22	Linda Brickman Declaration
EXH 23	Burns Decl Declaration
EXH 24	Dr. Briggs Rebuttal
EXH 25	Brian Teasley CV / Rebuttal
EXH 26	Ramsland CV and sources
EXH 27	Phil Waldron CV and sources
EXH 28	Spider Sources, 3 documents
EXH 29	Dominion Maricopa contract
EXH 30	Dominion User Manual
EXH 31	Staple street SEC Offering Form-D Report

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Attorneys for Defendant Arizona Secretary of State Katie Hobbs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT ARIZONA SECRETARY OF STATE KATIE HOBBS' AND MARICOPA COUNTY INTERVENORS' MOTION TO STRIKE FACT WITNESS TESTIMONY AND EVIDENTIARY OBJECTIONS

Motion to Strike

Plaintiffs' Complaint (Doc. 1) incorporates by reference affidavits from a collection of fact witnesses, and those witnesses' testimony is also incorporated by reference into Plaintiffs' TRO application and motion for preliminary objection. The affidavits from Plaintiffs' purported percipient witnesses are irrelevant, inadmissible, and devoid of any evidentiary value for the drastic relief they seek by their motion. They do not provide any plausible support for Plaintiffs' complaint, for the unprecedented relief they seek in this action, or for their motion.

In advance of the meet and confer the parties held on December 6, 2020 in accordance with the Court's minute order of December 4, 2020, Plaintiffs initially identified 17 fact witnesses that they said they "may" call at the evidentiary hearing. Defendants promptly pointed out the obvious impossibility of calling this many fact witnesses (to say nothing of Plaintiffs' six expert witnesses) during their one-hour portion of the hearing. Plaintiffs responded that, if the evidentiary hearing proceeds as scheduled on Thursday, December 10, 2020, ***they would offer no live fact witnesses***, and instead would submit any fact witness testimony through declarations of the ten proposed witnesses from whom they had produced affidavits. During the meet and confer, Plaintiffs also indicated that they would make any witness for whom testimony is presented by affidavit available for live cross-examination, but given the limited time allocations Defendants and Defendant Intervenors would be severely prejudiced if Plaintiffs introduce all of their direct testimony through declarations and require Defendants and Defendant Intervenors to use all of their time to cross them.

While Defendants and Defendant Intervenors do not believe there is any need to consider testimony from any of Plaintiffs' witnesses, they object to Plaintiffs' demand to introduce their witness testimony by declaration for the reasons stated below.

A. Dominion-Related Witnesses

1. "Venezuela Smartmatic Affidavit" (Doc. 1-2, Ex. 1). As their lead witness, plaintiffs offer this redacted affidavit from an undisclosed person who claims to

have had some involvement in rigging elections in Venezuela who claims to be "of sound mind." *Id.* ¶ 1. The first nineteen paragraphs are focused on elections in Venezuela using voting machines made by a company called "Smartmatic." *Id* ¶¶ 2-19. After a brief foray into other Latin American countries, *id.* ¶ 20, the affiant then asserts that "the Smartmatic software is in the DNA of every vote tabulating company's software and system," including Dominion. *Id.* ¶ 21. No foundation is offered for these conclusory assertions, and the witness does not purport to have first-hand knowledge of what s/he says.

The witness then asserts that "Dominion and Smartmatic did business together," that Dominion software has "fundamental flaws" that provide "opportunities to corrupt the data, and that "[t]he software decides the result regardless of what the voter votes." *Id.* ¶¶ 22-23. Again, the witness does not state anything that could support an inference that s/he is qualified to assess *Dominion*'s software or that s/he has *any* first-hand knowledge regarding *Dominion* software. The testimony appears to be pure speculation.

The affiant then returns to another discussion of events in Venezuela that bear no logical connection to an election in the United States. *Id.* ¶¶ 24-25. And then, finally, the affiant reaches the 2020 election in the United States, stating that s/he was "alarmed" as election results were announced and somehow found them to be "eerily reminiscent" of Venezuela. *Id* ¶ 26. According to the witness's sworn testimony, "vote counting was stopped," and "[t]hen during the wee hours of the morning, when there was no voting occurring and the vote count reporting was off-line, something significantly changed." *Id.* The witness asserts that "the very next morning there was a very pronounced change in favor of the opposing candidate, Joe Biden." *Id.* It's unclear how the witness could possibly have any foundation for this statement, let alone for making it under oath and under penalty of perjury, if it is intended to pertain to the election results *in Arizona*—in Arizona, Joe Biden of course was leading by more than 90,000 votes on election night, and that lead diminished as additional votes were counted over the ensuing days.

None of this is conceivably relevant or admissible under FRE 401-403, and none of it provides any basis to question the fairness and accuracy of the presidential election results in Arizona and should be struck.

2. "TM" (Doc. 1-5, Exh 13).

In similarly opaque fashion, the TM declaration is anonymous and thus inadmissible on its face. During the parties' meet and confer, Counsel for the Secretary asked for any caselaw supporting the admissibility of an anonymous fact witness and Plaintiffs could provide none. That should be the end of the inquiry. Even if the Court can somehow ignore this critical flaw, the substance of the declaration bears no connection to the allegations in Plaintiffs' Complaint. Its central thesis is that there are backdoors in certain voting machines that allow people to change votes using algorithms, and that this happened in Michigan, Arizona, Georgia, and Wisconsin. There is also testimony that President Obama and President-Elect Joe Biden colluded to rig elections in an unnamed county. The declarant has no meaningful or discernable qualifications to opine on any of the subjects of their report, nor do they employ any accepted methodology. In fact, they lack any personal knowledge of the theories disclosed.

None of this is conceivably relevant or admissible under FRE 401-403, and none of it provides any basis to question the fairness and accuracy of the presidential election results in Arizona and should be struck.

3. Joseph Oltmann (Doc. 1-3, Ex. 6). Mr. Oltmann lives in Colorado and describes himself as the founder of an organization that seeks "to restore constitutional integrity to our community and empower those in our community to stand up to state and national leadership that intends to suppress the rights of individuals holistically." *Id.* at 1. He states that he seeks to "infiltrate Antifa meetings and de-mask those Antifa members who are journalists in the mainstream media in Colorado specifically." *Id.* Mr. Oltmann than recounts several out-of-court statements he claims to have heard someone named "Eric" who was allegedly affiliated with Dominion Voting Systems say at an

Antifa meeting he claims to have infiltrated, during which this person allegedly expressed antipathy towards President Trump and skepticism as to his prospects in the election. *Id.* at 2.

Mr. Oltmann claims that, after the election, he learned that a person named Eric Coomer was affiliated with Dominion Voting Systems in some capacity, and that he then conducted a review of Mr. Coomer's social media, during which he found additional out-of-court statements expressing antipathy towards President Trump. *Id.* at 4. The purported statements of Mr. Coomer that Mr. Oltmann recounts are hearsay, and thus inadmissible under FRE 801-803. Further, Mr. Oltmann does not purport to have any first-hand knowledge about Mr. Coomer's role at Dominion, any alleged manipulation of Dominion voting machines, or the impact of any such manipulation on the election. He offers only vague speculation on those subjects. That speculation is inadmissible and irrelevant under FRE 401-403. And Mr. Oltmann's statement is subject to FRE 403 for the further reason that he does not say anything at all about Arizona.

4. Ana Mercedes Diaz Cardozo (Doc. 1-3, Ex. 8). This witness discusses her involvement in elections and with election equipment in Venezuela, and elsewhere in South and Central America, and her studies of elections in those parts of the world. Based on her studies, the witness believes it is important that election systems have "processes and mechanisms designed to prevent voting manipulation and fraud." *Id.* ¶ 17. She discusses her knowledge of Venezuela's use of an election management system called "Smartmatic" in 2004, *id.* ¶ 10, but she draws no connection between that system and anything in the United States at any time, let alone currently. She does not mention Arizona, and does not appear to have anything relevant to say pertaining to Plaintiffs' claims or the relief Plaintiffs seek. Her testimony is irrelevant and inadmissible under FRE 401-403.

5. Harri Hursti (Doc. 1-14, Ex. 7). This is a copy of a thirty-four-page declaration, plus exhibits, that apparently was filed in a prior case in Georgia. It relates to

the configuration and operation of Dominion voting machines in Georgia, suggests the machines and software were potentially vulnerable to manipulation or error in certain respects, and suggests ways to improve them. The statement says nothing about Arizona, and it draws no connection between the systems and software used in Georgia and that used in Arizona. The statement is irrelevant and inadmissible under FRE 401-403.

6. Ronald Watkins (Doc. 1-6, Ex. 14). Mr. Watkins purports to walk through the Dominion voting system with citation to various documents. But beside saying he has "nine years of experience as a network and information defense analyst," he provides no information about his employment or background. Accordingly, he does not establish any qualifications whatsoever for offering his opinion on the Dominon voting system, and his declaration should not be permitted.

B. Arizona-Specific Witnesses

7. Greg Wodynski. (Doc. 1-10, Ex. 22). Mr. Wodynski claims to have been a "Digital Adjudication Observer" in Maricopa County. Mr. Wodynski states that a Dominion employee named "Bruce" told him that he could not validate the chain of custody for a "daily second disk backup" (*i.e.,* not the original ballots, the original electronic case of the ballots, and not the first backup of that scan). *Id.* ¶¶ 11-12. Mr. Wodynski also expressed concerns about "Bruce's" handling of certain data files. *Id.* ¶ 13. Mr. Wodynski does not claim to have knowledge of *any* illegal vote that was counted or *any* lawful vote that was not, and he does not claim that the Dominion voting machines and software actually were manipulated or compromised in any way. Thus, Mr. Wodynski's statement does not seem to have any relevance that would support its admissibility under FRE 401-03. And the statements he attributes to "Bruce" are hearsay. FRE 801-03. According, the testimony should not be permitted.

8. Diane Serra (Doc. 1-3, Ex. 5). Ms. Serra claims she was a poll observer in Maricopa County. She expresses concern that she was able to provide only "less than effective" oversight and "no meaningful oversight" in the signature verification room and the envelope separation room on two separate days, and that she was physically

distanced from bi-partisan poll workers and election officials who were administering the election. *Id.* She also states that she "felt unwelcome" at one polling location after expressing her interest in "Big Band music," while indicating that another polling site she observed had a relatively "friendly atmosphere." *Id.* at 3. At one polling location she observed voters having issues with "over-votes" in an unspecified race and apparently had some question in her mind as to whether the poll workers provided appropriate guidance. *Id.* at 4. She had some involvement in identifying ballots to be included in the "hand count" audit at a polling location, and further states the hand count in that location was limited to ballots cast on election day." *Id.* at 5. Finally, Ms. Serra speculates that someone could have manipulated the Election Day votes if they had known they would not be included in the audit. *Id.* at 5. The last statement is objectionable under FRE 401-403 as Ms. Serra does not purport to have knowledge of any vote manipulation and is merely speculating. Because Ms. Serra does not identify any basis for concluding any illegal vote was counted or any lawful vote was not, her statement does not have any relevance to the Complaint or the requested relief and should not be permitted.

9. Judith Burns (Doc. 1-10, Ex. 21). Ms. Burns claims she was a poll observer in Maricopa County on October 20-21 (at the Maricopa County Tabulation and Election Center) and October 28, 2020 (in Surprise). *Id.* ¶ 1. Ms. Burns describes how far away she was from the tables where poll workers were conducting signature verifications, and states that she observed that there was one Republican and one Democrat at each table that were verifying signatures. *Id.* ¶ 2. She indicates that poll workers explained various aspects of their process. *Id.* And, when she worked at the Surprise location, there was some difficulty sealing envelopes. *Id.* ¶ 3. Ms. Burns' testimony is not relevant to the claims in the complaint or the relief Plaintiffs seek, and it is thus inadmissible under FRE 401-403 and should not be permitted.

10. Linda Brickman (Doc. 1-10, Ex. 23). Ms. Brickman is the 1st Vice Chair of the Maricopa County Republican Party. Doc. 1 at Ex. 23. Ms. Brickman attended the

post-election "Logic & Accuracy" certification of Dominion machines on November 18, 2020. *Id.* She states there initially were some problems with the machines in Maricopa County. Doc. 1 at 2. Apparently, the problems were resolved, and the machines functioned properly during a second test. *Id.* at 3. Ms. Brickman nonetheless declined to sign the certification. *Id.* Ms. Brickman also describes various issues she claims to have observed while working as a poll worker, including signature matching standards that she viewed as inconsistent, handwriting that she considered to be the same on multiple envelopes, and a duplicate ballot created as a replacement for a spoiled ballot that was erroneously read by the tabulation machine as a Biden ballot rather than a Trump ballot (Ms. Brickman states that she is unaware whether the error was corrected). *Id.* at 4-5. Ms. Brickman also was disappointed that there were not more observers allowed. *Id.* at 5. Finally, Ms. Brickman states than an unspecified number of ballots were rejected as "overvotes" when voters both filled in the bubble for a candidate and wrote in the candidate's name. *Id.*

Ms. Brickman does not provide evidence of any problem with Dominion voting machines on Election Day. She does not claim fraud. She does not identify any number of illegal votes cast or legal votes uncounted that could call into question the results of the election. And she does not identify what, if anything, she did to attempt to address the issues she claims to have identified on Election Day. Her testimony is not relevant to the Complaint or the relief Plaintiffs seek and is thus inadmissible under FRE 401-403.

11. Mark Low (Doc. 1-10, Ex. 20). Mr. Low claims he was an election observer. Mr. Low's first ten paragraphs recount various observations and interactions on October 25. *Id.* at 1-10 (e.g., he says a poll worker smiled "behind her mask" when ask for whom she had voted, he states that a Dominion worker was a Republican who encouraged him to trust the process, some of the referees were registered independents, and he speculates that the computer system could be hacked based on his experience watching *Mission Impossible*). It's unclear why any of them would be relevant to anything. Mr. Low then explains that, on Election Day, he learned that a Dominion

worker brought a "back up copy" of the "voter file" back to his hotel. *Id.* at 22. Mr. Low also had various concerns about the handling of overseas ballots. *Id.* at 24-30. Mr. Low does not claim any knowledge relating to Plaintiffs' claim that the Dominion machines were compromised; he does not identify any illegal votes that were cast; and he does not claim that he observed anyone doing anything nefarious. His testimony does not support Plaintiffs' claims or the relief they seek, and so is inadmissible under FRE 401-403.

Evidentiary Objections

The Secretary and the Maricopa County Intervenor-Defendants hereby assert the following, specific objections to Plaintiffs' exhibits. The Secretary and County note that as the majority of Plaintiffs' exhibits are either purported expert reports or witness affidavits, the Secretary has addressed the former via concurrently filed *Daubert* motions, and the latter via concurrently filed motions *in limine.*

Exhibit No.		Evidentiary Objections
1	Redacted – Venezuela Smartmatic Affidavit 11.116.2020	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
2	Absentee Survey Analysis – Briggs Rpt.	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
2 A	Absentee Survey Wisconsin Analysis – Briggs Rpt. Re Attachment AZ	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
2 B	Briggs – attachment GA re 5 state Rpt. Absentee Live ID Topline	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
2 C	Briggs – attachment PA re 5 state Rpt. Absentee Live Topline	The Secretary has filed a *Daubert* motion that addresses her objections to this report.

2 D	Briggs – Attachment WI Unreturned Live Agent Topline [26655]	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
2 E	Briggs – Attachment MI Unreturned Live Agent Topline	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
3	Re Braynard	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
4	Brian Teasley – Statistician	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
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6	Joseph Oltmann Affidavit	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
7	Harri Hursti Declaration Doc 809 US DIST CT 3 8-24-20	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
8	Affidavit of Anna Mercedes Diaz Cardozo in ENGLISH	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
9	Keshel Expert Affidavit	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
9 A&B	Keshel Expert attachment	The Secretary has filed a *Daubert* motion that addresses her objections to this report.

10	Andrew W. Appel, *et al.*, "Ballot Marking Devices (BMDs) Cannot Assure the Will of the Voters" at (Dec. 27, 2019)	FRE 401, 403, 802
11	State of Texas Secretary of State Report of Review 20 //an 11B	FRE 401, 403, 802
12	"Spider" Affidavit Redacted	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
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14	Declaration of Ronald Watkins 11 26 20	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
15	Congresswoman Maloney letter re Smartmatica	FRE 401, 403, 802
16	Senators Warren etc. letter re Dominion Voting Systems	FRE 401, 403, 802
17	Ramsland Declaration	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
18	Joint FBI CISSA Cyber Security Advisory Exhibit [2305843009225631231]	FRE 401, 403, 802
19	Matthew Bromberg, PhD Declaration 11 30 20	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
20	Mark Low Declaration	The Secretary has enumerated her objections to Plaintiffs' fact witness

		affidavits via motions to strike submitted concurrently herewith.
21	Burns Decl Declaration	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
22	Linda Brickman Declaration	The Secretary has enumerated her objections to Plaintiffs' fact witness affidavits via motions to strike submitted concurrently herewith.
23	Burns Decl Declaration	The Secretary does not understand how this exhibit differs from Plaintiffs' Exhibit No. 21, the objections to which she incorporates by reference.
24	Dr. Briggs Rebuttal	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
25	Brian Teasley CV / Rebuttal	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
26	Ramsland CV and sources	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
27	Phil Waldron CV and sources	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
28	Spider Sources, 3 documents	The Secretary has filed a *Daubert* motion that addresses her objections to this report.
29	Dominion Maricopa contract	FRE 401, 403, 802, 901a, 1002
30	Dominion User Manual	FRE 401, 403, 802, 901a, 1002

31	Staple street SEC Offering Form-D Report	FRE 401, 403, 802, 901a, 1002

Respectfully submitted this 7th day of December, 2020.

COPPERSMITH BROCKELMAN PLC

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Governor Ducey's Objections to Plaintiffs' Exhibit and Witness List for December 10 Hearing

Assigned to: Hon. Diane Humetewa

TRO Hearing Set: December 10, 2020 at 9:30 a.m.

In accordance with the Court's December 4, 2020 Order, (Doc. 35), Defendant Douglas A. Ducey, Governor of the State of Arizona submits the following objections to Plaintiffs' witness and exhibit lists. In addition to the objections specifically stated below, the Governor also joins in the objections made by Defendant Secretary of State Hobbs and the Maricopa County Intervenor-Defendants.

Objections to Plaintiffs' Witnesses

As a preliminary matter, the Governor objects to Plaintiffs' use of declarations for witnesses to the extent that any such witnesses made available for cross examination. The Governor also objects to the sheer number of witnesses proposed by Plaintiffs, given the limited amount of hearing time.

	Proposed Witness	**Objection(s)**
1.	William Briggs, expert	Objection. Mr. Briggs does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993). Further, the Governor objects to the substance of Mr. Briggs' expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993).
2.	Brian Teasley, expert	Objection. Mr. Teasley does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993). Further, the Governor objects to the substance of Mr. Teasley's expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993).
3.	Russell James Ramsland, Jr., expert	Objection. Mr. Ramsland does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993).

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		Further, the Governor objects to the substance of Mr. Ramsland's expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993).
4.	Spider, expert	Objection. This witness was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure. (Doc. 35). Plaintiffs have not fulfilled this requirement for "Spider" because they have redacted all identifying information for this witness, thus prejudicing Defendants' ability to prepare for the December 10 hearing. Further, "Spider" does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993). Further, the Governor objects to the substance of "Spider's" expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993). The Governor also objects to "Spider's" declaration on the ground that it contains material outside of "Spider's" personal knowledge and lacking foundation. Fed. R. Evid. 602.
5.	Matthew Bromberg, expert	Objection. Mr. Bromberg does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993). Further, the Governor objects to the substance of Mr. Bomberg's expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993).
6.	Phillip Waldron, expert	Objection. Mr. Waldron does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v.*

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		Merrell Dow Pharms., 509 U.S. 579 (1993). Further, the Governor objects to the substance of Mr. Waldron's expert report on the grounds that it was not produced using reliable methods. *Daubert*, 509 U.S. at 590, 600 (1993).
7.	Anna Orth	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor has no additional objections.
8.	Janese Bryant	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor has no additional objections.
9.	Greg Wodynski, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Mr. Wodynski's declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
10.	Les Minkas	Objection. Mr. Minkas' testimony was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure, (Doc. 35), because Plaintiffs have not provided any information regarding Mr. Minkas' expected testimony.
11.	Diane Serra, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Ms. Serra's declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
12.	Judith Burns, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Ms. Burns' declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the

		hearsay statements therein.
13.	Kathleen Alvey	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor has no additional objections.
14.	Linda Brickman, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Ms. Brickman's declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
15.	Mark Low, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Mr. Low's declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
16.	Redacted Fact Witness "TM," by declaration	Objection. This witness was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure. (Doc. 35). Plaintiffs have not fulfilled this requirement for "TM" because they have redacted all identifying information for this witness. The Governor further objects to "TM"'s declaration because it contains unqualified expert opinions regarding vote tabulation machines and vote allocation patterns unsupported by any expert disclosure or report. Fed. R. Evid. 702; *See Daubert v. Merrell Dow Pharms.*, 516 U.S. 869 (1993). The Governor also objects to "TM"'s declaration on the ground that it contains material outside of "TM"'s personal

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		knowledge and lacking foundation. Fed. R. Evid. 602. Because Plaintiffs have not disclosed the identity of the declarant, this declaration also has not been authenticated by any witness. Fed. R. Evid. 901.
17.	Senator Kelly Townsend	Objection. Senator Townsend's testimony was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure, (Doc. 35), because Plaintiffs simply provide a generic statement that Senator Townsend's testimony will be comprised of "information related to election violations."
18.	"Redacted-Venezuela Smartmatic Affidavit 11.1116.20202," by affidavit	Objection. This witness was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure. (Doc. 35). Plaintiffs have not fulfilled this requirement for "Redacted-Venzuela Smartmatic Affidavit 11.116.2020" because they have redacted all identifying information for this witness. The Governor further objects to "Redacted-Venzuela Smartmatic Affidavit 11.116.2020" declaration to the extent it contains unqualified expert opinions. Fed. R. Evid. 702; *See Daubert v. Merrell Dow Pharms*., 516 U.S. 869 (1993). The Governor also objects to the "Redacted" individual's declaration on the ground that it contains material outside of the individual's personal knowledge and lacking foundation. Fed. R. Evid. 602. Because Plaintiffs have not disclosed the identity of the declarant, this declaration also has not been authenticated by any witness. Fed. R. Evid. 901.

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19.	Joe Oltmann, by declaration	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Mr. Oltmann's declaration being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
20.	Anna Mercedes Diaz Cardozo, by affidavit	Subject to this witness being made available for cross-examination and the other Defendants' objections, the Governor does not object to Ms. Diaz's affidavit being offered as direct testimony, and the Court deciding what weight (if any) to give the hearsay statements therein.
21.	Ronald Watkins, by declaration	Objection. This alleged declaration is not signed by Mr. Watkins and thus cannot be authenticated. Fed. R. Evid. 901; *see also* 28 U.S.C. § 1746. The declaration also contains unqualified expert opinions on computer security unsupported by any expert disclosure or report. Fed. R. Evid. 702. Further, the material contained in the declaration is outside of the author's personal knowledge. Fed. R. Evid. 602.
22.	"Jane Doe"	Objection. This witness was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to provide a "full and complete witness" disclosure. (Doc. 35). Plaintiffs have not fulfilled this requirement for "Jane Doe" because they have redacted all identifying information for this witness.
23.	Ryan Hartwig	No objection.

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Objections to Plaintiffs' Exhibits

	Exhibit Description	Objection(s)
1.	"Dr. Briggs"	Objection. This exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). Plaintiffs' vague reference to "Dr. Briggs" does not reasonably identify any document and, for their court-ordered disclosure, Plaintiffs only produced a document titled "BRIGGS REBUTTAL IN MI," which did not have any attachments. As a result, the Governor is left to guess what document Plaintiffs' disclosure references. Because of the vague nature of this disclosure, the Governor reserves the right to make renewed objections to the "Dr. Briggs" exhibit, should Plaintiffs seek to admit it at the December 10 Hearing. With that caveat, it appears Plaintiffs are referencing Exhibit 2 to the Complaint and the attachments thereto ("Exhibits 2A-F"). (*See* Doc. 1-2 at 14-50). To the extent this is the document Plaintiffs are referencing, the Governor objects because the document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. The Governor further objects because neither the report nor the attachments can be authenticated by any disclosed witness. Fed. R. Evid. 901. The Governor further objects because the survey data discussed in the report (and the above-referenced rebuttal report from a Michigan proceeding) is irrelevant to this proceeding. Fed. R. Evid. 401. Finally, the Governor objects because the report contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 801.[1]

[1] The Governor acknowledges that hearsay evidence is *sometimes* admissible in preliminary injunction proceedings. *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

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2.	"Brian Teasley"	Objection. This exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). Plaintiffs' vague reference to "Brian Teasley" does not reasonably identify any document—and Plaintiffs did not produce any document titled "Brian Teasley" to the Governor. As a result, the Governor is left to guess what document this disclosure references. Because of the vague nature of this disclosure, the Governor reserves the right to make renewed objections to the "Brian Teasley" exhibit, should Plaintiffs seek to admit it at the December 10 Hearing. With that caveat, the Governor assumes that the disclosure is referencing a document titled "Teasley CV-Bio." If this is correct, then the Governor has no objection to the admission of "Teasley CV-Bio."
3.	"Ramsland"	Objection. This exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). Plaintiffs' vague reference to "Ramsland" does not reasonably identify any document—and Plaintiffs did not produce any document titled "Ramsland" to the Governor. As a result, the Governor is left to guess what document this disclosure references. Because of the vague nature of this disclosure, the Governor reserves the right to make renewed objections to the "Ramsland" exhibit, should Plaintiffs seek to admit it at the December 10 Hearing.
4.	"Spider Sources, 3 documents"	Objection. This exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring

		Plaintiffs to disclose and exchange exhibits. (Doc. 35). Plaintiffs' vague reference to "Spider Sources, 3 documents" does not reasonably identify any document—and Plaintiffs did not produce any document titled "Spider Sources, 3 documents" to the Governor. As a result, the Governor is left to guess what documents this disclosure references. Because of the vague nature of this disclosure, the Governor reserves the right to make renewed objections to the "Spider Sources, 3 documents" exhibit, should Plaintiffs seek to admit it at the December 10 Hearing. With that caveat, the Governor assumes that the disclosure is referencing pages 2, and 10-13 of a produced .pdf titled "Exhibit 3 AZ." The Governor objects to the inclusion of pages 2, 10-13 of "Exhibit 3 AZ" because those pages lack adequate foundation. Fed. R. Evid. 901. There is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602.
5.	"Phil Waldron"	Objection. This exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). Plaintiffs' vague reference to "Phil Waldron" does not reasonably identify any document—and Plaintiffs did not produce any document titled "Phil Waldron" to the Governor. As a result, the Governor is left to guess what document this disclosure references. Because of the vague nature of this disclosure, the Governor reserves the right to make renewed objections to the "Phil Waldron" exhibit, should Plaintiffs seek to admit it at the December 10 Hearing.

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Objections to Plaintiffs' Complaint Exhibits

The following is a list of exhibits attached to Plaintiffs' Complaint. Many of these exhibits were not listed in Plaintiffs' initial exhibit disclosures, while other exhibits (e.g., the witness declarations) were cross-referenced in Plaintiffs' witness list. Given the vague nature of Plaintiffs' disclosure, the Governor provides objections to these exhibits only in an abundance of caution. However, the Governor objects to the inclusion of any exhibit and witness not specifically listed in Plaintiffs' initial witness and exhibit disclosure, on the grounds that such exhibits were not properly disclosed pursuant to this Court's December 4, 2020 Order. (*See* Doc. 35.)

Ex. #	Complaint Exhibit	Objection(s)
1.	Redacted-Venezuela Smartmatic Affidavit 11.116.2020	Objection. Document contains unqualified expert opinions. Fed. R. Evid. 702. Document cannot be authenticated, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. The Governor further objects to the admission of this document because there are no legitimate grounds for redacting the information contained therein. *See* Fed. R. Evid. 106. .
2.	Absentee Survey Analysis – Briggs Rpt	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document is also irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).

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2A	Absentee Survey Wisconsin Analysis-Briggs Rpt. Re Attachment AZ	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document is also irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence not subject to any exception, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
2B	Brigs– Attachment GA re 5 state Rpt. Absentee Live ID Topline	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document is also irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
2C	Brigs – attachment PA re 5 state Rpt. Absentee Live ID Topline	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document is also irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).

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2D	Brigs – Attachment WI Unretruned Live Agent Topline	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document is also irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
2E	Briggs – Attachment MI Unreturned Live Agent topline	Objection. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document cannot be authenticated. Fed. R. Evid. 901. Document irrelevant to this proceeding. Fed. R. Evid. 401. Document contains hearsay evidence, including but not limited to survey data. Fed. R. Evid. 802. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
2F	Brigs CV	No Objection. The Governor, however, does maintain his prior objection that Mr. Briggs does not meet the qualifications required of an expert witness under Fed. R. Evid. 702. *See Daubert v. Merrell Dow Pharms.*, 516 U.S. 869 (1993).
3.	Re Braynard	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the

		content of these pages. Fed. R. Evid. 602.
4.	Redacted Expert affidavit Statistician	Objection. Document contains unqualified expert opinions regarding vote tabulation machines and vote allocation patterns unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document contains material outside of declarant's knowledge. Fed. R. Evid. 602. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602.
5.	Diana Serra Declaration (3 sep pdfs for pages 1-3)	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802.
6.	Joseph Oltmann Affidavit	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403.
7.	Harri Hursti Declaration Doc 809 US Dist Ct 3 8-24-20	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Document contains unqualified expert opinions. Fed. R. Evid. 702. Document contains material outside of the declarant's personal knowledge and lacking foundation. Fed. R. Evid. 602. Further, this exhibit was not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). In addition, Plaintiffs did not include this individual in their witness disclosure.
8.	Affidavit of Anna Mercedes Diaz Cardozo in ENGLISH	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403. Document contains unqualified expert opinions. Fed. R. Evid. 702. Document contains material

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		outside of the affiant's personal knowledge. Fed. R. Evid. 602. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602.
9.	Keshel Expert Affidavit	Objection. Document contains unqualified expert opinions purporting show a statistical analysis of voting patterns in Arizona, unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document contains material outside of affiant's personal knowledge. Fed. R. Evid. 602. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. Further, this exhibit was not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35). In addition, Plaintiffs did not include this individual in their witness disclosure.
9 - A&B	Keshel Expert attachment	Objection. Document contains unqualified expert opinions purporting show a statistical analysis of voting patterns in Arizona, unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. Further, this exhibit was not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
10.	Andrew W. Appel, *et al*, "Ballot Marketing Devices (BMDs) Cannot Assure the Will of the Voters"	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403. Document contains unqualified expert opinions

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		unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document cannot be authenticated by any disclosed witness, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. Further, this exhibit was not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
11.	State of Texas Secretary of State Report of Review 20 //and 11B	Objection. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Further, these exhibits (titled "11A and 11B" in the Complaint) were not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
12.	Spider Affidavit Redacted	Objection. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403. Document contains unqualified expert opinions purporting show a statistical analysis of voting patterns in Arizona, unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document contains material outside of affiant's knowledge. Fed. R. Evid. 602. Document cannot be authenticated, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. The Governor further objects to the admission of this document because there are no legitimate grounds for redacting the information contained therein. *See* Fed. R. Evid. 106.
13.	Redacted Declaration TPM 11 30 20 Redacted	Objection. Document contains hearsay not subject to any exceptions, including but not limited to the alleged documents sent to "TPM" from various governmental institutions and the handwritten notes contained in the document. Fed. R. Evid. 802. Document is irrelevant to the claims in this

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		case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403. Document contains material outside of declarant's personal knowledge. Fed. R. Evid. 602. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document cannot be authenticated, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. The Governor further objects to the admission of this document because there are no legitimate grounds for redacting the information contained therein. *See* Fed. R. Evid. 106.
14.	Declaration of Ronald Watkins 11 26 20	Objection. Document is irrelevant to the claims in this case. Fed. R. Evid. 401. Admission of the document would be more prejudicial than probative. Fed. R. Evid. 403. Document contains material outside of declarant's personal knowledge. Fed. R. Evid. 602. Document contains unqualified expert opinions regarding vote tabulation machines unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document cannot be authenticated, Fed. R. Evid. 901, and there is no witness with the personal knowledge necessary to testify about the content of these pages. Fed. R. Evid. 602. The document purports to be a declaration but is not signed by the supposed declarant. *See* 28 U.S.C § 1746.
15.	Congresswoman Maloney letter re Smartmatica	Objection. Document does not have any relevance to the administration of the November 3, 2020 General Election in Arizona. Fed. R. Evid. 401. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
16.	Senators Warren etc. letter re Dominion Voting	Objection. Documents do not have any relevance to the administration of the November 3, 2020

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	Systems	General Election in Arizona. Fed. R. Evid. 401. The Governor further objects to the admission of these document because there are no legitimate grounds for redacting the information contained therein. *See* Fed. R. Evid. 106. Further, this exhibit was not properly disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
17.	Ramsland Declaration	Objection. Document contains unqualified expert opinions purporting show a statistical analysis of voting patterns in Arizona, unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document contains material outside of declarant's knowledge. Fed. R. Evid. 602.
18.	Joint FBI CISSA Cyber Security Advisory Exhibit	Objection. Document does not have any relevance to the administration of the November 3, 2020 General Election in Arizona. Fed. R. Evid. 401. Further, this exhibit was not disclosed under the Court's December 4, 2020 Order requiring Plaintiffs to disclose and exchange exhibits. (Doc. 35).
19.	MCB Redacted Fraud Declaration	Objection. Document contains unqualified expert opinions purporting show a statistical analysis of voting patterns in Arizona, unsupported by any expert disclosure or report. Fed. R. Evid. 702. Document contains material outside of declarant's personal knowledge. Fed. R. Evid. 602. The Governor further objects to the admission of these document because there are no legitimate grounds for redacting the information contained therein. *See* Fed. R. Evid. 106.
20.	Mark Low Declaration	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802.
21.	Burns Declaration	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802.

22.	Greg Wodynski	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802.
23.	Linda Brickman Declaration	Objection. Document contains hearsay not subject to any exceptions. Fed. R. Evid. 802.

DATED this 7th day of December, 2020.

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CERTIFICATE OF SERVICE

I certify that on December 7, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Tracy Hobbs

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE KATIE HOBBS'S MOTION TO EXCLUDE THE TESTIMONY AND REPORTS OF PLAINTIFFS' EXPERTS WILLIAM BRIGGS, BRIAN TEASLEY, RUSSELL JAMS RAMSLAND, JR., "SPIDER," MATTHEW BROMBERG, AND PHILLIP WALDRON

INTRODUCTION

In their effort to support baseless claims of a multi-national conspiracy to rig the presidential election in favor of Joseph R. Biden, Jr., Plaintiffs have disclosed six purported "experts" along with various declarations and reports.[1] But the individuals identified by Plaintiffs as experts are wildly unqualified and their "expert" opinions, such as they are, are unreliable and lacking in foundation. Indeed, these individuals range from a statistician who was apparently fired from the last academic institution where he worked, to an online marketing businessman, to an anonymous intelligence analyst who is referred to only as "Spider." Plaintiffs remarkably contend these experts' opinions, which they incorporate by reference in their complaint, are "compelling" and "conclusively establish" the drastic and unprecedented relief they seek—decertifying the certified election results in this State and ordering certification of President Trump as the winner of the election. The opinions in fact only confirm the claims are doomed to dismissal and that their requested preliminary relief should be denied. Other courts in Michigan and Georgia have found these same experts to provide no basis for advancing plaintiffs' claims, and this Court should reach the same conclusion. None of these experts' testimony justify relief that would disenfranchise 3.4 million Arizona voters, and indeed none even satisfy the *Daubert* standard for admissibility.

I. LEGAL STANDARD

As a threshold matter, courts must ensure that a proposed expert has the requisite qualifications, based upon "knowledge, skill, experience, training, or education." Fed. R. Evid. 702. Courts may then only admit expert testimony if "(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert

[1] Attached hereto as "Exhibit 1" is a true and correct copy of Plaintiffs' Expert Rule 26(a)(2)(B) Expert Disclosures and Fact Witnesses. Plaintiffs' disclosures refer to both filed and newly disclosed documents. For ease of reference, Defendant attaches hereto as "Exhibit 2" through "Exhibit 7" true and correct copies of the newly served documents.

has reliably applied the principles and methods to the facts of the case." *Id.* To be admissible, expert testimony must be both relevant and reliable. *Daubert v. Merrill Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993).

Even where the trial court is the fact-finder, there is no question that a "district court must perform a 'gatekeeping role' to ensure that the testimony is both 'relevant' and reliable.'" *United States v. Valencia-Lopez*, 971 F.3d 891, 897–98 (9th Cir. 2020) (alterations in original omitted); *see Beech Aircraft Corp. v. United States*, 51 F.3d 834, 842 (9th Cir. 1995) (holding expert opinion properly excluded from a bench trial).

When assessing reliability, courts consider "(1) whether the theory or technique can be or has been tested, (2) whether the theory or technique has been subjected to peer review, (3) whether the error rate is known and standards exist controlling the operation of the technique, and (4) whether the theory or technique has gained general acceptance." *Cooper v. Brown*, 510 F.3d 870, 880 (9th Cir. 2007). Where expertise is "experience-based," there "is a strong argument that reliability becomes more, not less, important." *Valencia-Lopez*, 971 F.3d at 898. "The proponent of expert testimony bears the burden of showing that the proposed testimony is admissible under Rule 702." *Krause v. Cty. of Mohave*, 459 F. Supp. 3d 1258, 1264 (D. Ariz. 2020). "When a party . . . fails to carry this burden, their expert's opinions are not admissible." *Id.*

II. ARGUMENT

Plaintiffs cannot meet their burden to establish the admissibility of any of their six experts' proposed testimony. Courts have long held that the Federal Rules of Evidence prohibit "junk" science from entering the courtroom and the Federal Rules of Civil Procedure place additional procedural protections to keep out untrustworthy information cloaked in the mantle of "expert" testimony.

A. Plaintiffs' Experts are Unqualified, Unreliable, and Unhelpful.

Plaintiffs' experts are remarkably unqualified. Their "reports" lack any indicia of reliability. And their testimony will not be unhelpful to the finder of fact. Indeed, just this morning, the Eastern District of Michigan denied relief in a virtually identical case

brought by the same "National Counsel" as part of their campaign to overturn the election results determined by the will of voters around the country, questioning the post-election emergence of these so-called experts who came out of the woodwork to claim serious glitches and vulnerabilities in election machines and voting that allegedly occurred for years prior to the 2020 elections, given that such concerns (if legitimate) could have been raised much earlier. *See, e.g.*, Opinion Order Denying Relief, *King v. Whitmer*, No. 2:20-cv-13134-LVP-RSW, ECF No. 62 (E.D. Mich. Dec. 17, 2020), at 18.

1. William Briggs

Plaintiffs seek to have Dr. William M. Briggs (a self-proclaimed "Statistician to the Stars!," Compl. Exh. 2-F, at 1, Doc. 1-2) testify that there were a sufficient number of "troublesome" ballots, allegedly illegal votes counted and legal votes uncounted, to overturn Arizona's election returns.[2] Exh. 1 at 2. Briggs in turn states that his statistical analysis is based on survey data provided by an individual named Matt Braynard. Compl. Exh. 2, at 1, Doc. 1-2 ("Briggs Rep."). However, Briggs's analysis is unreliable because it rests on faulty data collected by a fatally flawed survey that fails to comport with professional survey research standards and because of the cavernous analytical gap between the data and his extrapolations. His analysis is also unhelpful to the trier of fact because he does not offer evidence of an actual change in the result of the election.

a. Briggs's Statistical Analysis is Unreliable Because It Rests On a Faulty Foundation And Contains Unacceptable Analytical Gaps.

Numerous flaws in Briggs's statistical analysis render his report and testimony unreliable.

The Braynard survey does not satisfy accepted survey principles. A central flaw in Briggs's analysis is that it is based entirely on an unreliable survey conducted by

[2] Plaintiffs' disclosures fail to describe the scope of Briggs's proposed testimony, but Briggs's report includes information relating to multiple states. Defendant focuses only on issues relating to the Arizona analysis, since information pertaining to other states is irrelevant. But, to be sure, there are errors in Briggs's survey methodology and data analysis for the other states, as well.

someone else, Braynard, who has not disclosed the survey, its methodology, or his qualifications for conducting it. Briggs admits that he only "assume[s] survey respondents are representative and the data is accurate." Briggs Rep., at 1, Doc. 1-2. Briggs never explains why it is reasonable for him to ***assume*** the data is accurate and the population is representative. "[T]he proffered expert must establish that reliable principles and methods underlie the particular conclusions offered," and failure to do so renders his opinions inadmissible. *United States v. Hermanek*, 289 F.3d 1076, 1094 (9th Cir. 2002). The core requirement for admissibility of survey results is that the survey is conducted "according to accepted principles." *Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt., Inc.*, 618 F.3d 1025, 1036 (9th Cir. 2010) (citation omitted).

Here, Briggs cannot validate the principles underlying the survey upon which his opinions are based because he is not and does purport to be an expert in survey methodology.[3] Moreover, there is zero indication that Briggs conducted any verification of Braynard's survey data or validated its correctness or integrity. Briggs also fails to provide even basic information about the survey research conducted by Braynard that is needed to establish the survey's reliability. Neither Plaintiffs nor Briggs offer anything whatsoever about Braynard's identity (other than a Twitter printout), qualifications, methodologies used in his surveys, whether those methodologies comported with the professional standards required for considering a survey reliable, the steps taken to ensure his samples were random and representative of the underlying population, or the steps taken to account for possible inaccuracies or falsehoods provided in survey responses.

As further described in the Report of Professor Gary King, Briggs's failure to provide information about Braynard's survey methodology violates the accepted

[3] Briggs also reports zero experience as an expert in elections or voting prior to the 2020 presidential election, he was fired from the last academic institution with which he was involved, and he appears often to self-publish his writings. *See* William Briggs, "I'm No Longer At Cornell," William M. Briggs: Statistician to the Stars, Apr. 22, 2017, https://wmbriggs.com/post/21473/ ("I got fired about a month ago."); Compl. Exh. 2-F at 2, Doc. 1-2. Briggs's writings touch on, among other subjects, denying the severity of the Covid-19 pandemic, disputing climate change science, and attacking homosexuality.

professional standards in the field of survey research and renders the data insufficient to support the stated conclusions in Briggs's analysis. *See* Exh. 8, Report of Gary King.

Briggs's report lacks crucial information about the survey that is required to comport with accepted survey principles, including the following:

- ***a probability sample***, which enumerates a list of the members of the target population and identifies the known random mechanism of selecting members of the population to be interviewed, *id.* at ¶ 2.a;
- the ***entire chain of evidence*** from the election to the quantitative information in the dataset to the numerical results, *id.* at ¶ 2.b;
- an analysis of the survey ***response rate***, including how the rate was computed and how those who responded to the survey differed from those who refused (which goes to the survey's representativeness), *id.* at ¶ 2.c;
- assurance that the survey used carefully worded and ***validated survey questions***, *id.* at ¶2.d; and
- analysis about ***response bias***, a concern of particular importance in a retrospective survey, such as Braynard's, which examined the outcome of an election while the President was claiming election fraud, *id.* at ¶2.e.

As Professor King explains, not only should a researcher make sure to provide this information, but any statistical analysis must "adjust" for these factors, since simply applying "means or counts to the data without adapting them" to the above factors "can yield highly misleading results." *Id.* at ¶2.f. Complete information about how the data was analyzed must be provided with sufficient detail so that a third party would be able to replicate the results without talking to the original author. *Id.* at ¶2.g.

But here, there is zero evidence that Braynard's survey was conducted in accordance with accepted survey principles. Upon the current record, Braynard's methods (whatever they may have been) have not been tested, have not been subjected to peer review or publication, have an unknown potential error rate, and have not been established as accepted within the relevant scientific community. Therefore, Briggs's

report, which relies upon the Braynard survey, cannot withstand any scrutiny under *Daubert*. *See Cooper*, 510 F.3d at 880.

Briggs's report is riddled with analytical gaps. A second major problem with Briggs's testimony is that his report is riddled with analytical gaps. The survey upon which his analysis rests has numerous methodological flaws that Briggs fails to correct, as explained by Dr. Stephen Ansolabehere in the Response Report of Report of Stephen Ansolabehere. *See* Exh. 1 to Proposed Intervenor-Defendant's Response to Plaintiffs' Motion for Relief ("Ansolabehere Resp. Rep."), Doc. 37-1.[4] First, the survey upon which allowed individuals other than the survey "target," the individual whose ballots were marked as unreturned, to answer survey questions. *See* Ansolabehere Resp. Rep. at ¶¶ 41-47. This error contaminates the data and along with other errors is "of sufficient magnitude and severity as to make the estimates completely unreliable and uninformative." *Id.* at ¶ 62. Briggs fails to correct or account for this issue.

Second, Braynard's survey had an unacceptably low response rate. *Id.* at ¶¶ 33-40. Braynard was only able to reach 0.4% of the individuals he sought to interview. *Id.* at ¶ 37. Put another way, 99.6% of the individuals targeted by the survey did not respond. This is not an acceptable response rate, either in the academic field of survey methodology or in the litigation context. *Id.* at ¶¶ 38-39. Further compounding this issue, without information about the target population or the responding population, it is impossible to know whether the responding population is representative and therefore whether there is any scientific value to the survey. *Id.* at ¶ 40. Briggs fails to account for this flaw.

Third, Briggs's report fails to account for unremarkable reasons, such as late arriving ballots, missing or mismatched signature rejections, or spoiled or voided ballots, for why returned absentee ballots might not be recorded or counted. *See* Ansolabehere Resp. Rep. at ¶¶ 27-30. The failure to grapple with these obvious alternative causes renders Briggs's analysis unreliable. *United States v. Artero*, 121 F.3d 1256, 1262 (9th

[4] A true and correct copy of Ansolabehere's Report is attached hereto as "Exhibit 9."

Cir. 1997 (quoting *People Who Care v. Rockford Board of Education*, 111 F.3d 528, 537–538 (7th Cir. 1997)).

Briggs only further confirms the unreliability of his work in his Response Report, filed as Exhibit 3 to Plaintiffs' Reply to Defendant's Response in Opposition to Plaintiff's Motion for Relief ("Briggs Resp. Rep."), Doc. 44-1.[5] For example, Briggs addresses response rate, but Briggs only provides the (non-responsive) response that if there had been double the response rate, then the prediction interval would shrink, and "we become more confident." Briggs Resp. Rep. at 2. Briggs ***never explains how he has accounted for the extremely low response rate in his analysis***; he just says it is not a problem. But "[n]othing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data only by the ipse dixit of the expert." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Rather, "[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.*

b. Briggs's testimony is otherwise unhelpful.

Briggs's report is not relevant to the question presented to the Court regarding the validity of the outcome of the election. Setting aside the problems with the data, Briggs does not opine regarding whether any particular alleged error resulted in a ballot for Biden that should have gone for Trump or how any error would or even could have changed the outcome of the election. His report should therefore be discarded for lack of relevance. *See* Fed. R. Evid. 702(a).

2. Brian Teasley

Plaintiffs offer a declaration by Brian Teasley and seek to have Teasley offer opinions on whether there are "abnormal patterns" of voting data favoring Biden in

[5] Plaintiffs filed Briggs's Response Report after the deadline for expert disclosures on December 5, 2020. They have not provided any indication that they intend for the response report to be affirmative evidence. The report is untimely and should not be considered within the Plaintiffs' affirmative disclosures.

counties that used Dominion Voting Systems machines, based on publicly available data on the 2020 presidential election. *See* Compl. Exh. 4, at ¶¶ 7, 16, Doc. 1-3.[6] Teasley's opinions should be excluded because they provide only a cursory explanation of his credentials, lacks foundation, and reflect serious errors in its methodology.

a. Teasley is not qualified as an expert.

Teasley is a businessman who lacks the qualifications needed to offer expert opinion testimony on the impact, if any, on Arizona's 2020 presidential election from the use of certain voting machines. Teasley states that he holds a Bachelor of Science degree in Mathematics and a Master of Science degree in Statistics, he has conducted statistical analyses for various companies, and that he spent 15 days studying publicly available data on the 2020 presidential election. Compl. Exh. 4, at ¶¶ 3-5, Doc. 1-3. However, he does not further describe his education, experience, or other credentials or explain how his prior work is similar to or relates to, if at all, the work he performed in this matter. He does not appear to have any experience with Arizona elections or analyzing Arizona election data, nor with statistical methods appropriate for analyzing election data, or such specialized topics as detection of voting anomalies or county pairings based on census variables. His professional background appears to be in online marketing optimization. This is patently insufficient to offer opinions on so important a topic as whether there are "abnormal results" caused by Dominion voting machines and that "[s]ome external force caused this anomaly" and swayed the results in Arizona's elections. *Id.* at ¶¶ 7, 9, 10. Courts routinely find that experts with such limited experience and knowledge in the particular field at issue are "glaringly inadequate." *See Jinro Am. Inc.*, 266 F.3d at 1005.

b. Teasley's report lacks foundation and is unreliable.

Even if the Court finds Teasley qualified, his declaration lacks any foundation and is otherwise unreliable. Expert Dr. Jonathan Rodden, a Stanford professor who has

[6] Plaintiffs filed Teasley's Rebuttal Report after the deadline for expert disclosures on December 5, 2020. They have not provided any indication that they intend for the rebuttal report to be affirmative evidence. The report is untimely and should not be considered within the Plaintiffs' affirmative disclosures.

published and testified regarding statistical methods to access political geography, balloting, and representation, among other topics, explains in his Report, filed as Exhibit 2 to Proposed Intervenor-Defendant's Response to Plaintiffs' Motion for Relief ("Rodden Rep."), Doc. 37-2,[7] that Teasley's report fails to comport with applicable standards in the field, and the design and analyses Teasley offers are flawed. *Id.* at 6.

First, Teasley "posits a causal relationship, whereby certain types of machines are responsible for boosting the Democratic vote share," but neither the data nor the research nor the design nor the analysis are adequately explained. Rodden Rep. at 6, Doc. 37-2. For example, the report refers to a Chi-Squared Automatic Interaction Detection approach, but fails to provide ***any*** details about "the analysis or the dataset, and provides no output." *Id.* at 7.

Rodden explains that Teasley's failure to provide details about the method of his analysis and the data he purports to have analyzed is a far departure from the standard techniques used in the field of election data analysis. Specifically, Teasley's approach

> is not a standard technique used in the analysis of election data, and the author provides no explanation of why this unusual approach was selected. The author presents a scatterplot that seems to be based on a prediction from some kind of statistical model, but the author does not explain anything about the model. The author goes on to mention, in a single sentence, some type of matching analysis. The author provides no details about how the matching analysis was set up, which variables were used, whether the analysis relied on within-state or cross-state variation, and crucially, whether or not it was possible to achieve adequate balance on all of the selected matching variables.

Rodden Rep. at 7-8.

Teasley's failure to explain how he went about reaching his conclusions and to point to any accepted scientific method within the election data field warrants exclusion of his opinion for lack of foundation and unreliability. *Cabrera v. Cordis Corp.*, 134 F.3d 1418, 1422 (9th Cir. 1998) (affirming exclusion where there was no explanation how expert "went about reaching his conclusions" and not employed accepted methodologies).

[7] A true and correct copy of Rodden's Report is attached hereto as "Exhibit 10."

Indeed, because Teasley fails to provide any details whatsoever about the analysis he purports to have conducted, "it is not possible to reconstruct the analysis." Rodden Rep. at 8. This is yet another reason to exclude his opinion. *Cooper*, 510 F.3d at 880.

Plaintiffs now offer another report from Teasley (this time belatedly served nine hours after the court-ordered deadline for expert disclosures), in which he for the first time purports to provide the "results of the analysis" as Exhibit 4 to Plaintiffs' Reply to Defendant's Response in Opposition to Plaintiff's Motion for Relief, ("Teasley Rebuttal Rep."), Doc. 44-1.[8] The results consist of two pages in an Appendix. *Id.* at 3-4.

But these so-called "results" are facially deficient. Teasley provides none of the basic data and information required to validate his assumptions—he doesn't disclose what counties he studied, what data he used, or how he determined those results were exceptionally high. Indeed, Teasley has not included any details to back up his most central conclusions (like the estimated number of votes affected in Arizona, Teasley Rep., at ¶ 16, or the estimated percentages of affected votes in Maricopa, AZ or nationally, *id.* at ¶ 15). Nor has Teasley provided any clarification about how he reached any numerical results. The Appendix simply raises more questions. What dataset did Teasley analyze? How did he match counties? What does "Other Dominion Voting Systems" refer to and what are the numbers in the table he provides? Teasley's complete failure to explain his methodology or provide sufficient data to ascertain his work's reliability precludes its admission. *Cooper*, 510 F.3d at 880.

Furthermore, as Rodden explains, Teasley's methodology, such as it is, wholly lacks reliability. For example, Teasley's report suffers from an obvious causal inference problem. As shown in Rodden's report, "Dominion software was most prominently in use in 2020 in states that were already relatively Democratic in 2016." Rodden Rep. at 11. Accordingly, "If extremely Democratic counties in states like those in New England

[8] Plaintiffs filed Teasley's Rebuttal Report after the deadline for expert disclosures on December 5, 2020. They have not provided any indication that they intend for the rebuttal report to be affirmative evidence. The report is untimely and should not be considered within the Plaintiffs' affirmative disclosures.

adopted a certain software in the past, and one examined a contemporary correlation between voting behavior and the use of that technology, that correlation could not plausibly be interpreted as evidence that the technology *caused* the voting outcomes . . . ." *Id.* at 11-12. Teasley's failure to employ the standard practices in the applicable social science field and reliance upon a false causal inference nullify the value of his opinion and demonstrate its lack of reliability. As such, the Court should not admit his testimony.

3. Russell James Ramsland, Jr.

Russell James Ramsland, Jr. offers opinions that the use of certain voting machines influenced the outcome of the 2020 presidential election in Arizona and specifically opines that 100,724 votes must be thrown out. *See* Ramsland Decl., Compl. Exh. 17 at ¶ 14, Doc. 1-9. Ramsland's report should be excluded because Ramsland is not qualified as an expert and fails to disclose the information relied on and the methodology he (or others) utilized to reach his conclusions. His opinions are not reliable.

First, Ramsland is neither a statistician nor a computer scientist. Rather, he is a businessman who lacks the qualifications necessary to offer expert opinion testimony on the impact, if any, on the 2020 presidential election from the use of certain voting machines. *See id.* at ¶¶ 1-2. In his declaration, Ramsland admits his lack of relevant knowledge, education, and experience, stating that he "relied on [his employer's] experts and resources," noting that his employer "provides a range of security services" and employs a "wide variety of cyber and cyber forensic analysts." *Id.* at ¶ 2. However, Ramsland does not disclose who these unidentified "experts" are, which of them were utilized, the sources of data they relied upon, the manner in which they performed whatever work they did, and in what way Ramsland, in turn, relied on them.[9]

[9] Plaintiffs' disclosures state that "Mr. Ramsland's CV is attached hereto as Ex. 3." Exhibit 3 provided by Plaintiffs contains unidentified materials. One page states "Source 1" and another states "Source 4" at the top of the page. It is unclear if any of the pages are Ramsland's CV. Attached hereto please find a copy of this document, marked as "Exhibit 4."

Instead, Ramsland parrots analyses from other unidentified individuals who he claims possess expertise that he does not. This alone is more than sufficient to exclude his report. *See Clear-View Techs., Inc. v. Rasnick*, No. 13-CV-02744-BLF, 2015 WL 3509384, at *5 (N.D. Cal. June 3, 2015) ("It is axiomatic that an expert, 'however well credentialed, is not permitted to be the mouthpiece of a scientist in a different specialty.'").

Even if Ramsland were qualified (and he is not), his report is inadmissible because it fails to disclose the data or methodology that he (or others) used, as well as the bases for his (or other's) analyses and conclusions. *Hermanek*, 289 F.3d at 1094 ("the court must assure that the methods are adequately explained"). Indeed, Ramsland's report does not disclose his data sources, the statistical analyses conducted, margins of error, or virtually anything that might suggest serious scholarly or expert analysis.[10]

Furthermore, to the extent any methodology can be discerned from the scant information in his report, that methodology is unreliable and lacking in foundation, and his proffered opinions are therefore inadmissible. *See* Fed. R. Evid. 702. For example, Ramsland points to high voter turn-out in certain areas as a "red flag" indicative of election fraud. Ramsland Decl., at ¶ 13. But as Rodden points out, Ramsland's report fails to offer any explanation or citation to academic literature to suggest that turnout above 80% is somehow suspicious. Quite to the contrary, turnout in Arizona and in the counties Ramsland identifies in 2020 are consistent with turnout in prior election cycles over the past two decades. *See* Rodden Rep. at 17, Doc. 37-2. Likewise, Ramsland points to what he calls an improbable or impossible "spike in processed votes." Ramsland Dec., at ¶ 16. However, he fails to explain why the processing of votes is impossible or why the timing of data releases is at all probative of election fraud. *See* Rodden Rep. at 19.

[10] Ramsland also devotes half of his report to unsubstantiated claims about Antrim County, Michigan and Dallas County, Texas that have no bearing on the administration of Arizona's elections. Ramsland's suggestion that similar issues could or might occur in Arizona are nothing more than rank speculation. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 861 (9th Cir. 2014) ("speculative testimony is inherently unreliable").

Ramsland's failure to provide or even describe the methodology underlying his opinions as well as the lack of reliability in the methodology that can be ascertained from his report mandate exclusion of Ramsland's testimony.[11]

4. "Spider"

Plaintiffs have disclosed two reports, Exhibit 12 to their Complaint and a new exhibit attached to their disclosures as Exhibit 4, for an individual whose name is redacted but referred to by Plaintiffs as "Spider." *See* Compl. Exh. 12, Doc. 1-5 ("Spider Decl. A"); *see* Exh. 5, Exhibit 4 to Plaintiffs' Witness Disclosures ("Spider Decl. B"). Spider claims to be an "electronic intelligence analyst . . . with experience gathering SAM missile system electronic intelligence" and "extensive experience as a white hat hacker used by some of the top election specialists in the world." *See* Exh. 5, ¶ 2. Other than claiming to work for "top election specialists," Spider does not disclose whether s/he has any experience with election administration or the companies, software, and machines used by states to conduct elections. Because Spider is not named, it is impossible to verify or even research what Spider's credentials may be. On the record before the Court, Spider cannot qualify as an expert given his/her lack of relevant education, training, experience, knowledge, and skill. *See Jinro Am. Inc.*, 266 F.3d at 1006.

Spider's declarations should also be disregarded because they rely on nothing more than speculation and s/he uses no discernable methodology in reaching his/her conclusions. *Ollier v. Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 861 (9th Cir. 2014) ("speculative testimony is inherently unreliable"). Following a dizzying array of screenshots, Spider comes to the conclusion that "Dominion Voter Systems and Edison

[11] In plain contravention of the Court's order requiring that "Plaintiffs shall provide full and complete witness disclosures by Saturday, December 5, 2020, at 12:00 PM," Plaintiffs' untimely filed a new and previously undisclosed report of Russell J. Ramsland, Jr., as an exhibit to their reply brief. *See* Exh. 5 to Plaintiffs' Reply to Defendant's Response in Opposition to Plaintiff's Motion for Relief, Doc. 44-1. All expert reports not timely served should not be considered. *See* Fed. R. Civ. P. 37(c)(1). In any event, the untimely report only multiplies the gaps in Ramsland's methodology, by inserting additional unfounded analysis and unexplained extrapolations.

Research" were "accessible" and "certainly compromised by rogue actors," such as Iran and China, and that Dominion and Edison Research "intentionally provided access to their infrastructure in order to monitor and manipulate elections, including the most recent one in 2020." Spider. Decl. A, at ¶ 21, Doc. 1-5. Spider's second declaration (which actually appears to contain multiple declarations) does nothing more: providing a hodge-podge of IP addresses allegedly showing that "SSL certificates" for Dominion were connected to foreign systems; including purported screenshots from a site called "offshoreleaks.icij.org"; averring that Smartmatic's website is in the Philippines; and including additional screenshots. Exh. 5, Spider Decl. B.

Spider appears to have applied no methodology other than a series of online and other searches in reaching a conclusion that rests entirely on speculation. *Cooper*, 510 F.3d at 880. Spider's declarations should not be considered.

5. Matthew Bromberg

Plaintiffs offer a declaration by Matthew Bromberg who purports to offer opinions about statistical anomalies allegedly supportive of voter fraud. Compl. Exh. 19, Doc. 1-10 ("Bromberg Decl.").

To the extent Bromberg's declaration refers to other states and cities outside of the state of Arizona, Plaintiffs have not established the relevance of this information (and cannot do so) to questions presented in this case regarding Arizona's electoral system. Bromberg's opinions about other locations is therefore unhelpful to the trier of fact. "Irrelevant evidence is not admissible." Fed. R. Evid. 401.

The sole contention Bromberg raises concerning Arizona is that some sort of data supports the idea that vote switching occurred in Maricopa, AZ. *See* Bromberg Decl., ¶ 7. Bromberg points to voting precincts in Maricopa County with relatively few voters and suggests that those precincts were more susceptible to voter fraud. But as Professor Michael C. Herron explains in his expert report, Bromberg's declaration is unreliable and

lacks foundation. *See* Exh. 3 to Proposed Intervenor-Defendant's Response to Plaintiffs' Motion for Relief, Doc. 37-3 ("Herron Rep.").[12]

First, Bromberg's theory is novel and untested and "does not appear in the literature on voter fraud," and lacks any evidentiary basis from Bromberg's declaration. *See* Herron Rep., at 2. Second, Bromberg's opinion rests on the faulty assumption that Maricopa voters were restricted to certain precincts. That assumption is untrue because, as explained by Herron, every "eligible voter in Maricopa County could use any of the county's 175 centers to cast an in-person ballot," such that voters "were *not* restricted to voting in the polling places associated with their precincts." *See id.* Accordingly Bromberg's theory is baseless and unreliable and should be excluded. *See Jinro Am. Inc.*, 266 F.3d at 1006.

6. Phillip Waldron

Plaintiffs list Col. Phillip Waldron as an expert but fail to identify or describe his testimony. Instead, they simply attach what appears to be Waldron's CV and a document titled "Arizona State Legislature Holds Public Hearing on 2020 Election.mp4." *See* Exh. 6, Waldron CV; Exh. 7, Arizona State Legislature Public Hearing mp4, It is possible that Exhibit 6 is a transcript of a public hearing. But the text on the page begins without any identification of a speaker, location, or date. *See* Exh. 6, at 1.

Plaintiffs' failure to identify Waldron's proposed testimony alone requires exclusion. "Bald conclusions, brief statements of ultimate conclusions with no explanation of the basis and reasons therefore, or reports omitting a statement of how the facts support the conclusions do not satisfy Rule 26(a)(2)(B)." *Izzo v. Wal-Mart Stores, Inc.*, No. 2:15-CV-01142-JAD-NJK, 2016 WL 593532, at *2 (D. Nev. Feb. 11, 2016) (citations omitted). Exclusion of expert testimony "is an appropriate remedy for failing to fulfill the required disclosure requirements of Rule 26(a)." *Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001).

[12] A true and correct copy of Herron's Report is attached hereto as "Exhibit 11."

But even on its own terms, the disclosure makes it pure guesswork what Plaintiffs intend to offer Waldron to testify about and therefore impossible to access Waldron's qualifications and the reliability of his expert testimony. On the record before the Court, Waldron cannot qualify as an expert in anything. *See Jinro Am. Inc.*, 266 F.3d at 1006.

B. Plaintiffs' Export Reports Should be Excluded for Failure to Comply with Federal Rule of Procedure 26(a)(2)(B).

Under Rule 26(a)(2) of the Federal Rules of Civil Procedure, parties are required to make certain disclosures relating to expert testimony and reports. First, parties are required to disclose "the identity of any witness it may use at trial" to present expert evidence. Fed. R. Civ. P. 26(a)(2)(A). The expert must provide a report containing "(i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; (iii) any exhibits that will be used to summarize or support them; (iv) the witness's qualifications, including a list of all publications authored in the previous 10 years; (v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and (vi) a statement of the compensation to be paid for the study and testimony in the case." Fed. R. Civ. P. 26(a)(2)(B). "Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed." *Yeti*, 259 F.3d at 1106.

Here, Plaintiffs' expert disclosures related to their six so-called experts failed to comply with the requirements of Federal Rule 26 and should therefore be excluded under Rule 37(c)(1). "Bald conclusions, brief statements of ultimate conclusions with no explanation of the basis and reasons therefore, or reports omitting a statement of how the facts support the conclusions do not satisfy Rule 26(a)(2)(B)." *Izzo*, 2016 WL 593532,

at *2.[13] Exclusion is the only appropriate remedy here *Ferreira v. Arpaio*, No. CV-15-01845-PHX-JAT, 2017 WL 5496135, at *1 (D. Ariz. Nov. 16, 2017) (citations omitted).[14]

III. CONCLUSION

Plaintiffs' proposed expert testimony and reports are based on anonymous affiants, facially unqualified so-called experts, and an implausible claimed conspiracy unsupported by reliable methods. Plaintiffs' disclosures also flunk every requirement of Rule 26(a)(2) of the Federal Rules of Civil Procedure. For the reasons stated herein, the Court should exclude the testimony and reports of Plaintiffs' six experts.

Respectfully submitted this 7th day of December, 2020.

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[13] Furthermore, to the extent Plaintiffs purport to untimely re-designate any expert witness as a fact witness, Defendant objects to the improper disclosure. Fed. R. Civ. P. 26(a)(2)(b), 37(c)(1). Moreover, the six witnesses lack of personal knowledge about voting in Arizona. *See* Fed. R. Evid. 602. Their testimony should also be excluded as prejudicial, misleading, and a waste of time. *See* Fed. R. Evid. 403.

[14] Under L.R.Civ. 7.2(l), counsel certifies that Defendant met and conferred with Plaintiffs in good faith on December 7, 2020, in an effort to resolve these issues; the parties were unable to resolve the dispute. During the conference, Defendant gave notice of her intent to file this Motion.

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' MOTION IN LIMINE AS TO DEFENSE EXPERTS

[1] District of Arizona admission scheduled for 12/9/2020.

At the outset, Plaintiffs note that they believe making Daubert challenges is inappropriate at the preliminary injunction stage of a case. The US Supreme Court has recognized, due to the urgency of requests for preliminary injunctive relief "a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395, 101 S. Ct. 1830, 1834, 68 L.Ed.2d 175, 180. Not only may a preliminary injunction be granted on the basis of declarations, but it may even be granted on the basis of unsworn statements or hearsay. *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984). Hence, Plaintiffs' position is that this Court should consider every piece of evidence including every expert report submitted by all parties to this case and give them the weight the court feels is due. On Sunday morning, counsel for Plaintiffs met and conferred with counsel for Defendants and Intervenor, pursuant to this Court's order, to attempt to obtain stipulations as to the admissibility of witnesses and exhibits. Unfortunately, an attorney for the Maricopa County Intervenor, derailed this meet and confer with belligerent behavior and threats to "jack up" (i.e. beat up or stab)[2] one of Plaintiff's attorneys and stipulations were unable to be obtained as to the admissibility of any witness or exhibit.

However, if, notwithstanding, the Court feels that this is the appropriate time to entertain Daubert-type challenges then Plaintiffs submit the following Objections to Defendants' designated expert witnesses:

I. LEGAL STANDARD

The Daubert standard for expert admissibility is codified at FRE 702. However, "[T]he factors identified in Daubert may or may not be pertinent in assessing reliability, depending on the nature of the issue, the expert's particular expertise, and the subject of his

[2] Jack something up. (n.d.) *McGRaw-Hill's Dictionary of American Slang and Colloquial Expressions.* (2006). ("**2.** *tv*. to beat or stab someone. (Underworld.)").

testimony. **Reliable** expert testimony need only be **relevant**, and need not establish every element that the plaintiff must prove, in order to be admissible." *Primiano v. Cook*, 598 F.3d 558, 565 (9th Cir. 2010) (emphasis supplied). "Expert opinion testimony is **relevant** if the knowledge underlying it has a valid connection to the pertinent inquiry. And it is **reliable** if the knowledge underlying it has a reliable basis in the knowledge and experience **of the relevant discipline**." *Id*. (emphasis supplied).

The experts Plaintiffs have designated have knowledge and experience in the fields of either statistics or cyber-security. The expert reports Defendants have submitted[3] take the form of rebuttal reports to Plaintiffs' experts.

However, as more fully set forth below, unlike the experts Plaintiffs have designated, only one of the experts that Defendants have disclosed holds a degree in statistics or mathematics[4] and none has any sort of cybersecurity background whatsoever. Accordingly they lack the knowledge or experience of the relevant disciplines necessary for their reports and testimony to be considered, or, at the very least, the knowledge or experience of the relevant disciplines necessary to provide rebuttal testimony.

1) Defendant Hobbs designated witness number 6, "Professor Rodden, Professor of Political Science, Senior Fellow at the Hoover Institution and at the Stanford Institute for Economic Policy Research, who is expected to provide expert testimony regarding the information contained in the report he submitted with the Arizona Democratic Party's Motion to Dismiss this action, filed on 12/04/2020.

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[3] Defendant Hobbs attempts to incorporate the Arizona Democratic Party's experts, and presumably their reports, by reference. By filing this opposition, no admission is made that this is in any way proper. Objection is additionally made to all witnesses and reports submitted by the Arizona Democratic Party because the Arizona Democratic Party is not a party to this case.

[4] This expert did not provide his name in his report, nor did he sign his report, nor has any party filed a motion to seal or a motion for a protective order pertaining to this expert.

a. Dr. Rodden is expected to provide expert testimony regarding the information contained in the report he submitted with the Arizona Democratic Party's Motion to Dismiss this action, filed on 12/04/2020.

b. Plaintiffs object to Professor Rodden's qualification on the issues that he is designated for, which Dr. Rodden states his qualifications as follows: "I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent papers published in the Annals of Internal Medicine and the New England Journal of Medicine.

c. Dr. Rodden has a Ph.D. in political science. His undergraduate degree is also in political science. He writes that he "received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science."

d. His qualifications do not attempt to suggest that he is a Statistician or an expert in the preparation and analysis of statistics.

e. Dr. Rodden also does not submit himself as an expert in cyber security, cyber forensic analysis or in the signal processing and wireless signal processing domain, with an emphasis on statistical signal processing.

f. Plaintiffs further object to Dr. Rodden as an expert on the standard of care on his anticipated testimony on statistical opinions or in the analysis of statistics

g. Plaintiffs further object to Dr. Rodden as an expert in cyber forensics or on the signal processing and wireless signal processing domain, with an emphasis on statistical signal processing because of his lack of credentials or expertise in mathematics and statistics.

2) Defendant-Intervenors Designated Dr. Stephen Daniel Ansolabehere who is designated to opine on Dr. Briggs' reports. Dr. Ansolabehere has a Ph.D. in political science and a B.A. in political science, and while he maintains an extensive resume, including having been a Professor of Political Science, Dr. Ansolabehere does not suggest that he is a Statistician or an expert in the preparation and analysis of statistics or even mathematics, so therefore, Plaintiffs object to testimony as it relates to the analysis of statistics or the preparation thereof.

3) Defendants' designated Professor Gary King also holds only degrees in political science. He does not profess to be a Statistician or an expert in the preparation and analysis of statistics or mathematics, so Plaintiffs would seek to limit his testimony in those areas. Further Plaintiffs seek to limit his testimony on computer and cyber security cyber operation toolkits for digital forensics and would seek to limit his testimony on that subject. Defendants have stated that "[h]e further is anticipated to testify on evaluating evidence described and conclusions drawn in several Exhibits in this case offered by the Plaintiffs." Plaintiffs object to this overbroad response which glosses over the substantive issues.

4) Defendant-Intervenors Designated a report that is unidentified but does not purport to be an expert in cyber security, cyber forensic analysis or in the signal processing and wireless signal processing domain, with an emphasis on statistical signal processing,

and his opinions should be limited accordingly. This expert did not provide his name in his report, nor did he sign his report, nor has any party filed a motion to seal or a motion for a protective order pertaining to this expert. Plaintiffs do not see how, in fairness, his report or testimony can be considered at the same time Defendants maintain their objection to a handful of Plaintiffs' witnesses keeping their identities. Even if this is a mere oversight and this expert has been designated, the fact that his name is not linked with his report creates prejudice to Plaintiffs in investigating and attempting to counter-this expert given the short timeframes in this litigation.

Accordingly, the Plaintiffs respectfully request that the Court either admit the experts and exhibits by every party as evidence and give them the weight they are due or prohibit the above experts from testifying and their reports from being considered.

Respectfully submitted this 7th day of December, 2020

/s/ Howard Kleinhendler

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CERTIFICATE OF SERVICE

I hereby certify that on December 7th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants.

Case No.: 2:20-cv-02321-DJH

NOTICE OF SERVICE OF PLAINTIFFS' EXHIBIT LIST

[1] District of Arizona admission scheduled for 12/9/2020.

Pursuant to LRCiv 5.2, Plaintiffs hereby give notice that Plaintiffs' Exhibit List was served upon Defendant Doug Ducey, Defendant Katie Hobbs, and Maricopa County Intervenors counsel of record via email on December 6, 2020 at 2:54 p.m.

Respectfully submitted this 7th day of December, 2020

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Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

OPPOSITION TO MARICOPA COUNTY'S MOTION FOR JUDICIAL NOTICE

[1] District of Arizona admission scheduled for 12/9/2020.

Plaintiffs, by and through undersigned counsel, hereby respond to Intervenor-Defendant Maricopa County's ("Maricopa County") Motion for Judicial Notice.

In Maricopa County's Motion for Judicial Notice, it claims that *Aguilera v. Fontes, CV2020-014562* was a challenge to the November 3, 2020 General Election results in Maricopa County. However, undersigned counsel, Alexander Kolodin, was the lawyer for [the different] Plaintiffs in that case and can aver that it was not an election challenge. This is evidenced by the complaint in that matter, which explicitly stated, "Plaintiffs are not alleging that the difficulties they experienced disproportionately impacted any given candidate or party." *See* **Exhibit 1** at 2:17-18. Furthermore, Plaintiffs in *Aguilera v. Fontes, CV2020-014562* did not seek decertification in that lawsuit. *See Id.* Finally, that action was filed before the statutory challenge period. *See* A.R.S. § 16-673(A).

As Maricopa County was a Defendant in that matter, and was represented by the same counsel, we are not sure how they made this error. However, we think it is important to correct the record. The request for judicial notice should be denied as to Maricopa County's characterizations. The Court may, of course, take judicial notice of the record itself in those matters.

Respectfully submitted this 7th day of December, 2020

/s/Alexander Kolodin

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By: */s/ Chris Viskovic*

Exhibit 1

CLERK OF THE
SUPERIOR COURT
RECEIVED CCC #3
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2020 NOV 12 PM 7:21

FILED
BY J. CARDENAS, DEP

PAID
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SUPERIOR COURT OF THE STATE OF ARIZONA

FOR THE COUNTY OF MARICOPA

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

Plaintiffs,

v.

ADRIAN FONTES, in his official capacity as Maricopa County Recorder; CLINT 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

VERIFIED COMPLAINT

(Expedited Election Matter)

(Order to Show Cause Requested)

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SECTION I

PREFATORY MATTERS

1.1. Plaintiffs are two individuals who experienced difficulties voting on election day.

1.2. Plaintiff Laurie Aguilera showed up to the polls on election day and, despite having the right to do so, was unable to cast a ballot.

1.3. Plaintiff Drobina showed up to the polls on election day and did manage to cast a ballot. However, Defendants' tabulation machine was unable to automatically read and tabulate his ballot with perfect accuracy as the law required.

1.4. Plaintiffs are conscious of the passions that reports of election-day problems have stirred and the wider context of this litigation. However, Plaintiffs do not wish to have this case sensationalized. Rather, they wish to vindicate their rights as Arizona voters to cast a vote that is not only counted, but is counted according to the processes the law requires, in both this and future elections. Accordingly, they take the unusual step of pointing out, as a prefatory matter, what they are not alleging at this time:

A. Plaintiffs are not alleging intentional misconduct on the part of a public official or government worker.

B. Plaintiffs are not alleging that the difficulties they experienced disproportionately impacted any given candidate or party.

C. Neither Plaintiff is alleging that poll-workers in their case "touched the green button," as is at issue in *Trump v. Hobbs*.

SECTION II

PARTIES, JURISDICTION, AND VENUE

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

2.2. Plaintiff Laurie Aguilera is an Arizona citizen and a duly registered voter in Maricopa County, Arizona. She is and was, at all times relevant hereto, a registered voter in Maricopa County not on the early voting list.

2.3. Plaintiff Donovan Drobina is an Arizona citizen and a duly registered voter in Maricopa County, Arizona.

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

2.5. All "Arizona citizens and voters" have standing to challenge violations of election law by public officials. *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at *6-7 (Nov. 5, 2020).

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

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

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

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

2.10. 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.

2.11. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, and A.R.S. §§ 12-1801, 12-1803, 12-1831, and 12-2021. Given the looming canvassing, certification, and electoral college deadlines, Plaintiffs seek an order to show cause.

2.12. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, and A.R.S. §§ 12-1801, 12-1803, 12-1831, and 12-2021.

SECTION III

FACTS

3.1. Plaintiffs incorporate by reference the preceding allegations.

Applicable Deadlines

3.2. The Secretary of State (in the presence of the Governor, Attorney General, and Chief Justice) canvasses and certifies results for state and federal offices on the fourth Monday following the election, which is November 30, 2020. A.R.S. 16-642; 648; 650.

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3.3. The Governor of Arizona has until December 8 to appoint a slate of presidential electors to the Electoral College. 3 U.S.C. § 5. Thus, the state has until December 8 to resolve controversies over the appointment of electors. *See also* www.archives.gov/electoral-college/state-offiiclas/so-key-dates.

3.4. On December 14, the electors cast their votes in the meeting of the Electoral College. 3 U.S.C. § 7.

3.5. On January 6, Congress receives and counts the votes from the Electoral College. 3 U.S.C. § 15.

3.6. Plaintiff Aguilera seeks to have her claim for injunctive relief to allow her vote to be cured adjudicated (with time for appeal) by November 30, 2020. Plaintiffs also seek to have their claim for injunctive relief for public observation of the electronic-adjudication process decided as expeditiously as possible in case there is any recount utilizing this process.

3.7. Plaintiffs ideally seek to have their claims for declaratory relief adjudicated (with time for appeal) by the time that Congress receives and counts the votes from the electoral college to allow for the Court's findings to be considered by Congress. However, if this is not possible, there is still value in deciding these matters in advance of the next election.

How Voter Credits Were Awarded

3.8. In Maricopa County, when election-day voters showed up to the polls, they were checked in by poll-workers on tablet-style devices and their names were then logged into the county's electronic pollbook.

3.9. A ballot was then printed for the voter.

3.10. Voters then completed their ballots and inserted their ballots into tabulation machines on site.

3.11. When voters follow the instructions of elections officials, those tabulation machines are supposed to automatically scan and tabulate the ballots of election-day voters with perfect accuracy.

3.12. However, upon information and belief, in Maricopa County there is no information on the ballots printed for election-day voters that indicate that specific ballot was given to that specific voter. **Ex. A. [Declaration of former Maricopa County Recorder Helen Purcell]**.

3.13. Upon information and belief, any information that Maricopa County has regarding whose election-day ballots were accurately cast who had their votes "counted" is based solely on the county's record identifying which voters appeared in-person to vote on election day. **Ex. A.**

3.14. Therefore, upon information and belief, in Maricopa County, it would be impossible after election day to ascertain with any certainty whether a particular election-day voter's ballot was counted much less whether all votes contained on any given ballot were tabulated. **Ex. A.**

Violation of Plaintiff Aguilera's Right to Vote

3.15. Plaintiff Laurie Aguilera voted in person in Maricopa County on election day, November 3, 2020 alongside her husband Damian Aguilera.

3.16. Neither Plaintiff Aguilera nor her husband are on the early voting list or received ballots by mail. **Ex. B. [Aguilera family ballot status information].**

3.17. When election-day voters like Plaintiff Aguilera showed up to the polls, they were checked in by poll-workers on tablet-style devices and their names were then logged into the county's electronic pollbook.

3.18. Plaintiff Aguilera and her husband were checked-in to the polls by a poll-worker.

3.19. Plaintiff Aguilera completed her ballot according to the instructions provided by Defendants.

3.20. Plaintiff Aguilera and her husband attempted to feed their ballots into the tabulator as instructed.

3.21. Upon information and belief, when a ballot is successfully read and inserted into a tabulator, the tabulator displays a confirmation that the ballot has been accepted on a small digital readout.

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3.22. However, while the tabulator seemingly accepted her husband's ballot without issue, the tabulator failed to display any such confirmation or, upon information and belief, to properly register Plaintiff Aguilera's ballot.

3.23. A poll worker monitoring the tabulator informed Plaintiff Aguilera that this was strange and not part of the normal course of events.

3.24. A poll-worker then canceled Plaintiff Aguilera's check-in on the touchpad at the entrance to the polling-place. The cancel button on the check-in pad is not the same thing as the "green button" at issue in *Trump v. Hobbs*.

3.25. Plaintiff Aguilera then requested a new ballot but, upon information and belief, after consulting with the Maricopa County Recorder's Office, poll workers refused to provide her with one.

3.26. As of November 11, 2020, the County's records indicate as follows with respect to Damian Aguilera: "You voted on Election Day. Your ballot was counted." However, the County's records contain no such statement for Plaintiff Aguilera. **Ex. B.**

Violation of Plaintiff Drobina's Right to Have His Vote Counted by a Perfectly Accurate and Fully Automated Process

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

3.28. Plaintiff Drobina was not on the early voting list and did not receive a ballot by mail. **Ex. C. [Drobina ballot status information].**

3.29. Plaintiff Drobina was checked-in to the polls by a poll-worker. **Ex. C.**

3.30. Plaintiff Drobina completed his ballot according to the instructions provided by Defendants. **Ex. D. [Drobina declaration].**

3.31. Plaintiff Drobina then attempted to insert his ballot into the slot at the top of the tabulator and it was rejected. **Ex. D.**

3.32. A poll worker had Plaintiff Drobina attempt to put the ballot in the slot at the top of the tabulator twice, and, after it failed to scan both times, the poll worker instructed him to put the ballot in a slot lower down on the tabulator (the "Lower Slot"). **Ex. D.**

3.33. Maricopa County's records as of November 11, 2020, indicate as follows with respect to Plaintiff Drobina: "You voted on Election Day. Your ballot was counted." **Ex. C**.

3.34. However, as discussed above, upon information and belief, this means only that Plaintiff Drobina checked into the polls on election day and has no bearing on whether Mr. Drobina's vote was automatically read and tabulated with perfect accuracy by Defendants' tabulation machines.

3.35. Upon information and belief, the slot located on top of the tabulators reads and tabulates a given voter's ballot on site.

3.36. Upon information and belief, election-day ballots placed into the Lower Slot are not read and tabulated on site.

3.37. Upon information and belief, election-day ballots placed into the Lower Slot are sent to Defendants' "MCTEC" facility.

3.38. Upon information and belief, once they reach the MCTEC facility some or all of the ballots placed in the Lower Slot are subject to manual review by human beings to determine voter intent ("Adjudication").

3.39. Upon information and belief, Defendants' position is that, after election-day ballots placed into the Lower Slot are taken to the MCTEC facility: (1) another attempt is first made there to run such ballots through tabulation machines, and (2) only those ballots that the tabulation machines at MCTEC are unable to automatically read and tabulate with perfect accuracy, in whole or in part, are subject to manual review by human beings to determine voter intent ("Human Adjudication").

3.40. Regardless of the truth of Defendants' position, due to the lack of any information on an election-day ballot that could tie that ballot back to a given voter, it is impossible for any particular voter whose ballot has been placed in the Lower Slot to ever know whether their particular ballot was subject, in whole or in part, to Human Adjudication.

3.41. Upon information and belief, Defendants' electronic voting system was also unable to both automatically and perfectly read and record the ballots of at least some

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other election day voters who followed Defendants' instructions. **Ex. E. [Additional declarations].**

SECTION IV

CAUSES OF ACTION

4.1. Plaintiffs incorporate by reference the preceding allegations.

FIRST CAUSE OF ACTION

(Failure to Maintain Statutorily Compliant Electronic Voting System)

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

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

4.4. By statute, the county's electronic voting system must, "When properly operated, record correctly and count accurately every vote cast." A.R.S. § 16-446(B)(6).

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

4.6. Plaintiffs[1] properly operated Defendants' electronic voting system but, upon information and belief, it failed to both automatically and perfectly read and record some or all of their votes.

4.7. Even if Defendants could prove that the processes they followed ultimately resulted in the selections on Plaintiff Drobina's ballot being properly recorded, the law requires not just that proper result, but that the proper process be followed to get there.

[1] References to plaintiffs should also be taken to refer to those Maricopa County voters who experienced similar issues.

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4.8. Human Adjudication is a safeguard to be employed when a voter has made a mistake. A ballot cast by a voter who has followed Defendants' instructions should never be subject to human Adjudication.

WHEREFORE Plaintiffs 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 constitutes a violation of Plaintiffs' right under Arizona law to have their votes read and tabulated in a fully automated process by a perfectly accurate machine when Plaintiffs operate the Electronic Voting System as instructed.

SECOND CAUSE OF ACTION

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

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

4.10. Defendants conduct elections in Maricopa County.

4.11. The ballots of at least some election-day voters who had properly followed Defendants' instructions, like Plaintiff Aguilera, were rejected by Defendants' on-site tabulators and not counted, while other election-day voters did not experience this issue.

4.12. Upon information and belief, unlike Plaintiff Aguilera, some election-day voters whose ballots were rejected by Defendants' on-site tabulators were given new ballots by Defendants' poll-workers.

4.13. The ballots of at least some election-day voters who had properly followed Defendants' instructions, like Plaintiff Drobina, were rejected by Defendants' on-site tabulators, and instead taken to MCTEC for further processing while other election-day voters did not experience this issue.

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4.14. Human beings are by nature fallible and imperfect.

4.15. Every human being has biases, conscious or unconscious.

4.16. Upon information and belief, the ballots of at least some election-day voters who had properly followed Defendants' instructions, like Plaintiff Drobina, were rejected by Defendants' on-site tabulators, and instead subject to Human Adjudication, while other election-day voters did not experience this issue.

4.17. Some, but not all, election-day voters were provided by Defendants with devices for marking their ballots that blead through the ballot paper. Upon information and belief, this is responsible for at least some of the difficulties described above.

4.18. Some, but not all, election-day voters were provided by Defendants with wide-tipped devices for marking their ballots, while other election day voters were provided with narrow-tipped marking devices. Upon information and belief, this is responsible for at least some of the difficulties described above.

4.19. Defendants could have avoided the issues described above by, among other things, maintaining a statutorily compliant electronic voting system and providing Plaintiff Aguilera with a new ballot.

4.20. Accordingly, Defendants, in conducting the 2020 general election, did not ensure the maximum degree of correctness, impartiality, and uniformity of procedures for voting and tabulating ballots.

WHEREFORE Plaintiffs 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 constitutes a violation of Defendants' obligation under Arizona law to ensure the maximum degree of correctness, impartiality, and uniformity of procedures for voting and tabulating ballots.

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THIRD CAUSE OF ACTION

(A.R.S. Const. Art. II, § 21)

4.21. A.R.S. Const. Art. II, § 21 provides that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

4.22. Upon information and belief, Defendants interfered with and prevented Plaintiff Aguilera's free exercise of her right of suffrage in that they forced her to use an electronic voting system in which, through no fault of her own, Plaintiff's ballot was rendered unreadable by the voting system Defendants purchased and utilized.

4.23. Upon information and belief, Defendants interfered with and prevented Plaintiff's free exercise of her right of suffrage in that after Plaintiff opted to spoil her ballot following its rejection by the scanning tabulator, election workers refused to give Plaintiff a second ballot to mark, thereby denying her the opportunity to cure her ballot and denying her the right to vote.

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

4.25. Plaintiff Aguilera was entitled to have her vote counted.

4.26. Upon information and belief, Plaintiff Aguilera's vote was not counted when it should have been.

4.27. Therefore, upon information and belief, Plaintiff Aguilera's vote was not properly counted.

4.28. Both Plaintiff Aguilera and Plaintiff Drobina were entitled to have their votes <u>both</u> automatically and perfectly read and recorded.

4.29. Proper counting of their votes would have required that Plaintiffs' votes be read and recorded in an automated fashion by a perfectly accurate machine.

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4.30. Upon information and belief, neither Plaintiff Aguilera's vote nor Plaintiff Drobina's vote were read and recorded in an automated fashion by a perfectly accurate machine.

WHEREFORE Plaintiffs 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 constitutes violations of the rights to suffrage and the proper counting of votes protected by *A.R.S. Const. Art. II, § 21.*

B. For injunctive relief allowing Plaintiff Aguilera to cast a new ballot prior to the certification deadline of November 30, 2020.

FOURTH CAUSE OF ACTION

(A.R.S. Const. Art. II, § 13)

4.31. A.R.S. Const. Art. II, § 21 provides that "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."

4.32. Accordingly, every election-day voter who fills out a ballot according to Defendants' instructions is entitled to have that ballot treated in the same way.

4.33. Because of the official acts of Defendants concerning the administration of the 2020 general election complained of herein, some voters, like Plaintiff Aguilera, did not have their ballots counted at all. Meanwhile, some voters, like Plaintiff Drobina, were deprived of the opportunity, afforded to other voters, to have their votes counted via a fully automated and perfect process.

WHEREFORE Plaintiffs 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 constitutes

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violations of the rights to have their ballots treated the same as other, similarly situated, voters pursuant to *A.R.S. Const. Art. II, § 13*.

FIFTH CAUSE OF ACTION

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

4.34. By statute Arizona elections are to be conducted pursuant to the Election Procedures Manual ("EPM") which has the force of law. A.R.S. § 16-452.[2]

4.35. Pursuant to the EPM, the ballots and marking devices provided to voters must: "Allow the voter to vote for the candidate or ballot measure of choice, allow the voter to vote for or against as many candidates or ballot measures for which they are entitled to vote, and inform the voter if the number of vote choices exceeds the permitted amount or prevent the voter from selecting more than the permitted number of vote choices[.]" EPM Chapter 4(I)(A)(2)(b)(i)(3) at 79.

4.36. Upon information and belief, the ballot and marking device provided to Plaintiff Aguilera did not allow her to vote for or against any candidates or ballot measures.

4.37. Upon information and belief, the ballot and marking device provided to Plaintiff Drobina did not reveal to him that the tabulation equipment would read overvotes on some or all of the races on his completed ballot.

4.38. Pursuant to the EPM, the ballots and marking devices provided to voters must: "Provide the voter with an opportunity (in a private, secret, and independent manner) to correct any error before the ballot is cast and counted or cast a replacement ballot if the previous ballot is spoiled or unable to be changed or corrected." EPM Chapter 4(I)(A)(2)(b)(i)(3) at 80.

4.39. Plaintiff Aguilera was not provided with the opportunity to cast a replacement ballot after her previous ballot was spoiled.

[2] https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf

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4.40. Upon information and belief, the ballot and marking device provided to Plaintiff Drobina did not reveal to him upon visual inspection that stray marks would cause one or more races on his ballot to be misread by the tabulation equipment. Hence, he was not afforded the opportunity to correct these errors nor was he afforded the opportunity to cast a replacement ballot that would have allowed his voters to be automatically read and tabulated on site.

WHEREFORE Plaintiffs 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 their obligation under Arizona law to comply with Chapter 4(I)(A)(2)(b)(i)(3) of the EPM.

SIXTH CAUSE OF ACTION

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

4.41. In February of 2019, an Electronic Adjudication Addendum (the "Addendum") was added to the EPM.[3]

4.42. The Addendum provides in pertinent part as follows: "The electronic adjudication of votes must be performed in a secure location, preferably in the same location as the EMS system, but open to public viewing." Addendum(D)(1) at 3.

4.43. Defendants failed to open the location where electronic adjudication occurs to the public.

WHEREFORE Plaintiffs 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

[3] https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf

by Plaintiffs constitutes a violation of their obligation to open the location where the electronic adjudication of votes is occurring to the public pursuant to Addendum(D)(1).

B. For injunctive relief requiring the opening the location where electronic adjudication is taking place to the public in further elections, as well as during any additional electronic adjudication that takes place this election (e.g. as a result of a recount).

ADDITIONALLY, Plaintiffs pray:

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

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

Respectfully submitted this 12th day of November, 2020

By /s/Alexander Kolodin

Alexander Kolodin
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Phoenix, AZ 85012

Attorneys for Plaintiffs

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

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.

11/12/2020

DATE

DocuSigned by:

C2484F857D8844A...

LAURIE AGUILERA

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Exhibit A

DECLARATION OF HELEN PURCELL

I, Helen Purcell, declare and state as follows:

1. My name is Helen Purcell. 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. From 1988 to 2017 I served as Maricopa County Recorder.
3. Upon information and belief, in Maricopa County, there is no information on any given ballot that would tie that ballot back to a specific voter.
4. Upon information and belief, any information that Maricopa County has on who has voted on election day comes solely from who checked in at the polls on election day.
5. Therefore, upon information and belief, in Maricopa County, it would be impossible to ascertain with any certainty after election day whether a particular voter's vote was counted, much less fully and accurately counted.

I declare under penalty of perjury that the foregoing is true and correct, except for those statements made upon information and belief, which I reasonably believe to be true.

Executed on 11/11/2020, in Maricopa County, Arizona.

DocuSigned by:
By /Helen Purcell
44DD9829A868431...
Helen Purcell

Exhibit B

3:26
recorder.maricopa.go...
10+

BeBallot READY .vote

Voter Registration Status:

REGISTERED

Get My Digital Voter ID Card

Name:

DAMIAN W AGUILERA

Change My Name

Residential Address:

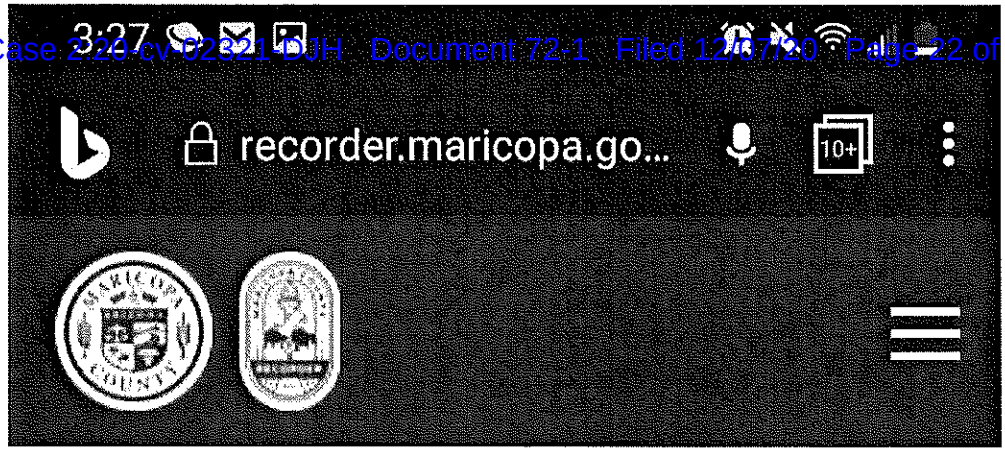
4214 W LAS PALMARITAS DR

PHOENIX

AZ 85051

Change My Address

My Political Party Designation:



Name:

DAMIAN W AGUILERA

Change My Name

Residential Address:

4214 W LAS PALMARITAS DR

PHOENIX

AZ 85051

Change My Address

My Political Party Designation:

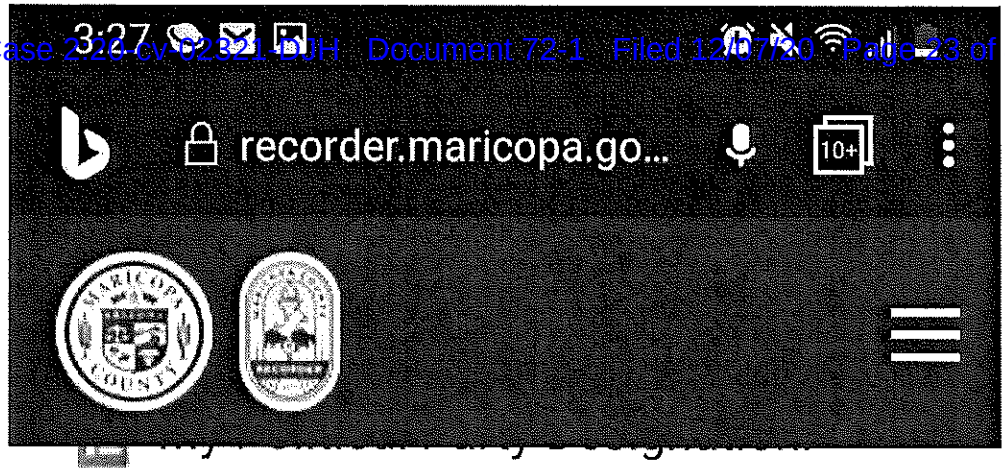
REPUBLICAN

Change My Political Party

Permanent Early Voting List:

NO

Change My Early Voting Status



REPUBLICAN

Change My Political Party

Permanent Early Voting List:

NO

Change My Early Voting Status

Upcoming Elections

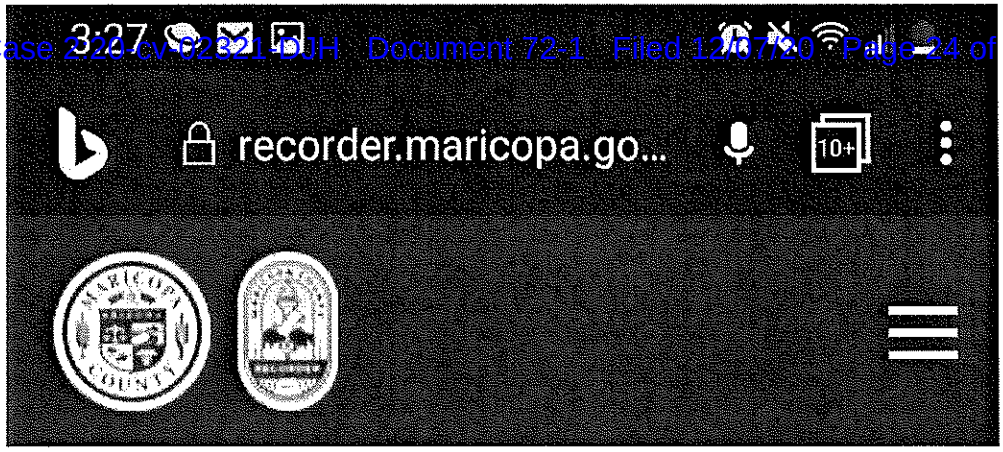
Upcoming Elections

11/3/2020

See Elections Calendar

What's on My Ballot?

Where Can I Vote?



Where Can I Vote?

Whether it's Election Day or before, you have options to vote.

View All Voting Locations

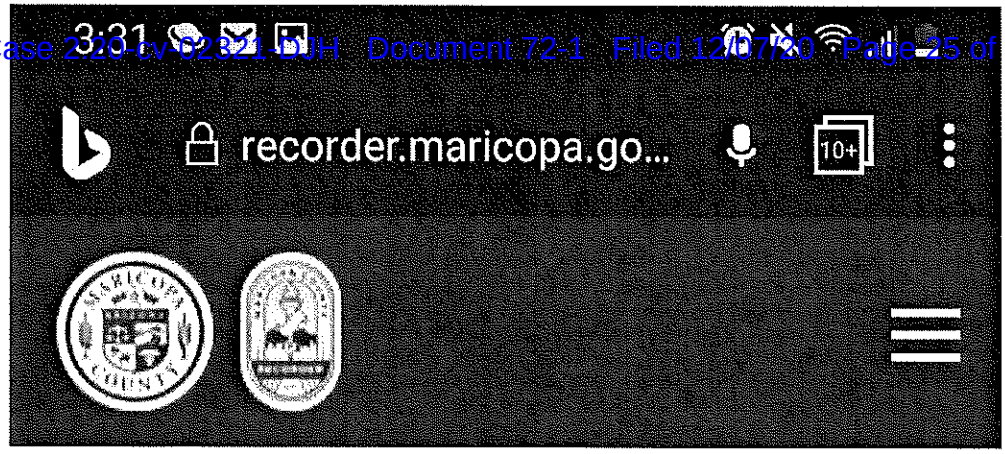
My Ballot Status

11/3/2020

You voted on Election Day. Your ballot was counted.

You're not signed up to vote by mail.

Request a Ballot



BeBallot READY .vote

Voter Registration Status:

REGISTERED

Get My Digital Voter ID Card

Name:

LAURIE CHRISTINE AGUILERA

Change My Name

Residential Address:

4214 W LAS PALMARITAS DR

PHOENIX

AZ 85051

Change My Address

My Political Party Designation:



My Political Party Designation:

REPUBLICAN

Change My Political Party

Permanent Early Voting List:

NO

Change My Early Voting Status

Upcoming Elections

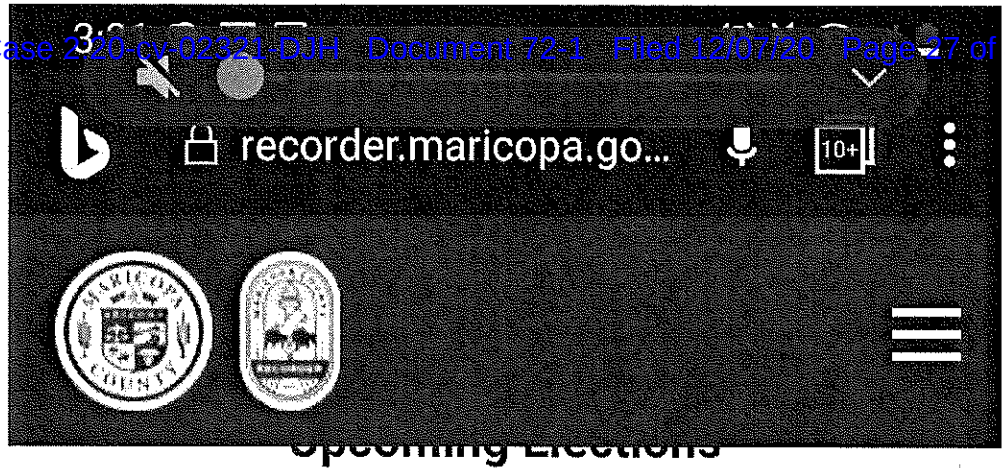
Upcoming Elections

11/3/2020

See Elections Calendar

What's on My Ballot?

Where Can I Vote?



Upcoming Elections

11/3/2020

See Elections Calendar

What's on My Ballot?

Where Can I Vote?

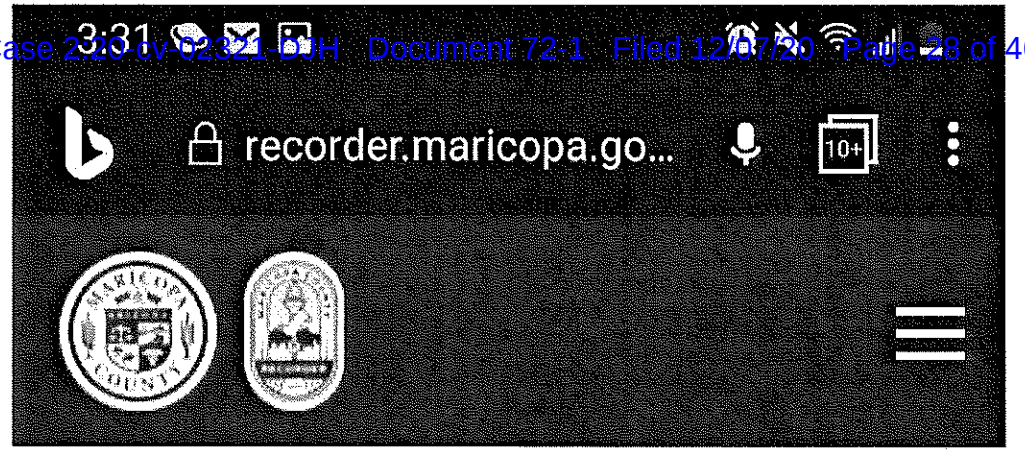
Whether it's Election Day or before, you have options to vote.

View All Voting Locations

My Ballot Status

You're not signed up to vote by mail.

Request a Ballot



View All Voting Locations

My Ballot Status

You're not signed up to vote by mail.

Request a Ballot

More Election Information

Election Security

Exhibit C

https://recorder.maricop

10

Upcoming Elections

11/3/2020

See Elections Calendar

What's on My Ballot?

Where Can I Vote?

Whether it's Election Day or before, you have options to vote.

View All Voting Locations

My Ballot Status

11/3/2020

You voted on Election Day. Your ballot was counted.

You're not signed up to vote by mail.

Request a Ballot

Exhibit D

DECLARATION

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:

902AF774965F43C...

Exhibit E

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

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 Banko
42B4EBE7FA1741F...

KOLODIN LAW GROUP PLLC
3443 North Central Avenue Suite 1009
Phoenix, Arizona 85012
Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

DECLARATION

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.

DocuSigned by:
9106078720844A2...

DECLARATION

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: [x] 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...

DECLARATION

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: [x] 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
0A3A21E19E8349C...

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.

DocuSigned by:

8576C5AAEF0F4B6...

DECLARATION

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: [x] 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:
F54637D3EC08440...

DECLARATION

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: [x] 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

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: [x] 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

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: [x] 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

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.

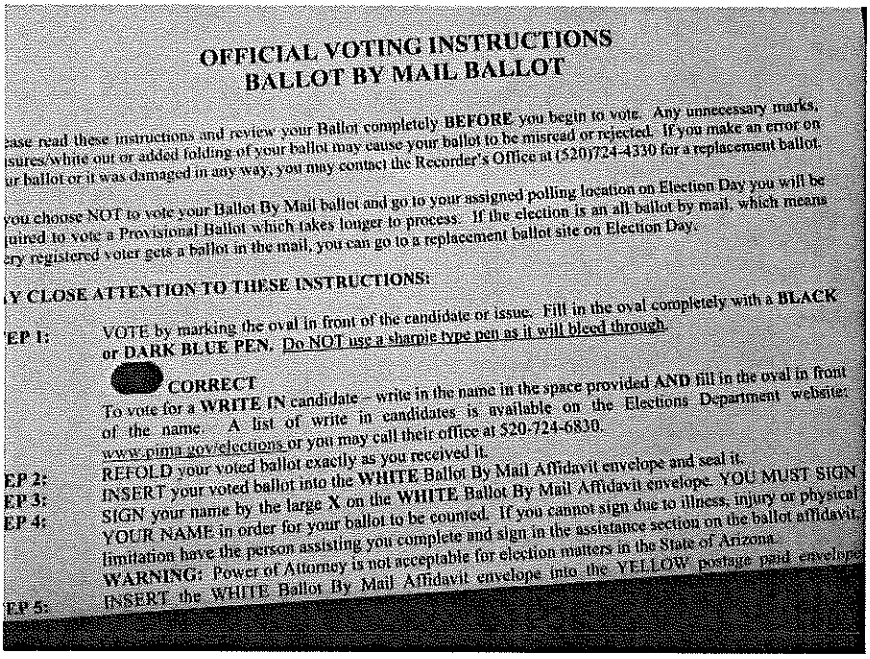
DocuSigned by:

C483F599CA1E49E...

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.



OFFICIAL VOTING INSTRUCTIONS
BALLOT BY MAIL BALLOT

ease read these instructions and review your Ballot completely **BEFORE** you begin to vote. Any unnecessary marks, isures/white out or added folding of your ballot may cause your ballot to be misread or rejected. If you make an error on ur ballot or it was damaged in any way, you may contact the Recorder's Office at (520)724-4330 for a replacement ballot.

you choose NOT to vote your Ballot By Mail ballot and go to your assigned polling location on Election Day you will be quired to vote a Provisional Ballot which takes longer to process. If the election is an all-ballot by mail, which means ery registered voter gets a ballot in the mail, you can go to a replacement ballot site on Election Day.

Y CLOSE ATTENTION TO THESE INSTRUCTIONS:

EP 1: VOTE by marking the oval in front of the candidate or issue. Fill in the oval completely with a **BLACK** or **DARK BLUE PEN.** Do NOT use a sharpie type pen as it will bleed through.

CORRECT

To vote for a **WRITE IN** candidate – write in the name in the space provided **AND** fill in the oval in front of the name. A list of write in candidates is available on the Elections Department website: www.pima.gov/elections or you may call their office at 520-724-6830.

EP 2: REFOLD your voted ballot exactly as you received it.

EP 3: INSERT your voted ballot into the **WHITE** Ballot By Mail Affidavit envelope and seal it.

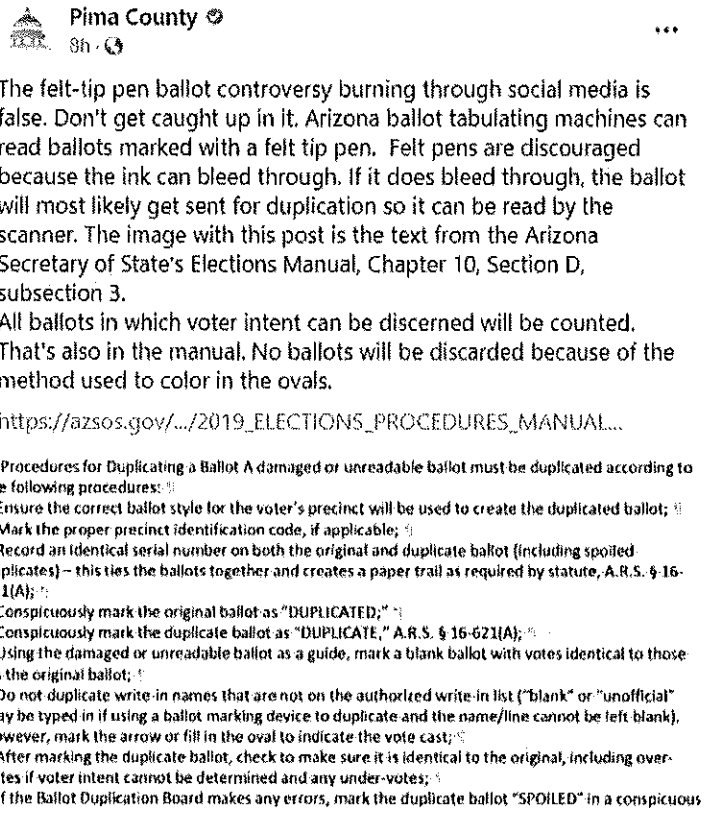
EP 4: SIGN your name by the large **X** on the **WHITE** Ballot By Mail Affidavit envelope. YOU MUST SIGN YOUR NAME in order for your ballot to be counted. If you cannot sign due to illness, injury or physical limitation have the person assisting you complete and sign in the assistance section on the ballot affidavit.

WARNING: Power of Attorney is not acceptable for election matters in the State of Arizona.

EP 5: INSERT the WHITE Ballot By Mail Affidavit envelope into the YELLOW postage paid envelope

KOLODIN LAW GROUP PLLC
3443 North Central Avenue Suite 1009
Phoenix, Arizona 85012
Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

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.



Pima County
9h ·

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...

Brett W. Johnson (#021527)
Colin P. Ahler (#023879)
Derek C. Flint (#034392)
Ian R. Joyce (#035806)
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Anni L. Foster (#023643)
General Counsel
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Telephone: 602-542-4331
E-Mail: afoster@az.gov

Attorneys for Defendant Douglas A. Ducey, Governor of the State of Arizona

Snell & Wilmer L.L.P.
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One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer, et al.,

Plaintiffs,

v.

Doug Ducey, et al.,

Defendants,

and

Maricopa County Board of Supervisors, et al.,

Intervenor-Defendants

No. 2:20-cv-02321-DJH

Supplement to Governor Ducey's Objections to Plaintiffs' Exhibit and Witness List for December 10 Hearing

Assigned to: Hon. Diane Humetewa

TRO Hearing Set: December 10, 2020 at 9:30 a.m.

Notice is hereby given that due to several different exhibit and witness lists disclosed in this case on an expedited basis, Defendant Governor Douglas A. Ducey respectfully supplements his objections to Plaintiffs' exhibits (Doc. 63) in order to ensure that they correspond with Plaintiffs' final exhibit list. Specifically, the Governor states that his objections concerning Plaintiffs' Exhibits 1-23 are found at pages 10-18 of Doc. 63.[1] The numbering of Exhibits 1-23 on these pages corresponds to Plaintiffs' number of these same proposed exhibits. Governor Ducey further clarifies that objections to Exhibit 24 can be found at Page 7, Lines 15-25 of Doc. 63. Governor Ducey also withdraws the objections that the following exhibits were not timely disclosed: Exhibit 2; Exhibit 2A; Exhibit 2B; Exhibit 2C; Exhibit 2D; Exhibit 2E; Exhibit 7; Exhibit 9; Exhibit 9 A&B; Exhibit 10; Exhibit 11; Exhibit 15; Exhibit 16; and Exhibit 18.

DATED this 7th day of December, 2020.

SNELL & WILMER L.L.P.

By: /s/ Brett W. Johnson

Brett W. Johnson
Colin P. Ahler
Derek C. Flint
Ian R. Joyce
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Phoenix, Arizona 85004-2202

Anni L. Foster
OFFICE OF ARIZONA GOVERNOR
DOUGLAS A. DUCEY
1700 West Washington Street
Phoenix, Arizona 85007

Attorneys for Defendant Douglas A. Ducey, Governor of the State of Arizona

[1] The description of Exhibit 13 should also be revised from "Redacted Expert affidavit statistician" to "Bryan Teasley-Statistician."

Snell & Wilmer L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

CERTIFICATE OF SERVICE

I certify that on December 7, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants.

s/ Richard Schaan

Snell & Wilmer L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren, Suite 1900
Phoenix, Arizona 85004-2202
602.382.6000

Sidney Powell (admitted pro hac vice)
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Christopher Viskovic, AZ Bar No. 035860[1]
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Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward and Michael Ward;

Plaintiffs;

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her capacity as Secretary of State of the State of Arizona;

Defendants;

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder;

Intervenors.

Case No.: 2:20-cv-02321-DJH

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

[1] District of Arizona admission scheduled for 12/9/2020.

Plaintiffs respectfully submit this Notice of Supplemental Authority to provide notice that the State of Texas has filed suit against the Commonwealth of Pennsylvania, the State of Georgia, the State of Michigan, and the State of Wisconsin in the Supreme Court of the United States to decertify the results of those respective elections due to constitutional violations and other illegality.

A copy of the filing is attached as **Exhibit 1**.

Respectfully submitted this 8th day of December, 2020

/s/Alexander Kolodin

Alexander Kolodin
Kolodin Law Group PLLC
AZ Bar No. 030826

3443 N. Central Ave Ste 1009
Phoenix, AZ 85012

Sidney Powell PC
Texas Bar No. 16209700

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice forthcoming

Of Counsel:
Emily P. Newman (Virginia Bar No. 84265)
Julia Z. Haller (D.C. Bar No. 466921)
Brandon Johnson (D.C. Bar No. 491730)

2911 Turtle Creek Blvd. Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice Forthcoming

L. Lin Wood (Georgia Bar No. 774588)
L. LIN WOOD, P.C.
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Atlanta, GA 30305-0584
Telephone: (404) 891-1402

Howard Kleinhendler (New York Bar No. 2657120)
Howard Kleinhendler Esquire
369 Lexington Ave. 12th Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

CERTIFICATE OF SERVICE

I hereby certify that on December 8th, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

By: */s/ Chris Viskovic*

Exhibit 1

No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Ken Paxton*
Attorney General of Texas

Brent Webster
First Assistant Attorney General of Texas

Lawrence Joseph
Special Counsel to the Attorney General of Texas

Office of the Attorney General
P.O. Box 12548 (MC 059)
Austin, TX 78711-2548
kenneth.paxton@oag.texas.gov
(512) 936-1414

* *Counsel of Record*

TABLE OF CONTENTS

Pages

Motion for leave to File Bill of Complaint 1

No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

Pursuant to 28 U.S.C. § 1251(a) and this Court's Rule 17, the State of Texas respectfully seeks leave to file the accompanying Bill of Complaint against the States of Georgia, Michigan, and Wisconsin and the Commonwealth of Pennsylvania (collectively, the "Defendant States") challenging their administration of the 2020 presidential election.

As set forth in the accompanying brief and complaint, the 2020 election suffered from significant and unconstitutional irregularities in the Defendant States:

- Non-legislative actors' purported amendments to States' duly enacted election laws, in violation of the Electors Clause's vesting State legislatures with plenary authority regarding the appointment of presidential electors.

- Intrastate differences in the treatment of voters, with more favorable allotted to voters – whether lawful or unlawful – in areas administered by local government under Democrat control and with populations with higher ratios of Democrat voters than other areas of Defendant States.
- The appearance of voting irregularities in the Defendant States that would be consistent with the unconstitutional relaxation of ballot-integrity protections in those States' election laws.

All these flaws – even the violations of *state* election law – violate one or more of the federal requirements for elections (*i.e.*, equal protection, due process, and the Electors Clause) and thus arise under federal law. *See Bush v Gore*, 531 U.S. 98, 113 (2000) ("significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question") (Rehnquist, C.J., concurring). Plaintiff State respectfully submits that the foregoing types of electoral irregularities exceed the hanging-chad saga of the 2000 election in their degree of departure from both state and federal law. Moreover, these flaws cumulatively preclude knowing who legitimately won the 2020 election and threaten to cloud all future elections.

Taken together, these flaws affect an outcome-determinative numbers of popular votes in a group of States that cast outcome-determinative numbers of electoral votes. This Court should grant leave to file the complaint and, ultimately, enjoin the use of unlawful election results without review and ratification by the Defendant States' legislatures and remand to the Defendant States' respective

legislatures to appoint Presidential Electors in a manner consistent with the Electors Clause and pursuant to 3 U.S.C. § 2.

December 7, 2020 Respectfully submitted,

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No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

BILL OF COMPLAINT

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"[T]hat form of government which is best contrived to secure an impartial and exact execution of the law, is the best of republics."

—John Adams

BILL OF COMPLAINT

Our Country stands at an important crossroads. Either the Constitution matters and must be followed, even when some officials consider it inconvenient or out of date, or it is simply a piece of parchment on display at the National Archives. We ask the Court to choose the former.

Lawful elections are at the heart of our constitutional democracy. The public, and indeed the candidates themselves, have a compelling interest in ensuring that the selection of a President—any President—is legitimate. If that trust is lost, the American Experiment will founder. A dark cloud hangs over the 2020 Presidential election.

Here is what we know. Using the COVID-19 pandemic as a justification, government officials in the defendant states of Georgia, Michigan, and Wisconsin, and the Commonwealth of Pennsylvania (collectively, "Defendant States"), usurped their legislatures' authority and unconstitutionally revised their state's election statutes. They accomplished these statutory revisions through executive fiat or friendly lawsuits, thereby weakening ballot integrity. Finally, these same government officials flooded the Defendant States with millions of ballots to be sent through the mails, or placed in drop boxes, with little

or no chain of custody[1] and, at the same time, weakened the strongest security measures protecting the integrity of the vote—signature verification and witness requirements.

Presently, evidence of material illegality in the 2020 general elections held in Defendant States grows daily. And, to be sure, the two presidential candidates who have garnered the most votes have an interest in assuming the duties of the Office of President without a taint of impropriety threatening the perceived legitimacy of their election. However, 3 U.S.C. § 7 requires that presidential electors be appointed on December 14, 2020. That deadline, however, should not cement a potentially illegitimate election result in the middle of this storm—a storm that is of the Defendant States' own making by virtue of their own unconstitutional actions.

This Court is the only forum that can delay the deadline for the appointment of presidential electors under 3 U.S.C. §§ 5, 7. To safeguard public legitimacy at this unprecedented moment and restore public trust in the presidential election, this Court should extend the December 14, 2020 deadline for Defendant States' certification of presidential electors to allow these investigations to be completed. Should one of the two leading candidates receive an absolute majority of the presidential electors' votes to be cast on December 14, this would finalize the selection of our President. The only date that is mandated under

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[1] *See* https://georgiastarnews.com/2020/12/05/dekalb-county-cannot-find-chain-of-custody-records-for-absentee-ballots-deposited-in-drop-boxes-it-has-not-been-determined-if-responsive-records-to-your-request-exist/

the Constitution, however, is January 20, 2021. U.S. CONST. amend. XX.

Against that background, the State of Texas ("Plaintiff State") brings this action against Defendant States based on the following allegations:

NATURE OF THE ACTION

1. Plaintiff State challenges Defendant States' administration of the 2020 election under the Electors Clause of Article II, Section 1, Clause 2, and the Fourteenth Amendment of the U.S. Constitution.

2. This case presents a question of law: Did Defendant States violate the Electors Clause (or, in the alternative, the Fourteenth Amendment) by taking—or allowing—non-legislative actions to change the election rules that would govern the appointment of presidential electors?

3. Those unconstitutional changes opened the door to election irregularities in various forms. Plaintiff State alleges that each of the Defendant States flagrantly violated constitutional rules governing the appointment of presidential electors. In doing so, seeds of deep distrust have been sown across the country. In the spirit of *Marbury v. Madison*, this Court's attention is profoundly needed to declare what the law is and to restore public trust in this election.

4. As Justice Gorsuch observed recently, "Government is not free to disregard the [Constitution] in times of crisis. … Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. ____ (2020) (Gorsuch, J., concurring). This case is no different.

5. Each of Defendant States acted in a common pattern. State officials, sometimes through pending litigation (*e.g.*, settling "friendly" suits) and sometimes unilaterally by executive fiat, announced new rules for the conduct of the 2020 election that were inconsistent with existing state statutes defining what constitutes a lawful vote.

6. Defendant States also failed to segregate ballots in a manner that would permit accurate analysis to determine which ballots were cast in conformity with the legislatively set rules and which were not. This is especially true of the mail-in ballots in these States. By waiving, lowering, and otherwise failing to follow the state statutory requirements for signature validation and other processes for ballot security, the entire body of such ballots is now constitutionally suspect and may not be legitimately used to determine allocation of the Defendant States' presidential electors.

7. The rampant lawlessness arising out of Defendant States' unconstitutional acts is described in a number of currently pending lawsuits in Defendant States or in public view including:

- *Dozens of witnesses testifying under oath about*: the physical blocking and kicking out of Republican poll challengers; thousands of the same ballots run multiple times through tabulators; mysterious late night dumps of thousands of ballots at tabulation centers; illegally backdating thousands of ballots; signature verification procedures ignored; more

than 173,000 ballots in the Wayne County, MI center that cannot be tied to a registered voter;[2]

- *Videos of*: poll workers erupting in cheers as poll challengers are removed from vote counting centers; poll watchers being blocked from entering vote counting centers—despite even having a court order to enter; suitcases full of ballots being pulled out from underneath tables after poll watchers were told to leave.
- *Facts for which no independently verified reasonable explanation yet exists*: On October 1, 2020, in Pennsylvania a laptop and several USB drives, used to program Pennsylvania's Dominion voting machines, were mysteriously stolen from a warehouse in Philadelphia. The laptop and the USB drives were the *only* items taken, and potentially could be used to alter vote tallies; In Michigan, which also employed the same Dominion voting system, on November 4, 2020, Michigan election officials have admitted that a purported "glitch" caused 6,000 votes for President Trump to be wrongly switched to Democrat Candidate Biden. A flash drive containing tens of thousands of votes was left unattended in the Milwaukee tabulations center in the early morning hours of Nov. 4, 2020, without anyone aware it was not in a proper chain of custody.

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[2] All exhibits cited in this Complaint are in the Appendix to the Plaintiff State's forthcoming motion to expedite ("App. 1a-151a"). *See* Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Benson*, 1:20-cv-1083 (W.D. Mich. Nov. 11, 2020) at ¶¶ 26-55 & Doc. Nos. 1-2, 1-4.

8. Nor was this Court immune from the blatant disregard for the rule of law. Pennsylvania itself played fast and loose with its promise to this Court. In a classic bait and switch, Pennsylvania used guidance from its Secretary of State to argue that this Court should not expedite review because the State would segregate potentially unlawful ballots. A court of law would reasonably rely on such a representation. Remarkably, before the ink was dry on the Court's 4-4 decision, Pennsylvania changed that guidance, breaking the State's promise to this Court. *Compare Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *5-6 (Oct. 28, 2020) ("we have been informed by the Pennsylvania Attorney General that the Secretary of the Commonwealth issued guidance today directing county boards of elections to segregate [late-arriving] ballots") (Alito, J., concurring) *with Republican Party v. Boockvar*, No. 20A84, 2020 U.S. LEXIS 5345, at *1 (Nov. 6, 2020) ("this Court was not informed that the guidance issued on October 28, which had an important bearing on the question whether to order special treatment of the ballots in question, had been modified") (Alito, J., Circuit Justice).

9. Expert analysis using a commonly accepted statistical test further raises serious questions as to the integrity of this election.

10. The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of

that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000[4]). *See* Decl. of Charles J. Cicchetti, Ph.D. ("Cicchetti Decl.") at ¶¶ 14-21, 30-31. *See* App. 4a-7a, 9a.

11. The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these **four** States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31.

12. Put simply, there is substantial reason to doubt the voting results in the Defendant States.

13. By purporting to waive or otherwise modify the existing state law in a manner that was wholly *ultra vires* and not adopted by each state's legislature, Defendant States violated not only the Electors Clause, U.S. CONST. art. II, § 1, cl. 2, but also the Elections Clause, *id.* art. I, § 4 (to the extent that the Article I Elections Clause textually applies to the Article II process of selecting presidential electors).

14. Plaintiff States and their voters are entitled to a presidential election in which the votes from each of the states are counted only if the ballots are cast and counted in a manner that complies with the pre-existing laws of each state. *See Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983) ("for the

President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation."). Voters who cast lawful ballots cannot have their votes diminished by states that administered their 2020 presidential elections in a manner where it is impossible to distinguish a lawful ballot from an unlawful ballot.

15. The number of absentee and mail-in ballots that have been handled unconstitutionally in Defendant States greatly exceeds the difference between the vote totals of the two candidates for President of the United States in each Defendant State.

16. In addition to injunctive relief for this election, Plaintiff State seeks declaratory relief for all presidential elections in the future. This problem is clearly capable of repetition yet evading review. The integrity of our constitutional democracy requires that states conduct presidential elections in accordance with the rule of law and federal constitutional guarantees.

JURISDICTION AND VENUE

17. This Court has original and exclusive jurisdiction over this action because it is a "controvers[y] between two or more States" under Article III, § 2, cl. 2 of the U.S. Constitution and 28 U.S.C. § 1251(a) (2018).

18. In a presidential election, "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson*, 460 U.S. at 795. The constitutional failures of Defendant States injure Plaintiff States because "'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as

effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush v. Gore*, 531 U.S. 98, 105 (2000) (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) (*Bush II*). In other words, Plaintiff State is acting to protect the interests of its respective citizens in the fair and constitutional conduct of elections used to appoint presidential electors.

19. This Court's Article III decisions indicate that only a state can bring certain claims. *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state); *cf. Massachusetts v. EPA,* 549 U.S. 497, 520 (2007) (courts owe states "special solicitude in standing analysis"). Moreover, redressability likely would undermine a suit against a single state officer or State because no one State's electoral votes will make a difference in the election outcome. This action against multiple State defendants is the only adequate remedy for Plaintiff States, and this Court is the only court that can accommodate such a suit.

20. Individual state courts do not—and under the circumstance of contested elections in multiple states, *cannot*—offer an adequate remedy to resolve election disputes within the timeframe set by the Constitution to resolve such disputes and to appoint a President via the electoral college. No court—other than this Court—can redress constitutional injuries spanning multiple States with the sufficient number of states joined as defendants or respondents to make a difference in the Electoral College.

21. This Court is the sole forum in which to exercise the jurisdictional basis for this action.

PARTIES

22. Plaintiff is the State of Texas, which is a sovereign State of the United States.

23. Defendants are the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin, which are sovereign States of the United States.

LEGAL BACKGROUND

24. Under the Supremacy Clause, the "Constitution, and the laws of the United States which shall be made in pursuance thereof … shall be the supreme law of the land." U.S. CONST. Art. VI, cl. 2.

25. "The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college." *Bush II*, 531 U.S. at 104 (citing U.S. CONST. art. II, § 1).

26. State legislatures have plenary power to set the process for appointing presidential electors: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors." U.S. CONST. art. II, §1, cl. 2; *see also Bush II*, 531 U.S. at 104 ("[T]he state legislature's power to select the manner for appointing electors is *plenary*." (emphasis added)).

27. At the time of the Founding, most States did not appoint electors through popular statewide elections. In the first presidential election, six of the ten States that appointed electors did so by direct legislative appointment. *McPherson v. Blacker*, 146 U.S. 1, 29-30 (1892).

28. In the second presidential election, nine of the fifteen States that appointed electors did so by direct legislative appointment. *Id.* at 30.

29. In the third presidential election, nine of sixteen States that appointed electors did so by direct legislative appointment. *Id.* at 31. This practice persisted in lesser degrees through the Election of 1860. *Id.* at 32.

30. Though "[h]istory has now favored the voter," *Bush II*, 531 U.S. at 104, "there is no doubt of the right of the legislature to resume the power [of appointing presidential electors] at any time, for *it can neither be taken away nor abdicated*." *McPherson*, 146 U.S. at 35 (emphasis added); *cf.* 3 U.S.C. § 2 ("Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.").

31. Given the State legislatures' constitutional primacy in selecting presidential electors, the ability to set rules governing the casting of ballots and counting of votes cannot be usurped by other branches of state government.

32. The Framers of the Constitution decided to select the President through the Electoral College "to afford as little opportunity as possible to tumult and disorder" and to place "every practicable obstacle [to] cabal, intrigue, and corruption," including "foreign powers" that might try to insinuate themselves into our elections. THE FEDERALIST NO. 68, at 410-11 (C. Rossiter, ed. 1961) (Madison, J.).

33. Defendant States' applicable laws are set out under the facts for each Defendant State.

FACTS

34. The use of absentee and mail-in ballots skyrocketed in 2020, not only as a public-health response to the COVID-19 pandemic but also at the urging of mail-in voting's proponents, and most especially executive branch officials in Defendant States. According to the Pew Research Center, in the 2020 general election, a record number of votes—about 65 million—were cast via mail compared to 33.5 million mail-in ballots cast in the 2016 general election—an increase of more than 94 percent.

35. In the wake of the contested 2000 election, the bipartisan Jimmy Carter-James Baker commission identified absentee ballots as "the largest source of potential voter fraud." BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005).

36. Concern over the use of mail-in ballots is not novel to the modern era, Dustin Waters, *Mail-in Ballots Were Part of a Plot to Deny Lincoln Reelection in 1864*, WASH. POST (Aug. 22, 2020),[3] but it remains a *current* concern. *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 194-96 & n.11 (2008); *see also* Texas Office of the Attorney General, *AG Paxton Announces Joint Prosecution of Gregg County Organized Election Fraud in Mail-In Balloting Scheme* (Sept. 24, 2020); Harriet Alexander & Ariel Zilber, *Minneapolis police opens investigation into reports that Ilhan Omar's supporters illegally harvested Democrat ballots in Minnesota*, DAILY MAIL, Sept. 28, 2020.

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[3] https://www.washingtonpost.com/history/2020/08/22/mail-in-voting-civil-war-election-conspiracy-lincoln/

37. Absentee and mail-in voting are the primary opportunities for unlawful ballots to be cast. As a result of expanded absentee and mail-in voting in Defendant States, combined with Defendant States' unconstitutional modification of statutory protections designed to ensure ballot integrity, Defendant States created a massive opportunity for fraud. In addition, the Defendant States have made it difficult or impossible to separate the constitutionally tainted mail-in ballots from all mail-in ballots.

38. Rather than augment safeguards against illegal voting in anticipation of the millions of additional mail-in ballots flooding their States, Defendant States *all* materially weakened, or did away with, security measures, such as witness or signature verification procedures, required by their respective legislatures. Their legislatures established those commonsense safeguards to prevent—or at least reduce—fraudulent mail-in ballots.

39. Significantly, in Defendant States, Democrat voters voted by mail at two to three times the rate of Republicans. Former Vice President Biden thus greatly benefited from this unconstitutional usurpation of legislative authority, and the weakening of legislative mandated ballot security measures.

40. The outcome of the Electoral College vote is directly affected by the constitutional violations committed by Defendant States. Plaintiff State complied with the Constitution in the process of appointing presidential electors for President Trump. Defendant States violated the Constitution in the process of appointing presidential electors by unlawfully abrogating state election laws designed to

protect the integrity of the ballots and the electoral process, and those violations proximately caused the appointment of presidential electors for former Vice President Biden. Plaintiff State will therefore be injured if Defendant States' unlawfully certify these presidential electors.

Commonwealth of Pennsylvania

41. Pennsylvania has 20 electoral votes, with a statewide vote tally currently estimated at 3,363,951 for President Trump and 3,445,548 for former Vice President Biden, a margin of 81,597 votes.

42. The number of votes affected by the various constitutional violations exceeds the margin of votes separating the candidates.

43. Pennsylvania's Secretary of State, Kathy Boockvar, without legislative approval, unilaterally abrogated several Pennsylvania statutes requiring signature verification for absentee or mail-in ballots. Pennsylvania's legislature has not ratified these changes, and the legislation did not include a severability clause.

44. On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking "a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting" were unlawful for a number of reasons. *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020).

45. The Pennsylvania Department of State quickly settled with the plaintiffs, issuing revised guidance on September 11, 2020, stating in relevant part: "The Pennsylvania Election Code does not

authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections."

46. This guidance is contrary to Pennsylvania law. First, Pennsylvania Election Code mandates that, for non-disabled and non-military voters, all applications for an absentee or mail-in ballot "shall be signed by the applicant." 25 PA. STAT. §§ 3146.2(d) & 3150.12(c). Second, Pennsylvania's voter signature verification requirements are expressly set forth at 25 PA. STAT. 350(a.3)(1)-(2) and § 3146.8(g)(3)-(7).

47. The Pennsylvania Department of State's guidance unconstitutionally did away with Pennsylvania's statutory signature verification requirements. Approximately 70 percent of the requests for absentee ballots were from Democrats and 25 percent from Republicans. Thus, this unconstitutional abrogation of state election law greatly inured to former Vice President Biden's benefit.

48. In addition, in 2019, Pennsylvania's legislature enacted bipartisan election reforms, 2019 Pa. Legis. Serv. Act 2019-77, that set *inter alia* a deadline of 8:00 p.m. on election day for a county board of elections to receive a mail-in ballot. 25 PA. STAT. §§ 3146.6(c), 3150.16(c). Acting under a generally worded clause that "Elections shall be free and equal," PA. CONST. art. I, § 5, cl. 1, a 4-3 majority of Pennsylvania's Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended that deadline to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely.

49. Pennsylvania's election law also requires that poll-watchers be granted access to the opening, counting, and recording of absentee ballots: "Watchers shall be permitted to be present when the envelopes containing official absentee ballots and mail-in ballots are opened and when such ballots are counted and recorded." 25 PA. STAT. § 3146.8(b). Local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b) for the opening, counting, and recording of absentee and mail-in ballots.

50. Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to "cure" defective mail-in ballots. This process clearly violated several provisions of the state election code.

- Section 3146.8(a) requires: "The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D,1 shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections."
- Section 3146.8(g)(1)(ii) provides that mail-in ballots shall be canvassed (if they are received by eight o'clock p.m. on election day) in the manner prescribed by this subsection.
- Section 3146.8(g)(1.1) provides that the first look at the ballots shall be "no earlier than seven o'clock a.m. on election day." And the hour for this "pre-canvas" must be publicly announced at least

48 hours in advance. Then the votes are counted on election day.

51. By removing the ballots for examination prior to seven o'clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely.

52. Statewide election officials and local election officials in Philadelphia and Allegheny Counties, aware of the historical Democrat advantage in those counties, violated Pennsylvania's election code and adopted the differential standards favoring voters in Philadelphia and Allegheny Counties with the intent to favor former Vice President Biden. *See* Verified Complaint (Doc. No. 1), *Donald J. Trump for President, Inc. v. Boockvar*, 4:20-cv-02078-MWB (M.D. Pa. Nov. 18, 2020) at ¶¶ 3-6, 9, 11, 100-143.

53. Absentee and mail-in ballots in Pennsylvania were thus evaluated under an illegal standard regarding signature verification. It is now impossible to determine which ballots were properly cast and which ballots were not.

54. The changed process allowing the curing of absentee and mail-in ballots in Allegheny and Philadelphia counties is a separate basis resulting in an unknown number of ballots being treated in an unconstitutional manner inconsistent with Pennsylvania statute. *Id.*

55. In addition, a great number of ballots were received after the statutory deadline and yet

were counted by virtue of the fact that Pennsylvania did not segregate all ballots received after 8:00 pm on November 3, 2020. Boockvar's claim that only about 10,000 ballots were received after this deadline has no way of being proven since Pennsylvania broke its promise to the Court to segregate ballots and co-mingled perhaps tens, or even hundreds of thousands, of illegal late ballots.

56. On December 4, 2020, fifteen members of the Pennsylvania House of Representatives led by Rep. Francis X. Ryan issued a report to Congressman Scott Perry (the "Ryan Report," App. 139a-144a) stating that "[t]he general election of 2020 in Pennsylvania was fraught with inconsistencies, documented irregularities and improprieties associated with mail-in balloting, pre-canvassing, and canvassing that the reliability of the mail-in votes in the Commonwealth of Pennsylvania is impossible to rely upon."

57. The Ryan Report's findings are startling, including:

- Ballots with NO MAILED date. That total is 9,005.
- Ballots Returned on or BEFORE the Mailed Date. That total is 58,221.
- Ballots Returned one day after Mailed Date. That total is 51,200.

Id. 143a.

58. These nonsensical numbers alone total 118,426 ballots and exceed Mr. Biden's margin of 81,660 votes over President Trump. But these discrepancies pale in comparison to the discrepancies in Pennsylvania's reported data concerning the

number of mail-in ballots distributed to the populace—now with no longer subject to legislated mandated signature verification requirements.

59. The Ryan Report also states as follows:

> [I]n a data file received on November 4, 2020, the Commonwealth's PA Open Data sites reported over 3.1 million mail in ballots sent out. The CSV file from the state on November 4 depicts 3.1 million mail in ballots sent out but on November 2, the information was provided that only 2.7 million ballots had been sent out. ***This discrepancy of approximately 400,000 ballots from November 2 to November 4 has not been explained***.

Id. at 143a-44a. (Emphasis added).

60. These stunning figures illustrate the out-of-control nature of Pennsylvania's mail-in balloting scheme. Democrats submitted mail-in ballots at more than two times the rate of Republicans. This number of constitutionally tainted ballots far exceeds the approximately 81,660 votes separating the candidates.

61. This blatant disregard of statutory law renders all mail-in ballots constitutionally tainted and cannot form the basis for appointing or certifying Pennsylvania's presidential electors to the Electoral College.

62. According to the U.S. Election Assistance Commission's report to Congress *Election Administration and Voting Survey: 2016 Comprehensive Report*, in 2016 Pennsylvania received 266,208 mail-in ballots; 2,534 of them were rejected (.95%). *Id.* at p. 24. However, in 2020, Pennsylvania received more than 10 times the number of mail-in ballots compared to 2016. As explained *supra*, this

much larger volume of mail-in ballots was treated in an unconstitutionally modified manner that included: (1) doing away with the Pennsylvania's signature verification requirements; (2) extending that deadline to three days after Election Day and adopting a presumption that even *non-postmarked ballots* were presumptively timely; and (3) blocking poll watchers in Philadelphia and Allegheny Counties in violation of State law.

63. These non-legislative modifications to Pennsylvania's election rules appear to have generated an outcome-determinative number of unlawful ballots that were cast in Pennsylvania. Regardless of the number of such ballots, the non-legislative changes to the election rules violated the Electors Clause.

State of Georgia

64. Georgia has 16 electoral votes, with a statewide vote tally currently estimated at 2,458,121 for President Trump and 2,472,098 for former Vice President Biden, a margin of approximately 12,670 votes.

65. The number of votes affected by the various constitutional violations exceeds the margin of votes dividing the candidates.

66. Georgia's Secretary of State, Brad Raffensperger, without legislative approval, unilaterally abrogated Georgia's statute governing the signature verification process for absentee ballots.

67. O.C.G.A. § 21-2-386(a)(2) prohibits the opening of absentee ballots until after the polls open on Election Day: In April 2020, however, the State Election Board adopted Secretary of State Rule 183-1-14-0.9-.15, Processing Ballots Prior to Election Day.

That rule purports to authorize county election officials to begin processing absentee ballots up to three weeks before Election Day.

68. Georgia law authorizes and requires a single registrar or clerk—after reviewing the outer envelope—to reject an absentee ballot if the voter failed to sign the required oath or to provide the required information, the signature appears invalid, or the required information does not conform with the information on file, or if the voter is otherwise found ineligible to vote. O.C.G.A. § 21-2-386(a)(1)(B)-(C).

69. Georgia law provides absentee voters the chance to "cure a failure to sign the oath, an invalid signature, or missing information" on a ballot's outer envelope by the deadline for verifying provisional ballots (*i.e.*, three days after the election). O.C.G.A. §§ 21-2-386(a)(1)(C), 21-2-419(c)(2). To facilitate cures, Georgia law requires the relevant election official to notify the voter in writing: "The board of registrars or absentee ballot clerk shall promptly notify the elector of such rejection, a copy of which notification shall be retained in the files of the board of registrars or absentee ballot clerk for at least two years." O.C.G.A. § 21-2-386(a)(1)(B).

70. On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release with the Democratic Party of Georgia (the "Settlement") to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter's identity by making it far more difficult to challenge defective signatures beyond the

express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B).

71. Among other things, before a ballot could be rejected, the Settlement required a registrar who found a defective signature to now seek a review by two other registrars, and only if a majority of the registrars agreed that the signature was defective could the ballot be rejected but not before all three registrars' names were written on the ballot envelope along with the reason for the rejection. These cumbersome procedures are in direct conflict with Georgia's statutory requirements, as is the Settlement's requirement that notice be provided by telephone (*i.e.*, not in writing) if a telephone number is available. Finally, the Settlement purports to require State election officials to consider issuing guidance and training materials drafted by an expert retained by the Democratic Party of Georgia.

72. Georgia's legislature has not ratified these material changes to statutory law mandated by the Compromise Settlement Agreement and Release, including altered signature verification requirements and early opening of ballots. The relevant legislation that was violated by Compromise Settlement Agreement and Release did not include a severability clause.

73. This unconstitutional change in Georgia law materially benefitted former Vice President Biden. According to the Georgia Secretary of State's office, former Vice President Biden had almost double the number of absentee votes (65.32%) as President Trump (34.68%). *See* Cicchetti Decl. at ¶ 25, App. 7a-8a.

74. The effect of this unconstitutional change in Georgia election law, which made it more likely that ballots without matching signatures would be counted, had a material impact on the outcome of the election.

75. Specifically, there were 1,305,659 absentee mail-in ballots submitted in Georgia in 2020. There were 4,786 absentee ballots rejected in 2020. This is a rejection rate of .37%. In contrast, in 2016, the 2016 rejection rate was 6.42% with 13,677 absentee mail-in ballots being rejected out of 213,033 submitted, which more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24, App. 7a.

76. If the rejection rate of mailed-in absentee ballots remained the same in 2020 as it was in 2016, there would be 83,517 less tabulated ballots in 2020. The statewide split of absentee ballots was 34.68% for Trump and 65.2% for Biden. Rejecting at the higher 2016 rate with the 2020 split between Trump and Biden would decrease Trump votes by 28,965 and Biden votes by 54,552, which would be a net gain for Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 12,917 votes. *Id*. Regardless of the number of ballots affected, however, the non-legislative changes to the election rules violated the Electors Clause.

State of Michigan

77. Michigan has 16 electoral votes, with a statewide vote tally currently estimated at 2,650,695 for President Trump and 2,796,702 for former Vice President Biden, a margin of 146,007 votes. In Wayne County, Mr. Biden's margin (322,925 votes) significantly exceeds his statewide lead.

78. The number of votes affected by the various constitutional violations exceeds the margin of votes dividing the candidates.

79. Michigan's Secretary of State, Jocelyn Benson, without legislative approval, unilaterally abrogated Michigan election statutes related to absentee ballot applications and signature verification. Michigan's legislature has not ratified these changes, and its election laws do not include a severability clause.

80. As amended in 2018, the Michigan Constitution provides all registered voters the right to request and vote by an absentee ballot without giving a reason. MICH. CONST. art. 2, § 4.

81. On May 19, 2020, however, Secretary Benson announced that her office would send unsolicited absentee-voter ballot applications by mail to all 7.7 million registered Michigan voters prior to the primary and general elections. Although her office repeatedly encouraged voters to vote absentee because of the COVID-19 pandemic, it did not ensure that Michigan's election systems and procedures were adequate to ensure the accuracy and legality of the historic flood of mail-in votes. In fact, it did the opposite and did away with protections designed to deter voter fraud.

82. Secretary Benson's flooding of Michigan with millions of absentee ballot applications prior to the 2020 general election violated M.C.L. § 168.759(3). That statute limits the procedures for requesting an absentee ballot to three specified ways:

> An application for an absent voter ballot under this section may be made in *any of the following ways*:
>
> (a) By a written request signed by the voter.

> (b) On an absent voter ballot application form provided for that purpose by the clerk of the city or township.
>
> (c) On a federal postcard application.

M.C.L. § 168.759(3) (emphasis added).

83. The Michigan Legislature thus declined to include the Secretary of State as a means for distributing absentee ballot applications. *Id.* § 168.759(3)(b). Under the statute's plain language, the Legislature explicitly gave *only local clerks* the power to distribute absentee voter ballot applications. *Id.*

84. Because the Legislature declined to explicitly include the Secretary of State as a vehicle for distributing absentee ballots applications, Secretary Benson lacked authority to distribute even a single absentee voter ballot application—much less the *millions* of absentee ballot applications Secretary Benson chose to flood across Michigan.

85. Secretary Benson also violated Michigan law when she launched a program in June 2020 allowing absentee ballots to be requested online, *without* signature verification as expressly required under Michigan law. The Michigan Legislature did not approve or authorize Secretary Benson's unilateral actions.

86. MCL § 168.759(4) states in relevant part: "An applicant for an absent voter ballot shall sign the application. Subject to section 761(2), a clerk or assistant clerk shall not deliver an absent voter ballot to an applicant who does not sign the application."

87. Further, MCL § 168.761(2) states in relevant part: "The qualified voter file must be used to determine the genuineness of a signature on an application for an absent voter ballot", and if "the

signatures do not agree sufficiently or [if] the signature is missing" the ballot must be rejected.

88. In 2016 only 587,618 Michigan voters requested absentee ballots. In stark contrast, in 2020, 3.2 million votes were cast by absentee ballot, about 57% of total votes cast – and more than *five times* the number of ballots *even requested* in 2016.

89. Secretary Benson's unconstitutional modifications of Michigan's election rules resulted in the distribution of millions of absentee ballot applications without verifying voter signatures as required by MCL §§ 168.759(4) and 168.761(2). This means that *millions* of absentee ballots were disseminated in violation of Michigan's statutory signature-verification requirements. Democrats in Michigan voted by mail at a ratio of approximately two to one compared to Republican voters. Thus, former Vice President Biden materially benefited from these unconstitutional changes to Michigan's election law.

90. Michigan also requires that poll watchers and inspectors have access to vote counting and canvassing. M.C.L. §§ 168.674-.675.

91. Local election officials in Wayne County made a conscious and express policy decision not to follow M.C.L. §§ 168.674-.675 for the opening, counting, and recording of absentee ballots.

92. Michigan also has strict signature verification requirements for absentee ballots, including that the Elections Department place a written statement or stamp on each ballot envelope where the voter signature is placed, indicating that the voter signature was in fact checked and verified

with the signature on file with the State. *See* MCL § 168.765a(6).

93. However, Wayne County made the policy decision to ignore Michigan's statutory signature-verification requirements for absentee ballots. Former Vice President Biden received approximately 587,074, or 68%, of the votes cast there compared to President Trump's receiving approximate 264,149, or 30.59%, of the total vote. Thus, Mr. Biden materially benefited from these unconstitutional changes to Michigan's election law.

94. Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court.[4] For example, Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified that:

> Absentee ballots that were received in the mail would have the voter's signature on the envelope. While I was at the TCF Center, I was instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file.[5]

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[4] *Johnson v. Benson*, Petition for Extraordinary Writs & Declaratory Relief filed Nov. 26, 2020 (Mich. Sup. Ct.) at ¶¶ 71, 138-39, App. 25a-51a.

[5] *Id.*, Affidavit of Jessy Jacob, Appendix 14 at ¶15, attached at App. 34a-36a.

95. The TCF was the only facility within Wayne County authorized to count ballots for the City of Detroit.

96. These non-legislative modifications to Michigan's election statutes resulted in a number of constitutionally tainted votes that far exceeds the margin of voters separating the candidates in Michigan.

97. Additional public information confirms the material adverse impact on the integrity of the vote in Wayne County caused by these unconstitutional changes to Michigan's election law. For example, the Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27, App. 8a. The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of margin of 146,007 votes by more than 28,377 votes.

98. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers' challenges, as documented by numerous declarations. App. 25a-51a.

99. In addition, a member of the Wayne County Board of Canvassers ("Canvassers Board"), William Hartman, determined that 71% of Detroit's Absent Voter Counting Boards ("AVCBs") were unbalanced—*i.e.*, the number of people who checked in did not match the number of ballots cast—without explanation. *Id*. at ¶ 29.

100. On November 17, 2020, the Canvassers Board deadlocked 2-2 over whether to certify the results of the presidential election based on numerous reports of fraud and unanswered material discrepancies in the county-wide election results. A few hours later, the Republican Board members reversed their decision and voted to certify the results after severe harassment, including threats of violence.

101. The following day, the two Republican members of the Board *rescinded their votes* to certify the vote and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See* Cicchetti Decl. at ¶ 29, App. 8a.

102. Regardless of the number of votes that were affected by the unconstitutional modification of Michigan's election rules, the non-legislative changes to the election rules violated the Electors Clause.

State of Wisconsin

103. Wisconsin has 10 electoral votes, with a statewide vote tally currently estimated at 1,610,151 for President Trump and 1,630,716 for former Vice President Biden (*i.e.*, a margin of 20,565 votes). In two counties, Milwaukee and Dane, Mr. Biden's margin (364,298 votes) significantly exceeds his statewide lead.

104. In the 2016 general election some 146,932 mail-in ballots were returned in Wisconsin out of more than 3 million votes cast.[6] In stark contrast, 1,275,019 mail-in ballots, nearly a 900

[6] Source: U.S. Elections Project, *available at*: http://www.electproject.org/early_2016.

percent increase over 2016, were returned in the November 3, 2020 election.[7]

105. Wisconsin statutes guard against fraud in absentee ballots: "[V]oting by absentee ballot is a privilege exercised wholly outside the traditional safeguards of the polling place. The legislature finds that the privilege of voting by absentee ballot must be carefully regulated to prevent the potential for fraud or abuse[.]" WISC. STAT. § 6.84(1).

106. In direct contravention of Wisconsin law, leading up to the 2020 general election, the Wisconsin Elections Commission ("WEC") and other local officials unconstitutionally modified Wisconsin election laws—each time taking steps that weakened, or did away with, established security procedures put in place by the Wisconsin legislature to ensure absentee ballot integrity.

107. For example, the WEC undertook a campaign to position hundreds of drop boxes to collect absentee ballots—including the use of unmanned drop boxes.[8]

108. The mayors of Wisconsin's five largest cities—Green Bay, Kenosha, Madison, Milwaukee, and Racine, which all have Democrat majorities—joined in this effort, and together, developed a plan use purportedly "secure drop-boxes to facilitate return

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[7] Source: U.S. Elections Project, *available at*: https://electproject.github.io/Early-Vote-2020G/WI.html.

[8] Wisconsin Elections Commission Memoranda, To: All Wisconsin Election Officials, Aug. 19, 2020, *available at*: https://elections.wi.gov/sites/elections.wi.gov/files/2020-08/Drop%20Box%20Final.pdf. at p. 3 of 4.

of absentee ballots." Wisconsin Safe Voting Plan 2020, at 4 (June 15, 2020).[9]

109. It is alleged in an action recently filed in the United States District Court for the Eastern District of Wisconsin that over five hundred unmanned, illegal, absentee ballot drop boxes were used in the Presidential election in Wisconsin.[10]

110. However, the use of *any* drop box, manned or unmanned, is directly prohibited by Wisconsin statute. The Wisconsin legislature specifically described in the Election Code "Alternate absentee ballot site[s]" and detailed the procedure by which the governing body of a municipality may designate a site or sites for the delivery of absentee ballots "other than the office of the municipal clerk or board of election commissioners as the location from which electors of the municipality may request and vote absentee ballots and to which voted absentee ballots shall be returned by electors for any election." Wis. Stat. 6.855(1).

111. Any alternate absentee ballot site "shall be staffed by the municipal clerk or the executive director of the board of election commissioners, or employees of the clerk or the board of election commissioners." Wis. Stat. 6.855(3). Likewise, Wis.

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[9] Wisconsin Safe Voting Plan 2020 Submitted to the Center for Tech & Civic Life, June 15, 2020, by the Mayors of Madison, Milwaukee, Racine, Kenosha and Green Bay *available at*: https://www.techandciviclife.org/wp-content/uploads/2020/07/Approved-Wisconsin-Safe-Voting-Plan-2020.pdf.

[10] *See* Complaint (Doc. No. 1), *Donald J. Trump, Candidate for President of the United States of America v. The Wisconsin Election Commission*, Case 2:20-cv-01785-BHL (E.D. Wisc. Dec. 2, 2020) (Wisconsin Trump Campaign Complaint") at ¶¶ 188-89.

Stat. 7.15(2m) provides, "[i]n a municipality in which the governing body has elected to an establish an alternate absentee ballot sit under s. 6.855, the municipal clerk shall operate such site as though it were his or her office for absentee ballot purposes and shall ensure that such site is adequately staffed."

112. Thus, the unmanned absentee ballot drop-off sites are prohibited by the Wisconsin Legislature as they do not comply with Wisconsin law expressly defining "[a]lternate absentee ballot site[s]". Wis. Stat. 6.855(1), (3).

113. In addition, the use of drop boxes for the collection of absentee ballots, positioned predominantly in Wisconsin's largest cities, is directly contrary to Wisconsin law providing that absentee ballots may only be "mailed by the elector, or delivered *in person* to the municipal clerk issuing the ballot or ballots." Wis. Stat. § 6.87(4)(b)1 (emphasis added).

114. The fact that other methods of delivering absentee ballots, such as through unmanned drop boxes, are *not* permitted is underscored by Wis. Stat. § 6.87(6) which mandates that, "[a]ny ballot not mailed or delivered as provided in this subsection may not be counted." Likewise, Wis. Stat. § 6.84(2) underscores this point, providing that Wis. Stat. § 6.87(6) "shall be construed as mandatory." The provision continues—"Ballots cast in contravention of the procedures specified in those provisions may not be counted. *Ballots counted in contravention of the procedures specified in those provisions may not be included in the certified result of any election*." Wis. Stat. § 6.84(2) (emphasis added).

115. These were not the only Wisconsin election laws that the WEC violated in the 2020

general election. The WEC and local election officials also took it upon themselves to encourage voters to unlawfully declare themselves "indefinitely confined"—which under Wisconsin law allows the voter to avoid security measures like signature verification and photo ID requirements.

116. Specifically, registering to vote by absentee ballot requires photo identification, except for those who register as "indefinitely confined" or "hospitalized." WISC. STAT. § 6.86(2)(a), (3)(a). Registering for indefinite confinement requires certifying confinement "because of age, physical illness or infirmity or [because the voter] is disabled for an indefinite period." *Id.* § 6.86(2)(a). Should indefinite confinement cease, the voter must notify the county clerk, *id.*, who must remove the voter from indefinite-confinement status. *Id.* § 6.86(2)(b).

117. Wisconsin election procedures for voting absentee based on indefinite confinement enable the voter to avoid the photo ID requirement and signature requirement. *Id.* § 6.86(1)(ag)/(3)(a)(2).

118. On March 25, 2020, in clear violation of Wisconsin law, Dane County Clerk Scott McDonnell and Milwaukee County Clerk George Christensen both issued guidance indicating that all voters should mark themselves as "indefinitely confined" because of the COVID-19 pandemic.

119. Believing this to be an attempt to circumvent Wisconsin's strict voter ID laws, the Republican Party of Wisconsin petitioned the Wisconsin Supreme Court to intervene. On March 31, 2020, the Wisconsin Supreme Court unanimously confirmed that the clerks' "advice was legally incorrect" and potentially dangerous because "voters

may be misled to exercise their right to vote in ways that are inconsistent with WISC. STAT. § 6.86(2)."

120. On May 13, 2020, the Administrator of WEC issued a directive to the Wisconsin clerks prohibiting removal of voters from the registry for indefinite-confinement status if the voter is no longer "indefinitely confined."

121. The WEC's directive violated Wisconsin law. Specifically, WISC. STAT. § 6.86(2)(a) specifically provides that "any [indefinitely confined] elector [who] is no longer indefinitely confined … shall so notify the municipal clerk." WISC. STAT. § 6.86(2)(b) further provides that the municipal clerk "shall remove the name of any other elector from the list upon request of the elector or upon receipt of reliable information that an elector no longer qualifies for the service."

122. According to statistics kept by the WEC, nearly 216,000 voters said they were indefinitely confined in the 2020 election, nearly a fourfold increase from nearly 57,000 voters in 2016. In Dane and Milwaukee counties, more than 68,000 voters said they were indefinitely confined in 2020, a fourfold increase from the roughly 17,000 indefinitely confined voters in those counties in 2016.

123. Under Wisconsin law, voting by absentee ballot also requires voters to complete a certification, including their address, and have the envelope witnessed by an adult who also must sign and indicate their address on the envelope. *See* WISC. STAT. § 6.87. The sole remedy to cure an "improperly completed certificate or [ballot] with no certificate" is for "the clerk [to] return the ballot to the elector[.]" *Id.* § 6.87(9). "If a certificate is missing the address of a

witness, the ballot *may not be counted*." *Id.* § 6.87(6d) (emphasis added).

124. However, in a training video issued April 1, 2020, the Administrator of the City of Milwaukee Elections Commission unilaterally declared that a "witness address may be written in red and that is because we were able to locate the witnesses' address for the voter" to add an address missing from the certifications on absentee ballots. The Administrator's instruction violated WISC. STAT. § 6.87(6d). The WEC issued similar guidance on October 19, 2020, in violation of this statute as well.

125. In the Wisconsin Trump Campaign Complaint, it is alleged, supported by the sworn affidavits of poll watchers, that canvas workers carried out this unlawful policy, and acting pursuant to this guidance, in Milwaukee used red-ink pens to alter the certificates on the absentee envelope and then cast and count the absentee ballot. These acts violated WISC. STAT. § 6.87(6d) ("If a certificate is missing the address of a witness, the ballot may not be counted"). *See also* WISC. STAT. § 6.87(9) ("If a municipal clerk receives an absentee ballot with an improperly completed certificate or with no certificate, the clerk may return the ballot to the elector . . . whenever time permits the elector to correct the defect and return the ballot within the period authorized.").

126. Wisconsin's legislature has not ratified these changes, and its election laws do not include a severability clause.

127. In addition, Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service ("USPS") to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified

that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. Further, Pease testified how a senior USPS employee told him on November 4, 2020 that "[a]n order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots were missing" and how the USPS dispatched employees to "find[] . . . the ballots." *Id.* ¶¶ 8-10. One hundred thousand ballots supposedly "found" after election day would far exceed former Vice President Biden margin of 20,565 votes over President Trump.

COUNT I: ELECTORS CLAUSE

128. Plaintiff State repeats and re-alleges the allegations above, as if fully set forth herein.

129. The Electors Clause of Article II, Section 1, Clause 2, of the Constitution makes clear that only the legislatures of the States are permitted to determine the rules for appointing presidential electors. The pertinent rules here are the state election statutes, specifically those relevant to the presidential election.

130. Non-legislative actors lack authority to amend or nullify election statutes. *Bush II*, 531 U.S. at 104 (quoted *supra*).

131. Under *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985), conscious and express executive policies—even if unwritten—to nullify statutes or to abdicate statutory responsibilities are reviewable to the same extent as if the policies had been written or adopted. Thus, conscious and express actions by State or local election officials to nullify or ignore requirements of election statutes violate the Electors

Clause to the same extent as formal modifications by judicial officers or State executive officers.

132. The actions set out in Paragraphs 41-128 constitute non-legislative changes to State election law by executive-branch State election officials, or by judicial officials, in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin, in violation of the Electors Clause.

133. Electors appointed to Electoral College in violation of the Electors Clause cannot cast constitutionally valid votes for the office of President.

COUNT II: EQUAL PROTECTION

134. Plaintiff State repeats and re-alleges the allegations above, as if fully set forth herein.

135. The Equal Protection Clause prohibits the use of differential standards in the treatment and tabulation of ballots within a State. *Bush II*, 531 U.S. at 107.

136. The one-person, one-vote principle requires counting valid votes and not counting invalid votes. *Reynolds*, 377 U.S. at 554-55; *Bush II*, 531 U.S. at 103 ("the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements").

137. The actions set out in Paragraphs 66-73 (Georgia), 80-93 (Michigan), 44-55 (Pennsylvania), and 106-24 (Wisconsin) created differential voting standards in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin in violation of the Equal Protection Clause.

138. The actions set out in Paragraphs 66-73 (Georgia), 80-93 (Michigan), 44-55 (Pennsylvania), and 106-24 (Wisconsin) violated the one-person, one-

vote principle in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin.

139. By the shared enterprise of the entire nation electing the President and Vice President, equal protection violations in one State can and do adversely affect and diminish the weight of votes cast in States that lawfully abide by the election structure set forth in the Constitution. Plaintiff State is therefore harmed by this unconstitutional conduct in violation of the Equal Protection or Due Process Clauses.

COUNT III: DUE PROCESS

140. Plaintiff State repeats and re-alleges the allegations above, as if fully set forth herein.

141. When election practices reach "the point of patent and fundamental unfairness," the integrity of the election itself violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994).

142. Under this Court's precedents on procedural due process, not only intentional failure to follow election law as enacted by a State's legislature but also random and unauthorized acts by state election officials and their designees in local government can violate the Due Process Clause. *Parratt v. Taylor*, 451 U.S. 527, 537-41 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984).

The difference between intentional acts and random and unauthorized acts is the degree of pre-deprivation review.

143. Defendant States acted unconstitutionally to lower their election standards—including to allow invalid ballots to be counted and valid ballots to not be counted—with the express intent to favor their candidate for President and to alter the outcome of the 2020 election. In many instances these actions occurred in areas having a history of election fraud.

144. The actions set out in Paragraphs 66-73 (Georgia), 80-93 (Michigan), 44-55 (Pennsylvania), and 106-24 (Wisconsin) constitute intentional violations of State election law by State election officials and their designees in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin, in violation of the Due Process Clause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff States respectfully request that this Court issue the following relief:

A. Declare that Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin administered the 2020 presidential election in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution.

B. Declare that any electoral college votes cast by such presidential electors appointed in Defendant States Pennsylvania, Georgia, Michigan, and Wisconsin are in violation of the Electors Clause and the Fourteenth Amendment of the U.S. Constitution and cannot be counted.

C. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College.

D. Enjoin Defendant States' use of the 2020 election results for the Office of President to appoint presidential electors to the Electoral College and authorize, pursuant to the Court's remedial authority, the Defendant States to conduct a special election to appoint presidential electors.

E. If any of Defendant States have already appointed presidential electors to the Electoral College using the 2020 election results, direct such States' legislatures, pursuant to 3 U.S.C. § 2 and U.S. CONST. art. II, § 1, cl. 2, to appoint a new set of presidential electors in a manner that does not violate the Electors Clause and the Fourteenth Amendment, or to appoint no presidential electors at all.

F. Enjoin the Defendant States from certifying presidential electors or otherwise meeting for purposes of the electoral college pursuant to 3 U.S.C. § 5, 3 U.S.C. § 7, or applicable law pending further order of this Court.

G. Award costs to Plaintiff State.

H. Grant such other relief as the Court deems just and proper.

December 7, 2020

Respectfully submitted,

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No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

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No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE

Pursuant to S.Ct. Rule 17.3 and U.S. CONST. art. III, § 2, the State of Texas ("Plaintiff State") respectfully submits this brief in support of its Motion for Leave to File a Bill of Complaint against the Commonwealth of Pennsylvania and the States of Georgia, Michigan, and Wisconsin (collectively, "Defendant States").

STATEMENT OF THE CASE

Lawful elections are at the heart of our freedoms. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 10 (1964). Trust in the integrity of that process

is the glue that binds our citizenry and the States in this Union.

Elections face the competing goals of maximizing and counting *lawful* votes but minimizing and excluding *unlawful* ones. *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Bush v. Gore*, 531 U.S. 98, 103 (2000) ("the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements") ("*Bush II*"); *compare* 52 U.S.C. § 20501(b)(1)-(2) (2018) *with id.* § 20501(b)(3)-(4). Moreover, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. Reviewing election results requires not only counting lawful votes but also eliminating unlawful ones.

It is an understatement to say that 2020 was not a good year. In addition to a divided and partisan national mood, the country faced the COVID-19 pandemic. Certain officials in Defendant States presented the pandemic as the justification for ignoring state laws regarding absentee and mail-in voting. Defendant States flooded their citizenry with tens of millions of ballot applications and ballots ignoring statutory controls as to how they were received, evaluated, and counted. Whether well intentioned or not, these unconstitutional and unlawful changes had the same *uniform effect*—they made the 2020 election less secure in Defendant States. Those changes were made in violation of relevant state laws and were made by non-legislative entities, without any consent by the state legislatures.

These unlawful acts thus directly violated the Constitution. U.S. CONST. art. I, § 4; *id.* art. II, § 1, cl. 2.

This case presents a question of law: Did Defendant States violate the Electors Clause by taking non-legislative actions to change the election rules that would govern the appointment of presidential electors? Each of these States flagrantly violated the statutes enacted by relevant State legislatures, thereby violating the Electors Clause of Article II, Section 1, Clause 2 of the Constitution. By these unlawful acts, Defendant States have not only tainted the integrity of their own citizens' votes, but their actions have also debased the votes of citizens in the States that remained loyal to the Constitution.

Elections for federal office must comport with federal constitutional standards, s*ee Bush II*, 531 U.S. at 103-105, and executive branch government officials cannot subvert these constitutional requirements, no matter their stated intent. For presidential elections, each State must appoint its electors to the electoral college in a manner that complies with the Constitution, specifically the Electors Clause requirement that only state *legislatures* may set the rules governing the appointment of electors and the elections upon which such appointment is based.[1]

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[1] Subject to override by Congress, state legislatures have the exclusive power to regulate the time, place, and manner for electing Members of Congress, *see* U.S. CONST. art. I, § 4, which is distinct from legislatures' exclusive and plenary authority on the appointment of presidential electors. When non-legislative actors purport to set state election law for presidential elections, they violate both the Elections Clause and the Electors Clause.

Constitutional Background

The right to vote is protected by the by the Equal Protection Clause and the Due Process Clause. U.S. CONST. amend. XIV, § 1, cl. 3-4. Because "the right to vote is personal," *Reynolds*, 377 U.S. at 561-62 (alterations omitted), "[e]very voter in a federal … election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted." *Anderson v. United States*, 417 U.S. 211, 227 (1974); *Baker v. Carr*, 369 U.S. 186, 208 (1962). Invalid or fraudulent votes debase or dilute the weight of each validly cast vote. *Bush II*, 531 U.S. at 105. The unequal treatment of votes within a state, and unequal standards for processing votes raise equal protection concerns. *Id.* Though *Bush II* did not involve an action between States, the concern that illegal votes can cancel out lawful votes does not stop at a State's boundary in the context of a Presidential election.

The Electors Clause requires that each State "shall appoint" its presidential electors "in such Manner as the *Legislature thereof* may direct." U.S. CONST. art. II, § 1, cl. 2 (emphasis added); *cf. id.* art. I, § 4, cl. 1 (similar for time, place, and manner of federal legislative elections). "[T]he state legislature's power to select the manner for appointing electors is *plenary*," *Bush II*, 531 U.S. at 104 (emphasis added), and sufficiently *federal* for this Court's review. *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) ("*Bush I*"). This textual feature of our Constitution was adopted to ensure the integrity of the presidential selection process: "Nothing was more

to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption." FEDERALIST NO. 68 (Alexander Hamilton). When a State conducts a popular election to appoint electors, the State must comply with all constitutional requirements. *Bush II*, 531 U.S. at 104. When a State fails to conduct a valid election—for any reason—"the electors may be appointed on a subsequent day in such a manner *as the legislature of such State may direct*." 3 U.S.C. § 2 (emphasis added).

Non-Legislative Changes Made in Violation of the Electors Clause

As set forth in the Complaint, executive and judicial officials made significant changes to the legislatively defined election rules in Defendant States. *See* Compl. at ¶¶ 66-73 (Georgia), 80-93 (Michigan), 44-55 (Pennsylvania), 106-24 (Wisconsin). Taken together, these non-legislative changes did away with statutory ballot-security measures for absentee and mail-in ballots such as signature verification, witness requirements, and statutorily authorized secure ballot drop-off locations.

Citing the COVID-19 pandemic, Defendant States gutted the safeguards for absentee ballots through non-legislative actions, despite knowledge that absentee ballots are "the largest source of potential voter fraud," BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (hereinafter, "CARTER-BAKER"), which is magnified when absentee balloting is shorn of ballot-integrity measures such as signature verification, witness requirements, or outer-envelope protections, or when absentee ballots

are processed and tabulated without bipartisan observation by poll watchers.

Without Defendant States' combined 62 electoral votes, President Trump presumably has 232 electoral votes, and former Vice President Biden presumably has 244. Thus, Defendant States' presidential electors will determine the outcome of the election. Alternatively, if Defendant States are unable to certify 37 or more presidential electors, neither candidate will have a majority in the electoral college, in which case the election would devolve to the House of Representatives under the Twelfth Amendment.

Defendant States experienced serious voting irregularities. *See* Compl. at ¶¶ 75-76 (Georgia), 97-101 (Michigan), 55-60 (Pennsylvania), 122-28 (Wisconsin). At the time of this filing, Plaintiff State continues to investigate allegations of not only unlawful votes being counted but also fraud. Plaintiff State reserves the right to seek leave to amend the complaint as those investigations resolve. *See* S.Ct. Rule 17.2; FED. R. CIV. P. 15(a)(1)(A)-(B), (a)(2). But even the *appearance* of fraud in a close election is poisonous to democratic principles: "Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell v. Gonzalez,* 549 U.S. 1, 4 (2006); *Crawford v. Marion County Election Bd.,* 553 U.S. 181, 189 (2008) (States have an interest in preventing voter fraud and ensuring voter confidence)**.**

STANDARD OF REVIEW

This Court considers two primary factors when it decides whether to grant a State leave to file a bill of complaint against another State: (1) "the nature of the

interest of the complaining State," and (2) "the availability of an alternative forum in which the issue tendered can be resolved." *Mississippi v. Louisiana*, 506 U.S. 73, 77 (1992) (internal quotations omitted) Because original proceedings in this Court follow the Federal Rules of Civil Procedure, S.Ct. Rule 17.2, the facts for purposes of a motion for leave to file are the well-pleaded facts alleged in the complaint. *Hernandez v. Mesa*, 137 S.Ct. 2003, 2005 (2017).

ARGUMENT

I. THIS COURT HAS JURISDICTION OVER PLAINTIFF STATE'S CLAIMS.

In order to grant leave to file, this Court first must assure itself of its jurisdiction, *Steel Co. v. Citizens for a Better Env't.,* 523 U.S. 83, 95 (1998); *cf. Foman v. Davis*, 371 U.S. 178, 182 (1962) (courts deny leave to file amended pleadings that would be futile). That standard is met here. Plaintiff State's fundamental rights and interests are at stake. This Court is the *only* venue that can protect Plaintiff State's electoral college votes from being cancelled by the unlawful and constitutionally tainted votes cast by electors appointed and certified by Defendant States.

A. The claims fall within this Court's constitutional and statutory subject-matter jurisdiction.

The federal judicial power extends to "Controversies between two or more States." U.S. CONST. art. III, § 2, and Congress has placed the jurisdiction for such suits exclusively with the Supreme Court: "The Supreme Court shall have original *and exclusive* jurisdiction of all controversies between two or more States." 28 U.S.C. § 1251(a)

(emphasis added). This Court not only is a permissible court for hearing this action; it is the only court that can hear this action quickly enough to render relief sufficient to avoid constitutionally tainted votes in the electoral college and to place the appointment of Defendant States' electors before their legislatures pursuant to 3 U.S.C. § 2 in time for a vote in the House of Representatives on January 6, 2021. *See* 3 U.S.C. § 15. With that relief in place, the House can resolve the election on January 6, 2021, in time for the president to be selected by the constitutionally set date of January 20. U.S. CONST. amend. XX, § 1.

B. The claims arise under the Constitution.

When States violate their own election laws, they may argue that these violations are insufficiently federal to allow review in this Court. *Cf. Foster v. Chatman*, 136 S.Ct. 1737, 1745-46 (2016) (this Court lacks jurisdiction to review state-court decisions that "rest[] on an adequate and independent state law ground"). That attempted evasion would fail for two reasons.

First, in the election context, a state-court remedy or a state executive's administrative action purporting to alter state election statutes implicates the Electors Clause. *See Bush II*, 531 U.S. at 105. Even a plausible federal-law defense to state action arises under federal law within the meaning of Article III. *Mesa v. California*, 489 U.S. 121, 136 (1989) (holding that "it is the raising of a federal question in the officer's removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes"). Constitutional arising-under jurisdiction exceeds statutory federal-question

jurisdiction of federal district courts,[2] and—indeed—we did not even have federal-question jurisdiction until 1875. *Merrell Dow Pharm.,* 478 U.S. at 807. Plaintiff States' Electoral Clause claims arise under the Constitution and so are *federal*, even if the only claim is that Defendant States violated their own state election statutes. Moreover, as is explained below, Defendant States' actions injure the interests of Plaintiff State in the appointment of electors to the electoral college in a manner that is inconsistent with the Constitution.

Given this federal-law basis against these state actions, the state actions are not "independent" of the federal constitutional requirements that provide this Court jurisdiction. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935); *cf. City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (noting that "even though state law creates a party's causes of action, its case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law" and collecting cases) (internal quotations and alterations omitted). Plaintiff State's claims therefore fall within this Court's jurisdiction.

Second, state election law is not purely a matter of state law because it applies "not only to elections to state offices, but also to the election of Presidential

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[2] The statute for federal officer removal at issue in *Mesa* omits the well-pleaded complaint rule, *id.*, which is a *statutory* restriction on federal question jurisdiction under 28 U.S.C. § 1331. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

electors," meaning that state law operates, in part, "by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush I*, 531 U.S. at 76. Logically, "any state authority to regulate election to [federal] offices could not precede their very creation by the Constitution," meaning that any "such power had to be delegated to, rather than reserved by, the States." *Cook v. Gralike*, 531 U.S. 510, 522 (2001) (internal quotations omitted). "It is no original prerogative of State power to appoint a representative, a senator, or President for the Union." J. Story, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858). For these reasons, any "significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush II*, 531 U.S. at 113 (Rehnquist, C.J., concurring).

Under these circumstances, this Court has the power both to review and to remedy a violation of the Constitution. Significantly, parties do not need winning hands to establish jurisdiction. Instead, jurisdiction exists when "the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction," even if the right "will be defeated if they are given another." *Bell v. Hood*, 327 U.S. 678, 685 (1946). At least as to *jurisdiction*, a plaintiff need survive only the low threshold that "the alleged claim under the Constitution or federal statutes [not] … be immaterial and made solely for the purpose of obtaining jurisdiction or … wholly insubstantial and frivolous." *Id.* at 682. The bill of complaint meets that test.

C. The claims raise a "case or controversy" between the States.

Like any other action, an original action must meet the Article III criteria for a case or controversy: "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence." *Maryland v. Louisiana*, 451 U.S. 725, 735-36 (1981) (internal quotations omitted). Plaintiff State has standing under those rules.[3]

With voting, "'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush II*, 531 U.S. at 105 (quoting *Reynolds*, 377 U.S. at 555). In presidential elections, "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). Thus, votes in Defendant States affect the votes in Plaintiff State, as set forth in more detail below.

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[3] At its constitutional minimum, standing doctrine measures the necessary effect on plaintiffs under a tripartite test: cognizable injury to the plaintiffs, causation by the challenged conduct, and redressable by a court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). The rules for standing in state-versus-state actions is the same as the rules in other actions under Article III. *See Maryland v. Louisiana*, 451 U.S. 725, 736 (1981).

1. Plaintiff State suffers an injury in fact.

The citizens of Plaintiff State have the right to demand that all other States abide by the constitutionally set rules in appointing presidential electors to the electoral college. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry*, 376 U.S. at 10; *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the political franchise of voting" is "a fundamental political right, because preservative of all rights"). "Every voter in a federal … election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted." *Anderson v. United States*, 417 U.S. at 227; *Baker*, 369 U.S. at 208. Put differently, "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction," *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972), and—unlike the residency durations required in *Dunn*—the "jurisdiction" here is the entire United States. In short, the rights at issue are congeable under Article III.

Significantly, Plaintiff State presses its own form of voting-rights injury *as States*. As with the one-person, one-vote principle for congressional redistricting in *Wesberry*, the equality of the States arises from the structure of the Constitution, not from the Equal Protection or Due Process Clauses. *See Wesberry*, 376 U.S. at 7-8; *id.* n.10 (expressly not

reaching claims under Fourteenth Amendment). Whereas the House represents the People proportionally, the Senate represents the States. *See* U.S. CONST. art. V, cl. 3 ("no state, without its consent, shall be deprived of its equal suffrage in the Senate"). While Americans likely care more about who is elected President, the States have a distinct interest in who is elected *Vice President* and thus who can cast the tie-breaking vote in the Senate. Through that interest, States suffer an Article III injury when another State violates federal law to affect the outcome of a presidential election. This injury is particularly acute in 2020, where a Senate majority often will hang on the Vice President's tie-breaking vote because of the nearly equal—and, depending on the outcome of Georgia run-off elections in January, possibly *equal*—balance between political parties. Quite simply, it is vitally important to the States who becomes Vice President.

Because individual citizens may arguably suffer only a generalized grievance from Electors Clause violations, States have standing where their citizen voters would not, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state). In *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), this Court held that states seeking to protect their sovereign interests are "entitled to special solicitude in our standing analysis." *Id.* at 520. While *Massachusetts* arose in a different context—the same principles of federalism apply equally here to require special deference to the sovereign states on standing questions.

In addition to standing for their own injuries, States can assert *parens patriae* standing for their citizens who are presidential electors.[4] Like legislators, presidential electors assert "legislative injury" whenever allegedly improper actions deny them a working majority. *Coleman v. Miller*, 307 U.S. 433, 435 (1939). The electoral college is a zero-sum game. If Defendant States' unconstitutionally appointed electors vote for a presidential candidate opposed by the Plaintiff State's electors, that operates to defeat Plaintiff State's interests.[5] Indeed, even without an electoral college majority, presidential electors suffer the same voting-debasement injury as voters generally: "It must be remembered that 'the

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[4] "The '*parens patriae*' doctrine … is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens.'" *New Jersey v. New York*, 345 U.S. 369, 372-73 (1953) (quoting *Kentucky v. Indiana*, 281 U.S. 163, 173 (1930)).

[5] Because Plaintiff State appointed its electors consistent with the Constitution, they suffer injury if its electors are defeated by Defendant States' unconstitutionally appointed electors. This injury is all the more acute because Plaintiff State has taken steps to prevent fraud. For example, Texas does not allow no excuse vote by mail (Texas Election Code Sections 82.001-82.004); has strict signature verification procedures (Tex. Election Code §87.027(j); Early voting ballot boxes have two locks and different keys and other strict security measures (Tex. Election Code §§85.032(d) & 87.063); requires voter ID (House Comm. on Elections, Bill Analysis, Tex. H.B. 148, 83d R.S. (2013)); has witness requirements for assisting those in need (Tex. Election Code §§ 86.0052 & 86.0105), and does not allow ballot harvesting Tex. Election Code 86.006(f)(1-6). Unlike Defendant States, Plaintiff State neither weakened nor allowed the weakening of its ballot-integrity statutes by non-legislative means.

right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush II*, 531 U.S. at 105 (quoting *Reynolds v. Sims*, 377 U. S. 533, 555 (1964)) ("*Bush II*"). Finally, once Plaintiff State has standing to challenge Defendant States' unlawful actions, Plaintiff State may do so on any legal theory that undermines those actions. *Duke Power Co. v. Carolina Envtl. Study Group, Inc.,* 438 U.S. 59, 78-81 (1978); *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 353 & n.5 (2006). Injuries to Plaintiff State's electors serve as an Article III basis for a *parens patriae* action.

2. Defendant States caused the injuries.

Non-legislative officials in Defendant States either directly caused the challenged violations of the Electors Clause or, in the case of Georgia, acquiesced to them in settling a federal lawsuit. The Defendants thus caused the Plaintiff's injuries.

3. The requested relief would redress the injuries.

This Court has authority to redress Plaintiff State's injuries, and the requested relief will do so.

First, while Defendant States are responsible for their elections, this Court has authority to enjoin reliance on *unconstitutional* elections:

> When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight

> accorded to each vote and the equal dignity owed to each voter.

Bush II, 531 U.S. at 104; *City of Boerne v. Flores,* 521 U.S. 507, 524 (1997) ("power to interpret the Constitution in a case or controversy remains in the Judiciary"). Plaintiff State does not ask this Court to decide who won the election; they only ask that the Court enjoin the clear violations of the Electors Clause of the Constitution.

Second, the relief that Plaintiff State requests—namely, remand to the State legislatures to allocate electors in a manner consistent with the Constitution—does not violate Defendant States' rights or exceed this Court's power. The power to select electors is a plenary power of the State legislatures, and this remains so, without regard to state law:

> This power is conferred upon the legislatures of the States by the Constitution of the United States, and cannot be taken from them or modified by their State constitutions…. Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated.

McPherson v. Blacker, 146 U.S. 1, 35 (1892) (internal quotations omitted); *accord Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S at 104.

Third, uncertainty of how Defendant States' legislatures will allocate their electors is irrelevant to the question of redressability:

> If a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency's action and remand the case – even though the agency … might later, in the exercise of its lawful discretion, reach the same result for a different reason.

FEC v. Akins, 524 U.S. 11, 25 (1998). Defendant States' legislatures would remain free to exercise their plenary authority under the Electors Clause in any *constitutional* manner they wish. Under *Akins*, the simple act of reconsideration under lawful means is redress enough.

Fourth, the requested relief is consistent with federal election law: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct." 3 U.S.C. § 2. Regardless of the statutory deadlines for the electoral college to vote, this Court could enjoin reliance on the results from the constitutionally tainted November 3 election, remand the appointment of electors to Defendant States, and order Defendant States' legislatures to certify their electors in a manner consistent with the Constitution, which could be accomplished well in advance of the statutory deadline of January 6 for House to count the presidential electors' votes. 3 U.S.C. § 15.

D. This action is not moot and will not become moot.

None of the looming election deadlines are constitutional, and they all are within this Court's power to enjoin. Indeed, if this Court vacated a State's

appointment of presidential electors, those electors could not vote on December 14, 2020; if the Court vacated their vote after the fact, the House of Representatives could not count those votes on January 6, 2021. Moreover, any remedial action can be complete well before January 6, 2020. Indeed, even the swearing in of the next President on January 20, 2021, will not moot this case because review could outlast even the selection of the next President under "the 'capable of repetition, yet evading review' doctrine," which applies "in the context of election cases … when there are 'as applied' challenges as well as in the more typical case involving only facial attacks." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (internal quotations omitted); *accord Norman v. Reed*, 502 U.S. 279, 287-88 (1992). Mootness is not, and will not become, an issue here.

E. This matter is ripe for review.

Plaintiff State's claims are clearly ripe now, but they were not ripe before the election: "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations and citations omitted). Prior to the election, there was no reason to know who would win the vote in any given State.

Ripeness also raises the question of laches, which Justice Blackmun called "precisely the opposite argument" from ripeness. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 915 n.16 (1990) (Blackmun, J., dissenting). Laches is an equitable defense against unreasonable delay in commencing suit. *Petrella v. MGM*, 572 U.S. 663, 667 (2014). This action was

neither unreasonably delayed nor is prejudicial to Defendant States.

Before the election, Plaintiff States had no ripe claim against a Defendant State:

> "One cannot be guilty of laches until his right ripens into one entitled to protection. For only then can his torpor be deemed inexcusable."

What-A-Burger of Va., Inc. v. Whataburger, Inc., 357 F.3d 441, 449-50 (4th Cir. 2004) (quoting 5 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 31: 19 (4th ed. 2003); *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 777 (Fed. Cir. 1995) (same); *Profitness Physical Therapy Ctr. v. Pro-Fit Orthopedic & Sports Physical Therapy P.C.*, 314 F.3d 62, 70 (2d Cir. 2002) (same). Plaintiff State could not have brought this action before the election results. The extent of the county-level deviations from election statutes in Defendant States became evident well after the election. Neither ripeness nor laches presents a timing problem here.

F. This action does not raise a non-justiciable political question.

The "political questions doctrine" does not apply here. Under that doctrine, federal courts will decline to review issues that the Constitution delegates to one of the other branches—the "political branches"—of government. While picking electors involves political rights, the Supreme Court has ruled in a line of cases beginning with *Baker* that constitutional claims related to voting (other than claims brought under the Guaranty Clause) are justiciable in the federal courts. As the Court held in *Baker*, litigation over political rights is not the same as a political question:

> We hold that this challenge to an apportionment presents no nonjusticiable "political question." The mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection "is little more than a play upon words."

Baker, 369 U.S. at 209. This is no political question; it is a constitutional one that this Court should answer.

G. No adequate alternate remedy or forum exists.

In determining whether to hear a case under this Court's original jurisdiction, the Court has considered whether a plaintiff State "has another adequate forum in which to settle [its] claim." *United States v. Nevada*, 412 U.S. 534, 538 (1973). This equitable limit does not apply here because Plaintiff State cannot sue Defendant States in any other forum.

To the extent that Defendant States wish to avail themselves of 3 U.S.C. § 5's safe harbor, *Bush I*, 531 U.S. at 77-78, this action will not meaningfully stand in their way:

> The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. … There is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated[.]

Bush II, 531 U.S. at 104 (citations and internal quotations omitted).[6] Defendant States' legislature

[6] Indeed, the Constitution also includes another backstop: "if no person have such majority [of electoral votes], then from the

will remain free under the Constitution to appoint electors or vote in any *constitutional* manner they wish. The only thing that they cannot do—and should not wish to do—is to rely on an allocation conducted in violation of the Constitution to determine the appointment of presidential electors.

Moreover, if this Court agrees with Plaintiff State that Defendant States' appointment of presidential electors under the recently conducted elections would be unconstitutional, then the statutorily created safe harbor cannot be used as a justification for a violation of the Constitution. The safe-harbor framework created by statute would have to yield in order to ensure that the Constitution was not violated.

It is of no moment that Defendants' *state laws* may purport to tether state legislatures to popular votes. Those state limits on a state legislature's exercising federal constitutional functions cannot block action because the federal Constitution "transcends any limitations sought to be imposed by the people of a State" under this Court's precedents. *Leser v. Garnett*, 258 U.S. 130, 137 (1922); *see also Bush I*, 531 U.S. at 77; *United States Term Limits v. Thornton*, 514 U.S. 779, 805 (1995) ("the power to regulate the incidents of the federal system is not a reserved power of the States, but rather is delegated by the Constitution").

As this Court recognized in *McPherson v. Blacker*, the authority to choose presidential electors:

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persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot." U.S. CONST. amend. XII.

> is conferred upon the legislatures of the states by the Constitution of the United States, and cannot be taken from them or modified by their state constitutions. ... *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away or abdicated*.

146 U.S. 1, 35 (1892) (emphasis added) (internal quotations omitted). Defendant States would suffer no cognizable injury from this Court's enjoining their reliance on an unconstitutional vote.

II. THIS CASE PRESENTS CONSTITUTIONAL QUESTIONS OF IMMENSE NATIONAL CONSEQUENCE THAT WARRANT THIS COURT'S DISCRETIONARY REVIEW.

Electoral integrity ensures the legitimacy of not just our governmental institutions, but the Republic itself. *See Wesberry*, 376 U.S. at 10. "Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell,* 549 U.S. at 4. Against that backdrop, few cases could warrant this Court's review more than this one. In addition, the constitutionality of the process for selecting the President is of extreme national importance. If Defendant States are permitted to violate the requirements of the Constitution in the appointment of their electors, the resulting vote of the electoral college not only lacks constitutional legitimacy, but the Constitution itself will be forever sullied.

Though the Court claims "discretion when accepting original cases, even as to actions between States where [its] jurisdiction is exclusive," *Wyoming v. Oklahoma*, 502 U.S. 437, 450 (1992) (internal quotations omitted), this is not a case where the Court should apply that discretion "sparingly." *Id.* While Plaintiff State disputes that exercising this Court's original jurisdiction is discretionary, *see* Section III, *infra*, the clear unlawful abrogation of Defendant States' election laws designed to ensure election integrity by a few officials, and examples of material irregularities in the 2020 election cumulatively warrant this Court's exercising jurisdiction as this Court's "unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront." *Bush II*, 531 U.S. at 111; *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). While isolated irregularities could be "garden-variety" election irregularities that do not raise a federal question,[7] the closeness of the presidential election results, combined with the unconstitutional setting-aside of state election laws by non-legislative actors call both the result and the process into question.

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[7] "To be sure, 'garden variety election irregularities' may not present facts sufficient to offend the Constitution's guarantee of due process[.]" *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 232 (6th Cir. 2011) (quoting *Griffin*, 570 F.2d at 1077-79)).

A. The 2020 election suffered from serious irregularities that constitutionally prohibit using the reported results.

Defendant States' administration of the 2020 election violated several constitutional requirements and, thus, violated the rights that Plaintiff State seeks to protect. "When the state legislature vests the right to vote for President in its people, the *right to vote as the legislature has prescribed is fundamental*; and one source of *its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter*." *Bush II*, 531 U.S. at 104.[8] Even a State legislature vested with authority to regulate election procedures lacks authority to "abridg[e …] fundamental rights, such as the right to vote." *Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986). As demonstrated in this section, Defendant States' administration of the 2020 election violated the Electors Clause, which renders invalid any appointment of electors based upon those election results, unless the relevant State legislatures review and modify or expressly ratify those results as sufficient to determine the appointment of electors. For example, even without fraud or nefarious intent, a mail-in vote not subjected to the State legislature's ballot-integrity measures cannot be counted.

It does not matter that a judicial or executive officer sought to bypass that screening in response to the COVID pandemic: the choice was not theirs to

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[8] The right to vote is "a fundamental political right, because preservative of all rights." *Reynolds*, 377 U.S. at 561-62 (internal quotations omitted).

make. "Government is not free to disregard the [the Constitution] in times of crisis." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. ___ (Nov. 25, 2020) (Gorsuch, J., concurring). With all unlawful votes discounted, the election result is an open question that this Court must address. Under 3 U.S.C. § 2, the State legislatures may answer the question, but the question must be asked here.

1. Defendant States violated the Electors Clause by modifying their legislatures' election laws through non-legislative action.

The Electors Clause grants authority to *state legislatures* under both horizontal and vertical separation of powers. It provides authority to each State—not to federal actors—the authority to dictate the manner of selecting presidential electors. And within each State, it explicitly allocates that authority to a single branch of State government: to the "Legislature thereof." U.S. CONST. art. II, § 1, cl. 2. State legislatures' primacy *vis-à-vis* non-legislative actors—whether State or federal—is even more significant than congressional primacy *vis-à-vis* State legislatures.

The State legislatures' authority is plenary. *Bush II*, 531 U.S. at 104. It "cannot be taken from them or modified" even through "their state constitutions." *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S at 76-77; *Bush II*, 531 U.S at 104. The Framers allocated election authority to State legislatures as the branch closest—and most accountable—to the People. *See, e.g.*, Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. PA.

J. CONST. L. 1, 31 (2010) (collecting Founding-era documents); *cf.* THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (J. Madison) ("House of Representatives is so constituted as to support in its members a habitual recollection of their dependence on the people"). Thus, only the State legislatures are permitted to create or modify the respective State's rules for the appointment of presidential electors. U.S. CONST. art. II, § 1, cl. 2.

"[T]here must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (interior quotations omitted). Thus, for example, deadlines are necessary, even if some votes sent via absentee ballot do not arrive timely. *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973). Even more importantly in this pandemic year with expanded mail-in voting, ballot-integrity measures—*e.g.*, witness requirements, signature verification, and the like—are an essential component of any legislative expansion of mail-in voting. *See* CARTER-BAKER, at 46 (absentee ballots are "the largest source of potential voter fraud"). Though it may be tempting to permit a breakdown of the constitutional order in the face of a global pandemic, the rule of law demands otherwise.

Specifically, because the Electors Clause makes clear that state legislative authority is exclusive, non-legislative actors lack authority to *amend* statutes. *Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *4 (Oct. 28, 2020) ("there is a strong likelihood that the State Supreme Court

decision violates the Federal Constitution") (Alito, J., concurring); *Wisconsin State Legis.*, No. 20A66, 2020 U.S. LEXIS 5187, at *11-14 (Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay); *cf. Grayned v. City of Rockford,* 408 U.S. 104, 110 (1972) ("it is not within our power to construe and narrow state laws"); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 509-10 (2010) ("editorial freedom … [to "blue-pencil" statutes] belongs to the Legislature, not the Judiciary"). That said, courts can enjoin elections or even enforcement of *unconstitutional* election laws, but they cannot rewrite the law in federal presidential elections.

For example, if a state court enjoins or modifies ballot-integrity measures adopted to allow absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the legislature has—prior to the election—ratified the new procedure. Without pre-election legislative ratification, results based on the treatment and tabulation of votes done in violation of state law cannot be used to appoint presidential electors.

Elections must be lawful contests, but they should not be mere *litigation contests* where the side with the most lawyers wins. As with the explosion of nation-wide injunctions, the explosion of challenges to State election law for partisan advantage in the lead-up to the 2020 election "is not normal." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay). Nor is it healthy. Under the "*Purcell* principle," federal courts generally avoid enjoining state election laws in the period close to an election. *Purcell*, 549 U.S. at 4-5 (citing "voter

confusion and consequent incentive to remain away from the polls"). *Purcell* raises valid concerns about confusion in the run-up to elections, but judicial election-related injunctions also raise *post-election* concerns. For example, if a state court enjoins ballot-integrity measures adopted to secure absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the State legislature has had time to ratify the new procedure. Without either pre-election legislative ratification or a severability clause in the legislation that created the rules for absentee voting by mail, the state court's actions operate to violate the Electors Clause.

2. State and local administrator's systemic failure to follow State election qualifies as an unlawful amendment of State law.

When non-legislative state and local executive actors engage in systemic or intentional failure to comply with their State's duly enacted election laws, they adopt by executive fiat a *de facto* equivalent of an impermissible amendment of State election law by an executive or judicial officer. *See* Section II.A.1, *supra*. This Court recognizes an executive's "consciously and expressly adopt[ing] a general policy that is so extreme as to amount to an abdication of its statutory responsibilities" as another form of reviewable final action, even if the policy is not a written policy. *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985) (interior quotations omitted); *accord id.* at 839 (Brennan, J., concurring). Without a *bona fide* amendment to State election law *by the legislature*, executive officers must follow state law. *Cf. Morton v.*

Ruiz, 415 U.S. 199, 235 (1974); *Service v. Dulles*, 354 U.S. 363, 388-89 (1957). The wrinkle here is that the non-legislative actors lack the authority under the federal Constitution to enact a *bona fide* amendment, regardless of whatever COVID-related emergency power they may have.

This form of executive nullification of state law by statewide, county, or city officers is a variant of impermissible amendment by a non-legislative actor. *See* Section II.A.1, *supra*. Such nullification is always unconstitutional, but it is especially egregious when it eliminates legislative safeguards for election integrity (*e.g.*, signature and witness requirements for absentee ballots, poll watchers[9]). Systemic failure by statewide, county, or city election officials to follow State election law is no more permissible than formal amendments by an executive or judicial actor.

3. Defendant States' administration of the 2020 election violated the Fourteenth Amendment.

In each of Defendant States, important rules governing the sending, receipt, validity, and counting of ballots were modified in a manner that varied from county to county. These variations from county to county violated the Equal Protection Clause, as this

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[9] Poll watchers are "prophylactic measures designed to prevent election fraud," *Harris v. Conradi,* 675 F.2d 1212, 1216 n.10 (11th Cir. 1982), and "to insure against tampering with the voting process." *Baer v. Meyer,* 728 F.2d 471, 476 (10th Cir. 1984). For example, poll monitors reported that 199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election. *Barr v. Chatman,* 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968).

Court explained at length in *Bush II*. Each vote must be treated equally. "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." *Bush II*, 531 U.S. at 104. The Equal Protection Clause demands uniform "statewide standards for determining what is a legal vote." *Id*. at 110.

Differential intrastate voting standards are "hostile to the one man, one vote basis of our representative government." *Bush II*, 531 U.S. at 107 (internal quotations omitted). These variations from county to county also appear to have operated to affect the election result. For example, the obstruction of poll-watcher requirements that occurred in Michigan's Wayne County may have contributed to the unusually high number of more than 173,000 votes which are not tied to a registered voter and that 71 percent of the precincts are out of balance with no explanation. Compl. ¶ 97.

Regardless of whether the modification of legal standards in some counties in Defendant States tilted the election outcome in those States, it is clear that the standards for determining what is a legal vote varied greatly from county to county. That constitutes a clear violation of the Equal Protection Clause; and it calls into question the constitutionality of any Electors appointed by Defendant States based on such an unconstitutional election.

The Fourteenth Amendment's due process clause protects the fundamental right to vote against "[t]he

disenfranchisement of a state electorate." *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981). Weakening or eliminating signature-validating requirements, then restricting poll watchers also undermines the 2020 election's integrity—especially as practiced in urban centers with histories of electoral fraud—also violates substantive due process. *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978) ("violation of the due process clause may be indicated" if "election process itself reaches the point of patent and fundamental unfairness"); *see also Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183-84 (11th Cir. 2008); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580-82 (11th Cir. 1995); *Roe v. State of Ala.*, 68 F.3d 404, 407 (11th Cir. 1995); *Marks v. Stinson*, 19 F. 3d 873, 878 (3rd Cir. 1994). Defendant States made concerted efforts to weaken or nullify their legislatures' ballot-integrity measures for the unprecedented deluge of mail-in ballots, citing the COVID-19 pandemic as a rationale. But "Government is not free to disregard the [the Constitution] in times of crisis." *Roman Catholic Diocese of Brooklyn*, 592 U.S. at ___ (Gorsuch, J., concurring).

Similarly, failing to follow procedural requirements for amending election standards violates procedural due process. *Brown v. O'Brien*, 469 F.2d 563, 567 (D.C. Cir.), *vacated as moot*, 409 U.S. 816 (1972). Under this Court's precedents on procedural due process, not only intentional failure to follow election law as enacted by a State's legislature but also random and unauthorized acts by state election officials and their designees in local government can violate the Due Process Clause. *Parratt v. Taylor*, 451

U.S. 527, 537-41 (1981), *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 532 (1984). Here, the violations all were intentional, even if done for the reason of addressing the COVID-19 pandemic.

While Plaintiff State disputes that exercising this Court's original jurisdiction is discretionary, *see* Section III, *infra*, the clear unlawful abrogation of Defendant States' election laws designed to ensure election integrity by a few officials, and examples of material irregularities in the 2020 election cumulatively warrant exercising jurisdiction. Although isolated irregularities could be "garden-variety" election disputes that do not raise a federal question,[10] the closeness of election results in swing states combines with unprecedented expansion in the use of fraud-prone mail-in ballots—millions of which were also mailed out—and received and counted—without verification—often in violation of express state laws by non-legislative actors, *see* Sections II.A.1-II.A.2, *supra*, call both the result and the process into question. For an office as important as the presidency, these clear violations of the Constitution, coupled with a reasonable inference of unconstitutional ballots being cast in numbers that far exceed the margin of former Vice President Biden's vote tally over President Trump demands the attention of this Court.

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[10] "To be sure, 'garden variety election irregularities' may not present facts sufficient to offend the Constitution's guarantee of due process[.]" *Hunter*, 635 F.3d at 232 (quoting *Griffin*, 570 F.2d at 1077-79)).

While investigations into allegations of unlawful votes being counted and fraud continue, even the appearance of fraud in a close election would justify exercising the Court's discretion to grant the motion for leave to file. Regardless, Defendant States' violations of the Constitution would warrant this Court's review, even if no election fraud had resulted.

B. A ruling on the 2020 election would preserve the Constitution and help prevent irregularities in future elections.

In addition to ensuring that the 2020 presidential election is resolved in a manner consistent with the Constitution, this Court must review the violations that occurred in Defendant States to enable Congress and State legislatures to avoid future chaos and constitutional violations. Unless this Court acts to review this presidential election, these unconstitutional and unilateral violations of state election laws will continue in the future.

Regardless of how the 2020 election resolves and whatever this Court does with respect to the 2020 election, it is imperative for our system of government that elections follow the clear constitutional mandates for all future elections. Just as this Court in *Bush II* provided constitutional guidance to all states regarding the equal treatment of ballots from county to county in 2000, this Court should now provide a clear statement that non-legislative modification of rules governing presidential elections violate the Electors Clause. Such a ruling will discourage in the future the kind of non-legislative election modifications that proliferated in 2020.

III. REVIEW IS NOT DISCRETIONARY.

Although this Court's original jurisdiction precedents would justify the Court's hearing this matter under the Court's discretion, *see* Section II, *supra*, Plaintiff State respectfully submits that the Court's review is not discretionary. To the contrary, the plain text of § 1251(a) provides *exclusive* jurisdiction, not discretionary jurisdiction. *See* 28 U.S.C. § 1251(a). In addition, no other remedy exists for these interstate challenges, *see* Section I.G, *supra*, and *some* court must have jurisdiction for these weighty issues. *See Mostyn v. Fabrigas*, 98 Eng. Rep. 1021, 1028 (K.B. 1774) ("if there is no other mode of trial, that alone will give the King's courts a jurisdiction"). As individual Justices have concluded, the issue "bears reconsideration." *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.); *accord New Mexico v. Colorado*, 137 S.Ct. 2319 (2017) (Thomas, J., dissenting) (same). Plaintiff State respectfully submits that that reconsideration would be warranted to the extent that the Court does not elect to hear this matter in its discretion.

IV. THIS CASE WARRANTS SUMMARY DISPOSITION OR EXPEDITED BRIEFING.

The issues presented here are neither fact-bound nor complex, and their vital importance urgently needs a resolution. Plaintiff State will move this Court for expedited consideration but also suggest that this case is a prime candidate for summary disposition because the material facts—namely, that the COVID-19 pandemic prompted non-legislative actors to unlawfully modify Defendant States' election laws, and carry out an election in violation of basic voter

integrity statutes—are not in serious dispute. *California v. United States*, 457 U.S. 273, 278 (1982); *South Carolina v. Katzenbach*, 383 U.S. 301, 307 (1966). This case presents a pure and straightforward question of law that requires neither finding additional facts nor briefing beyond the threshold issues presented here.

CONCLUSION

Leave to file the Bill of Complaint should be granted.

December 7, 2020

Respectfully submitted,

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No. 20A , Original

In the Supreme Court of the United States

STATE OF TEXAS,
Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA,
STATE OF MICHIGAN, AND STATE OF WISCONSIN,
Defendants.

MOTION FOR EXPEDITED CONSIDERATION OF THE MOTION FOR LEAVE TO FILE A BILL OF COMPLAINT AND FOR EXPEDITION OF ANY PLENARY CONSIDERATION OF THE MATTER ON THE PLEADINGS IF PLAINTIFFS' FORTHCOMING MOTION FOR INTERIM RELIEF IS NOT GRANTED

The State of Texas ("Plaintiff State") hereby moves, pursuant to Supreme Court Rule 21, for expedited consideration of the motion for leave to file a bill of complaint, filed today, in an original action on the administration of the 2020 presidential election by defendants Commonwealth of Pennsylvania, *et al.* (collectively, "Defendant States"). The relevant statutory deadlines for the defendants' action based on unconstitutional election results are imminent: (a) December 8 is the safe harbor for certifying presidential electors, 3 U.S.C. § 5; (b) the electoral college votes on December 14, 3 U.S.C. § 7; and (c) the House of Representatives counts votes on January 6, 3 U.S.C. § 15. Absent some form of relief, the defendants will appoint electors based on unconstitutional and deeply uncertain election results, and the House will count those votes on January 6, tainting the election and the future of free elections.

Expedited consideration of the motion for leave to file the bill of complaint is needed to enable the Court to resolve this original action before the applicable statutory deadlines, as well as the constitutional deadline of January 20, 2021, for the next presidential term to commence. U.S. CONST. amend. XX, § 1, cl. 1. Texas respectfully requests that the Court order Defendant States to respond to the motion for leave to file by December 9. Texas waives the waiting period for reply briefs under this Court's Rule 17.5, so that the Court could consider the case on an expedited basis at its December 11 conference.

Working in tandem with the merits briefing schedule proposed here, Texas also will move for interim relief in the form of a temporary restraining order, preliminary injunction, stay, and administrative stay to enjoin Defendant States from certifying their presidential electors or having them vote in the electoral college. *See* S.Ct. Rule 17.2 ("The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed."); *cf.* S.Ct. Rule 23 (stays in this Court). Texas also asked in their motion for leave to file that the Court summarily resolve this matter at that threshold stage. Any relief that the Court grants under those two alternate motions would inform the expedited briefing needed on the merits.

Enjoining or staying Defendant States' appointment of electors would be an especially appropriate and efficient way to ensure that the eventual appointment and vote of such electors reflects a constitutional and accurate tally of lawful votes and otherwise complies with the applicable constitutional and statutory requirements in time for the House to act on January 6. Accordingly, Texas respectfully requests

expedition of this original action on one or more of these related motions. The degree of expedition required depends, in part, on whether Congress reschedules the day set for presidential electors to vote and the day set for the House to count the votes. *See* 3 U.S.C. §§ 7, 15; U.S. Const. art. II, §1m cl. 4.

STATEMENT

Like much else in 2020, the 2020 election was compromised by the COVID-19 pandemic. Even without Defendant States' challenged actions here, the election nationwide saw a massive increase in fraud-prone voting by mail. *See* BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (absentee ballots are "the largest source of potential voter fraud"). Combined with that increase, the election in Defendant States was also compromised by numerous changes to the State legislatures' duly enacted election statutes by non-legislative actors—including both "friendly" suits settled in courts and executive fiats via guidance to election officials—in ways that undermined state statutory ballot-integrity protections such as signature and witness requirements for casting ballots and poll-watcher requirements for counting them. State legislatures have plenary authority to set the method for selecting presidential electors, *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("*Bush II*"), and "significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Id.* at 113 (Rehnquist, C.J., concurring); *accord Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) ("*Bush I*").

Plaintiff State has not had the benefit of formal discovery prior to submitting this original action. Nonetheless, Plaintiff State has uncovered substantial evidence

discussed below that raises serious doubts as to the integrity of the election processes in Defendant States. Although new information continues to come to light on a daily basis, as documented in the accompanying Appendix ("App."), the voting irregularities that resulted from Defendant States' unconstitutional actions include the following:

- Jesse Jacob, a decades-long City of Detroit employee assigned to work in the Elections Department for the 2020 election testified (App. 34a-36a) that she was "instructed not to look at any of the signatures on the absentee ballots, and I was instructed not to compare the signature on the absentee ballot with the signature on file" in direct contravention of MCL § 168.765a(6), which requires all signatures on ballots be verified.
- Ethan J. Pease, a box truck delivery driver subcontracted to the U.S. Postal Service ("USPS") to deliver truckloads of mail-in ballots to the sorting center in Madison, WI, testified that USPS employees were backdating ballots received after November 3, 2020. Decl. of Ethan J. Pease at ¶¶ 3-13. (App. 149a-51a). Further, Pease testified how a senior USPA employee told him on November 4, 2020 that "An order came down from the Wisconsin/Illinois Chapter of the Postal Service that 100,000 ballots" and how the USPSA dispatched employees to "find[] … the ballots." ¶¶ 8-10. One hundred thousand ballots "found" after election day far exceeds former Vice President Biden margin of 20,565 votes over President Trump.

- On August 7, 2020, the League of Women Voters of Pennsylvania and others filed a complaint against Secretary Boockvar and other local election officials, seeking "a declaratory judgment that Pennsylvania existing signature verification procedures for mail-in voting" were unlawful for a number of reasons, *League of Women Voters of Pennsylvania v. Boockvar*, No. 2:20-cv-03850-PBT, (E.D. Pa. Aug. 7, 2020), which the Pennsylvania defendants quickly settled resulting in guidance (App. 109a-114a)[1] issued on September 11, 2020, stating in relevant part: "The Pennsylvania Election Code does not authorize the county board of elections to set aside returned absentee or mail-in ballots based solely on signature analysis by the county board of elections." App. 113a.
- Acting under a generally worded clause that "Elections shall be free and equal," PA. CONST. art. I, §5, cl. 1, a 4-3 majority of Pennsylvania's Supreme Court in *Pa. Democratic Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), extended the statutory deadline for mail-in ballots from Election Day to three days after Election Day and adopted a presumption that even *non-postmarked ballots* were presumptively timely. In addition, a great number of ballots were received after the statutory deadline. Because Pennsylvania misled this Court

[1] Although the materials cited here are a complaint, that complaint is verified (*i.e.*, declared under penalty of perjury), App. 75a, which is evidence for purposes of a motion for summary judgment. *Neal v. Kelly*, 963 F.2d 453, 457 (D.C. Cir. 1992) ("allegations in [the] verified complaint should have been considered on the motion for summary judgment as if in a new affidavit").

about segregating the late-arriving ballots and instead commingled those ballots, it is now impossible to verify Pennsylvania's claim about the number of ballots affected.

- Contrary to Pennsylvania election law on providing poll-watchers access to the opening, counting, and recording of absentee ballots, local election officials in Philadelphia and Allegheny Counties decided not to follow 25 PA. STAT. § 3146.8(b). App. 127a-28a.
- Prior to the election, Secretary Boockvar sent an email to local election officials urging them to provide opportunities for various persons—including political parties—to contact voters to "cure" defective mail-in ballots. This process clearly violated several provisions of the state election code. App. 122a-24a. By removing the ballots for examination prior to seven o'clock a.m. on election day, Secretary Boockvar created a system whereby local officials could review ballots without the proper announcements, observation, and security. This entire scheme, which was only followed in Democrat majority counties, was blatantly illegal in that it permitted the illegal removal of ballots from their locked containers prematurely. App. 122a-24a.
- On December 4, 2020, fifteen members of the Pennsylvania House of Representatives issued a report (App. 139a-45a) to Congressman Scott Perry stating that "[t]he general election of 2020 in Pennsylvania was fraught with … documented irregularities and improprieties associated with mail-in balloting … [and] that the reliability of the mail-in votes in the Commonwealth

of Pennsylvania is impossible to rely upon." The report detailed, *inter alia*, that more than 118,426 mail-in votes either had no mail date, were returned *before* they were mailed, or returned one day after the mail date. The Report also stated that, based on government reported data, the number of mail-in ballots *sent* by November 2, 2020 (2.7 million) somehow ballooned by 400,000, to 3.1 million on November 4, 2020, without explanation.

- On March 6, 2020, in *Democratic Party of Georgia v. Raffensperger*, No. 1:19-cv-5028-WMR (N.D. Ga.), Georgia's Secretary of State entered a Compromise Settlement Agreement and Release (App. 19a-24a) with the Democratic Party of Georgia (the "Settlement") to materially change the statutory requirements for reviewing signatures on absentee ballot envelopes to confirm the voter's identity by making it far more difficult to challenge defective signatures beyond the express mandatory procedures set forth at GA. CODE § 21-2-386(a)(1)(B), which is particularly disturbing because the legislature allowed persons *other than the voter* to apply for an absentee ballot, GA. CODE § 21-2-381(a)(1)(C), which means that the legislature likely was relying heavily on the signature-verification on ballots under GA. CODE § 21-2-386.
- Numerous poll challengers and an Election Department employee whistleblower have testified that the signature verification requirement was ignored in Wayne County in a case currently pending in the Michigan Supreme Court. App. 25a-51a.

- The probability of former Vice President Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently given President Trump's early lead in those States as of 3 a.m. on November 4, 2020, is less than one in a quadrillion, or 1 in 1,000,000,000,000,000. For former Vice President Biden to win these four States collectively, the odds of that event happening decrease to less than one in a quadrillion to the fourth power (*i.e.*, 1 in 1,000,000,000,000,000[4]). *See* Decl. of Charles J. Cicchetti, Ph.D. ("Cicchetti Decl.") at ¶¶ 14-21, 30-31 (App. 4a-7a, 9a).
- The same less than one in a quadrillion statistical improbability of Mr. Biden winning the popular vote in the four Defendant States—Georgia, Michigan, Pennsylvania, and Wisconsin—independently exists when Mr. Biden's performance in each of those Defendant States is compared to former Secretary of State Hilary Clinton's performance in the 2016 general election and President Trump's performance in the 2016 and 2020 general elections. Again, the statistical improbability of Mr. Biden winning the popular vote in these **four** States collectively is 1 in 1,000,000,000,000,000[5]. *Id.* 10-13, 17-21, 30-31 (App. 3a-7a, 9a).
- Georgia's unconstitutional abrogation of the express mandatory procedures for challenging defective signatures on ballots set forth at GA. CODE § 21-2-386(a)(1)(B) resulted in far more ballots with unmatching signatures being counted in the 2020 election than if the statute had been properly applied. The

2016 rejection rate was more than *seventeen times greater* than in 2020. *See* Cicchetti Decl. at ¶ 24 (App. 7a). As a consequence, applying the rejection rate in 2016, which applied the mandatory procedures, to the ballots received in 2020 would result in a net gain for President Trump of 25,587 votes. This would be more than needed to overcome the Biden advantage of 12,670 votes, and Trump would win by 12,917 votes. *See* App. 8a.

- The two Republican members of the Board *rescinded their votes* to certify the vote in Wayne County, and signed affidavits alleging they were bullied and misled into approving election results and do not believe the votes should be certified until serious irregularities in Detroit votes are resolved. *See* Cicchetti Decl. at ¶ 29 (App. 8a).
- The Wayne County Statement of Votes Report lists 174,384 absentee ballots out of 566,694 absentee ballots tabulated (about 30.8%) as counted without a registration number for precincts in the City of Detroit. *See* Cicchetti Decl. at ¶ 27 (App. 8a). The number of votes not tied to a registered voter by itself exceeds Vice President Biden's margin of margin of 146,007 votes by more than 28,377 votes. The extra ballots cast most likely resulted from the phenomenon of Wayne County election workers running the same ballots through a tabulator multiple times, with Republican poll watchers obstructed or denied access, and election officials ignoring poll watchers' challenges, as documented by numerous declarations. App. 25a-51a.

As a net result of these challenges, the close election result in Defendant States—on

which the presidential election turns—is indeterminate. Put another way, Defendant States' unconstitutional actions affect outcome-determinative numbers of popular votes, that in turn affect outcome-determinative numbers of electoral votes.

To remedy Texas's claims and remove the cloud over the results of the 2020 election, expedited review and interim relief are required. December 8, 2020 is a statutory safe harbor for States to appoint presidential electors, and by statute the electoral college votes on December 14. *See* 3 U.S.C. §§ 7, 15. In a contemporaneous filing, Texas asks this Court to vacate or enjoin—either permanently, preliminarily, or administratively—Defendant States from certifying their electors and participating in the electoral college vote. As permanent relief, Texas asks this Court to remand the allocation of electors to the legislatures of Defendant States pursuant to the statutory and constitutional backstop for this scenario: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct." 3 U.S.C. § 2 (emphasis added); U.S. CONST. art. II, § 1, cl. 2.

Significantly, State legislatures retain the authority to appoint electors under the federal Electors Clause, even if state laws or constitutions provide otherwise. *McPherson v. Blacker*, 146 U.S. 1, 35 (1892); *accord Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S at 104. For its part, Congress could move the December 14 date set for the electoral college's vote, as it has done before when faced with contested elections. Ch. 37, 19 Stat. 227 (1877). Alternatively, the electoral college could vote on December 14

without Defendant States' electors, with the presidential election going to the House of Representatives under the Twelfth Amendment if no candidate wins the required 270-vote majority.

What cannot happen, constitutionally, is what Defendant States appear to want (namely, the electoral college to proceed based on the unconstitutional election in Defendant States):

> When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.

Bush II, 531 U.S. at 104. Proceeding under the unconstitutional election is not an option.

Pursuant to 28 U.S.C. 1251(a), Plaintiff State has filed a motion for leave to file a bill of complaint today. As set forth in the complaint and outlined above, all Defendant States ran their 2020 election process in noncompliance with the ballot-integrity requirements of their State legislature's election statutes, generally using the COVID-19 pandemic as a pretext or rationale for doing so. In so doing, Defendant States disenfranchised not only their own voters, but also the voters of all other States: "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983).

ARGUMENT

The Constitution vests plenary authority over the appointing of presidential electors with State legislatures. *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S at 104. While State legislatures need not proceed by popular

vote, the Constitution requires protecting the fundamental right to vote when State legislatures decide to proceed via elections. *Bush II*, 531 U.S. at 104. On the issue of the constitutionality of an election, moreover, the Judiciary has the final say: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803); *Bush II*, 531 U.S. at 104. For its part, Congress has the ability to set the time for the electoral college to vote. U.S. CONST. art. II, § 1, cl. 3. To proceed constitutionally with the 2020 election, all three actors potentially have a role, given the complications posed by Defendant States' unconstitutional actions.

With this year's election on November 3, and the electoral college's vote set by statute for December 14, 3 U.S.C. § 7, Congress has not allowed much time to investigate irregularities like those in Defendant States before the electoral college is statutorily set to act. But the time constraints are not constitutional in nature—the Constitution's only time-related provision is that the President's term ends on January 20, U.S. CONST. amend. XX, § 1, cl. 1—and Congress has both the obvious authority and even a history of moving the date of the electoral college's vote when election irregularities require it.

Expedited consideration of this matter is warranted by the seriousness of the issues raised here, not only for the results of the 2020 presidential election but also for the implications for our constitutional democracy going forward. If this Court does not halt the Defendant States' participation in the electoral college's vote on December 14, a grave cloud will hang over not only the presidency but also the

Republic.

With ordinary briefing, Defendant States would not need to respond for 60 days, S.Ct. Rule 17.5, which is after the next presidential term commences on January 20, 2021. Accordingly, this Court should adopt an expedited briefing schedule on the motion for leave to file the bill of complaint, as well as the contemporaneously filed motion for interim relief, including an administrative stay or temporary restraining order pending further order of the Court. If this Court declines to resolve this original action summarily, the Court should adopt an expedited briefing schedule for plenary consideration, allowing the Court to resolve this matter before the relevant deadline passes. The contours of that schedule depend on whether the Court grants interim relief. Texas respectfully proposes two alternate schedules.

If the Court has not yet granted administrative relief, Texas proposes that the Court order Defendant States to respond to the motion for leave to file a bill of complaint and motion for interim relief by December 9. *See* S.Ct. Rule 17.2 (adopting Federal Rules of Civil Procedure); FED. R. CIV. P. 65; *cf.* S.Ct. Rule 23 (stays). Texas waives the waiting period for reply briefs under this Court's Rule 17.5 and would reply by December 10, which would allow the Court to consider this case on an expedited basis at its December 11 Conference.

With respect to the merits if the Court neither grants the requested interim relief nor summarily resolves this matter in response to the motion for leave to file the bill of complaint, thus requiring briefing of the merits, Texas respectfully proposes

the following schedule for briefing and argument:

December 8, 2020	Plaintiffs' opening brief
December 8, 2020	*Amicus* briefs in support of plaintiffs or of neither party
December 9, 2020	Defendants' response brief(s)
December 9, 2020	*Amicus* briefs in support of defendants
December 10, 2020	Plaintiffs' reply brief(s) to each response brief
December 11, 2020	Oral argument, if needed

If the Court grants an administrative stay or other interim relief, but does not summarily resolve this matter in response to the motion for leave to file the bill of complaint, Texas respectfully proposes the following schedule for briefing and argument on the merits:

December 11, 2020	Plaintiffs' opening brief
December 11, 2020	*Amicus* briefs in support of plaintiffs or of neither party
December 17, 2020	Defendants' response brief(s)
December 17, 2020	*Amicus* briefs in support of defendants
December 22, 2020	Plaintiffs' reply brief(s) to each response brief
December 2020	Oral argument, if needed

In the event that Congress moves the date for the electoral college and the House to vote or count votes, then the parties could propose an alternate schedule. If any motions to intervene are granted by the applicable deadline, intervenors would file by the applicable deadline as plaintiffs-intervenors or defendants-intervenors, with any still-pending intervenor filings considered as *amicus* briefs unless such

prospective intervenors file or seek leave to file an *amicus* brief in lieu of their still-pending intervenor filings.

CONCLUSION

Texas respectfully requests that the Court expedite consideration of its motion for leave to file a bill of complaint based on the proposed schedule and, if the Court neither stays nor summarily resolves the matter and thus sets the case for plenary consideration, that the Court expedite briefing and oral argument based on the proposed schedule.

Dated: December 7, 2020

Respectfully submitted,

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CERTIFICATE AS TO FORM

Pursuant to Sup. Ct. Rules 22 and 33, I certify that the foregoing motion are proportionately spaced, has a typeface of Century Schoolbook, 12 points, and contains 15 pages (and 3,550 words), excluding this Certificate as to Form, the Table of Contents, and the Certificate of Service.

Dated: December 7, 2020

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CERTIFICATE OF SERVICE

The undersigned certifies that, on this 7th day of December 2020, in addition to filing the foregoing document via the Court's electronic filing system, one true and correct copy of the foregoing document was served by Federal Express, with a PDF courtesy copy served via electronic mail on the following counsel and parties:

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Executed December 7, 2020, at Washington, DC,

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Lawrence J. Joseph

No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER OR, ALTERNATIVELY, FOR STAY AND ADMINISTRATIVE STAY

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No. _____, Original

In the Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF MICHIGAN, AND STATE OF WISCONSIN,

Defendants.

MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER OR, ALTERNATIVELY, FOR STAY AND ADMINISTRATIVE STAY

Pursuant to S.Ct. Rules 21, 23, and 17.2 and pursuant to FED. R. CIV. P. 65, the State of Texas ("Plaintiff State") respectfully moves this Court to enter an administrative stay and temporary restraining order ("TRO") to enjoin the States of Georgia, Michigan, and Wisconsin and the Commonwealth of Pennsylvania (collectively, the "Defendant States") and all of their agents, officers, presidential electors, and others acting in concert from taking action to certify presidential electors or to have such electors take any official action—including without limitation participating in the electoral college or voting for a presidential candidate—until further order of this Court, and to preliminarily enjoin

and to stay such actions pending the final resolution of this action on the merits.

STATEMENT OF THE CASE

Lawful elections are the heart of our freedoms. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 10 (1964). Trust in the integrity of that process is the glue that binds our citizenry and the States in this Union.

Elections face the competing goals of maximizing and counting *lawful* votes but minimizing and excluding *unlawful* ones. *Reynolds v. Sims*, 377 U.S. 533, 554-55 (1964); *Bush v. Gore*, 531 U.S. 98, 103 (2000) ("the votes eligible for inclusion in the certification are the votes meeting the properly established legal requirements") ("*Bush II*"); *compare* 52 U.S.C. § 20501(b)(1)-(2) (2018) *with id.* § 20501(b)(3)-(4). Moreover, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds*, 377 U.S. at 555. Reviewing election results requires not only counting lawful votes but also eliminating unlawful ones.

It is an understatement to say that 2020 was not a good year. In addition to a divided and partisan national mood, the country faced the COVID-19 pandemic. Certain officials in the Defendant States presented the pandemic as the justification for ignoring state laws regarding absentee and mail-in

voting. The Defendant States flooded their citizenry with tens of millions of ballot applications and ballots in derogation of statutory controls as to how they are lawfully received, evaluated, and counted. Whether well intentioned or not, these unconstitutional acts had the same *uniform effect*—they made the 2020 election less secure in the Defendant States. Those changes are inconsistent with relevant state laws and were made by non-legislative entities, without any consent by the state legislatures. The acts of these officials thus directly violated the Constitution. U.S. CONST. art. I, § 4; *id.* art. II, § 1, cl. 2.

This case presents a question of law: Did the Defendant States violate the Electors Clause by taking non-legislative actions to change the election rules that would govern the appointment of presidential electors? These non-legislative changes to the Defendant States' election laws facilitated the casting and counting of ballots in violation of state law, which, in turn, violated the Electors Clause of Article II, Section 1, Clause 2 of the U.S. Constitution. By these unlawful acts, the Defendant States have not only tainted the integrity of their own citizens' vote, but their actions have also debased the votes of citizens in Plaintiff State and other States that remained loyal to the Constitution.

Elections for federal office must comport with federal constitutional standards, s*ee Bush II*, 531 U.S. at 103-05, and executive branch government officials cannot subvert these constitutional requirements, no matter their stated intent. For presidential elections, each State must appoint its Electors to the electoral college in a manner that complies with the

Constitution, specifically the Electors Clause requirement that only state *legislatures* may set the rules governing the appointment of electors and the elections upon which such appointment is based.[1]

Constitutional Background

The Electors Clause requires that each State "shall appoint" its Presidential Electors "in such Manner as the *Legislature thereof* may direct." U.S. CONST. art. II, § 1, cl. 2 (emphasis added); *cf. id.* art. I, § 4 (similar for time, place, and manner of federal legislative elections). "[T]he state legislature's power to select the manner for appointing electors is *plenary*," *Bush II*, 531 U.S. at 104 (emphasis added), and sufficiently *federal* for this Court's review. *Bush v. Palm Beach Cty. Canvassing Bd.*, 531 U.S. 70, 76 (2000) ("*Bush I*"). This textual feature of our Constitution was adopted to ensure the integrity of the presidential selection process: "Nothing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption." FEDERALIST NO. 68 (Alexander Hamilton). When a State conducts a popular election to appoint electors, the State must comply with all constitutional requirements. *Bush II*, 531 U.S. at 104. When a State fails to conduct a valid election—for any reason—"the electors may be appointed on a subsequent day in such

[1] Subject to override by Congress, State legislatures have the exclusive power to regulate the time, place, and manner for electing Members of Congress, *see* U.S. CONST. art. I, § 4, which is distinct from legislatures' exclusive and plenary authority on the appointment of presidential electors. When non-legislative actors purport to set State election law for presidential elections, they violate both the Elections Clause and the Electors Clause.

a manner *as the legislature of such State may direct*." 3 U.S.C. § 2 (emphasis added).

Defendant States' Violations of Electors Clause

As set forth in the Complaint, executive and judicial officials made significant changes to the legislatively defined election laws in the Defendant States. *See* Compl. at ¶¶ 29-134. Taken together, these non-legislative changes did away with statutory ballot-security measures for absentee and mail-in ballots such as signature verification, witness requirements, and statutorily authorized secure ballot drop-off locations.

Citing the COVID-19 pandemic, Defendant States gutted the safeguards for absentee ballots through non-legislative actions, despite knowledge that absentee ballots are "the largest source of potential voter fraud," BUILDING CONFIDENCE IN U.S. ELECTIONS: REPORT OF THE COMMISSION ON FEDERAL ELECTION REFORM, at 46 (Sept. 2005) (hereinafter, "CARTER-BAKER"), which is magnified when absentee balloting is shorn of ballot-integrity measures such as signature verification, witness requirements, or outer-envelope protections, or when absentee ballots are processed and tabulated without bipartisan observation by poll watchers.

Factual Background

Without Defendant States' combined 72 electoral votes, President Trump presumably has 232 electoral votes, and former Vice President Biden presumably has 234. Thus, Defendant States' electors will determine the outcome of the election. Alternatively, if Defendant States are unable to certify 37 or more electors, neither candidate will have a majority in the

Electoral College, in which case the election would devolve to the U.S. House of Representatives under the Twelfth Amendment to the U.S. Constitution.

STANDARD OF REVIEW

Original actions follow the motions practice of the Federal Rules of Civil Procedure. S.Ct. 17.2. Plaintiffs can obtain preliminary injunctions in original actions. *See California v. Texas*, 459 U.S. 1067 (1982) ("[m]otion of plaintiff for issuance of a preliminary injunction granted"); *United States v. Louisiana*, 351 U.S. 978 (1956) (enjoining named state officers "and others acting with them … from prosecuting any other case or cases involving the controversy before this Court until further order of the Court"). Similarly, a moving party can seek a stay pending appeal under this Court's Rule 23.[2]

Plaintiffs who seek interim relief under Federal Rule 65 must establish that they likely will succeed on the merits and likely will suffer irreparable harm without interim relief, that the balance of equities between their harm in the absence of interim relief and the defendants' harm from interim relief favors the movants, and that the public interest favors interim relief. *Winter v. Natural Resources Def. Council, Inc.,* 555 U.S. 7, 20 (2008). To obtain a stay pending appeal under this Court's Rule 23, the applicant must meet a similar test:

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[2] *See, e.g.*, *Frank v. Walker,* 135 S.Ct. 7 (2014); *Husted v. Ohio State Conf. of the NAACP,* 135 S.Ct. 42 (2014); *North Carolina v. League of Women Voters,* 135 S.Ct. 6 (2014); *Arizona Sect'y of State's Office v. Feldman*, 137 S.Ct. 446 (2016); *North Carolina v. Covington*, 138 S.Ct. 974 (2018); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S.Ct. 1205 (2020).

> (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010).

ARGUMENT

I. THIS COURT IS LIKELY TO EXERCISE ITS DISCRETION TO HEAR THIS CASE.

Although Plaintiff State disputes that this Court has discretion to decide not to hear this case instituted by a sovereign State, *see* 28 U.S.C. § 1251(a) (this Court's jurisdiction is exclusive for actions between States); *Nebraska v. Colorado*, 136 S.Ct. 1034, 1035 (2016) (Thomas, J., dissenting, joined by Alito, J.); *accord New Mexico v. Colorado*, 137 S.Ct. 2319 (2017) (Thomas, J., dissenting), this Court is nonetheless likely to exercise its discretion to hear this case for two reasons, which is analogous to the first *Hollingsworth* factor for a stay.

First, in the analogous case of *Republican Party v. Boockvar*, No. 20A54, 2020 U.S. LEXIS 5181 (Oct. 19, 2020), four justices voted to stay a decision by the Pennsylvania Supreme Court that worked an example of the type of non-legislative revision to State election law that the Plaintiff State challenges here. In addition, since then, a new Associate Justice joined the Court, and the Chief Justice indicated a rationale

for voting against a stay in *Democratic Nat'l Comm. v. Wisconsin State Legis.*, No. 20A66, 2020 U.S. LEXIS 5187, at *1 (Oct. 26, 2020) (Roberts, C.J., concurring in denial of application to vacate stay) that either does not apply to original actions or that was wrong for the reasons set forth in Section II.A.2, *supra* (non-legislative amendment of State election statutes poses a question that arises under the federal Constitution, see *Bush II*, 531 U.S. at 113 (Rehnquist, C.J., concurring).

Second, this Court has repeatedly acknowledged the "uniquely important national interest" in elections for president and the rules for them. *Bush II*, 531 U.S. at 112 (interior quotations omitted); *see also Oregon v. Mitchell*, 400 U.S. 112 (1970) (original jurisdiction in voting-rights cases). Few cases on this Court's docket will be as important to our future as this case.

Third, no other remedy or forum exists for a State to challenge multiple States' maladministration of a presidential election, *see* Section II.A.8, *infra*, and *some* court must have jurisdiction for these fundamental issues about the viability of our democracy: "if there is no other mode of trial, that alone will give the King's courts a jurisdiction." *Mostyn v. Fabrigas*, 98 Eng. Rep. 1021, 1028 (K.B. 1774) (Lord Mansfield).

II. THE PLAINTIFF STATE IS LIKELY TO PREVAIL.

Under the *Winter-Hollingsworth* test, the plaintiff's likelihood of prevailing is the primary factor to assess the need for interim relief. Here, the Plaintiff State will prevail because this Court has jurisdiction and the Plaintiff State's merit case is likely to prevail.

A. This Court has jurisdiction over Plaintiff State's claims

In order to grant leave to file, this Court first must assure itself of its jurisdiction, *Steel Co. v. Citizens for a Better Env't.*, 523 U.S. 83, 95 (1998); *cf. Foman v. Davis*, 371 U.S. 178, 182 (1962) (courts deny leave to file amended pleadings that would be futile). That standard is met here. The Plaintiff State's fundamental rights and interests are at stake. This Court is the *only* venue that can protect the Plaintiff State's Electoral College votes from being cancelled by the unlawful and constitutionally tainted votes cast by Electors appointed by the Defendant States.

1. The claims fall within this Court's constitutional and statutory subject-matter jurisdiction.

The federal judicial power extends to "Controversies between two or more States." U.S. CONST. art. III, § 2, and Congress has placed the jurisdiction for such suits exclusively with the Supreme Court: "The Supreme Court shall have original *and exclusive* jurisdiction of all controversies between two or more States." 28 U.S.C. § 1251(a) (emphasis added). This Court not only is a permissible court for hearing this action; it is the only court that can hear this action quickly enough to render relief sufficient to avoid constitutionally tainted votes in the Electoral College and to place the appointment and certification of the Defendant States' presidential electors before their legislatures pursuant to 3 U.S.C. §§ 2, 5, and 7 in time for a vote in the House of Representatives on January 6, 2021. *See* 3 U.S.C. § 15. With that relief in place, the House can resolve the

election on January 6, 2021, in time for the President to be selected by the constitutionally set date of January 20. U.S. CONST. amend. XX, § 1.

2. The claims arise under the Constitution.

When States violate their own election laws, they may argue that these violations are insufficiently federal to allow review in this Court. *Cf. Foster v. Chatman*, 136 S.Ct. 1737, 1745-46 (2016) (this Court lacks jurisdiction to review state-court decisions that "rest[] on an adequate and independent state law ground"). That attempted evasion would fail for two reasons.

First, in the election context, a state-court remedy or a state executive's administrative action purporting to alter state election statutes implicates the Electors Clause. *See Bush II*, 531 U.S. at 105. Even a plausible federal-law defense to state action arises under federal law within the meaning of Article III. *Mesa v. California*, 489 U.S. 121, 136 (1989) (holding that "it is the raising of a federal question in the officer's removal petition that constitutes the federal law under which the action against the federal officer arises for Art. III purposes"). Constitutional arising-under jurisdiction exceeds statutory federal-question jurisdiction of federal district courts,[3] and—indeed—we did not even have federal-question jurisdiction until 1875. *Merrell Dow Pharm.,* 478 U.S. at 807. The

[3] The statute for federal-officer removal at issue in *Mesa* omits the well-pleaded complaint rule, *id.*, which is a *statutory* restriction on federal-question jurisdiction under 28 U.S.C. § 1331. *See Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 808 (1986).

Plaintiff State's Electoral Clause claims arise under the Constitution and so are *federal*, even if the only claim is that the Defendant States violated their own state election statutes. Moreover, as is explained below, the Defendant States' actions injure the interests of Plaintiff State in the appointment and certification of presidential electors to the Electoral College.

Given this federal-law basis against these state actions, the state actions are not "independent" of the federal constitutional requirements that provide this Court jurisdiction. *Fox Film Corp. v. Muller*, 296 U.S. 207, 210-11 (1935); *cf. City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164 (1997) (noting that "even though state law creates a party's causes of action, its case might still 'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law" and collecting cases) (internal quotations and alterations omitted). Plaintiff State's claims therefore fall within this Court's arising-under jurisdiction.

Second, state election law is not purely a matter of state law because it applies "not only to elections to state offices, but also to the election of Presidential electors," meaning that state law operates, in part, "by virtue of a direct grant of authority made under Art. II, § 1, cl. 2, of the United States Constitution." *Bush I*, 531 U.S. at 76. Logically, "any state authority to regulate election to [federal] offices could not precede their very creation by the Constitution," meaning that any "such power had to be delegated to, rather than reserved by, the States." *Cook v. Gralike*, 531 U.S.

510, 522 (2001) (internal quotations omitted). "It is no original prerogative of State power to appoint a representative, a senator, or President for the Union." J. Story, 1 COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858). For these reasons, any "significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush II*, 531 U.S. at 113 (Rehnquist, C.J., concurring).

Under these circumstances, this Court has the power both to review and to remedy a violation of the Constitution. Significantly, parties do not need winning hands to establish jurisdiction. Instead, jurisdiction exists when "the right of the petitioners to recover under their complaint will be sustained if the Constitution and laws of the United States are given one construction," even if the right "will be defeated if they are given another." *Bell v. Hood*, 327 U.S. 678, 685 (1946). At least as to *jurisdiction*, a plaintiff need survive only the low threshold that "the alleged claim under the Constitution or federal statutes [not] … be immaterial and made solely for the purpose of obtaining jurisdiction or … wholly insubstantial and frivolous." *Id.* at 682. The Bill of Complaint meets that test.

3. The claims raise a "case or controversy" between the States.

Like any other action, an original action must meet the Article III criteria for a case or controversy: "it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of

judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence." *Maryland v. Louisiana*, 451 U.S. 725, 735-36 (1981) (internal quotations omitted). Plaintiff State has standing under those rules.[4]

With voting, "'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush II*, 531 U.S. at 105 (quoting *Reynolds*, 377 U.S. at 555). In presidential elections, "the impact of the votes cast in each State is affected by the votes cast for the various candidates in other States." *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983). Thus, votes in the Defendant States affect the votes in the Plaintiff State, as set forth in more detail below.

a. <u>Plaintiff State suffers an injury in fact.</u>

The citizens of Plaintiff State have the right to demand that all other States abide by the constitutionally set rules in appointing Presidential Electors to the Electoral College. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights,

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[4] At its constitutional minimum, standing doctrine measures the necessary effect on plaintiffs under a tripartite test: cognizable injury to the plaintiffs, causation by the challenged conduct, and redressable by a court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). The rules for standing in state-versus-state actions is the same as the rules in other actions under Article III. *See Maryland v. Louisiana*, 451 U.S. 725, 736 (1981).

even the most basic, are illusory if the right to vote is undermined." *Wesberry*, 376 U.S. at 10; *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("the political franchise of voting" is "a fundamental political right, because preservative of all rights"). "Every voter in a federal … election, whether he votes for a candidate with little chance of winning or for one with little chance of losing, has a right under the Constitution to have his vote fairly counted." *Anderson v. United States*, 417 U.S. 211, 227 (1974); *Baker v. Carr*, 369 U.S. 186, 208 (1962). Put differently, "a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction," *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972), and—unlike the residency durations required in *Dunn*—the "jurisdiction" here is the entire United States. In short, the rights at issue are cognizable under Article III.

Significantly, Plaintiff State presses its own form of voting-rights injury *as a State*. As with the one-person, one-vote principle for congressional redistricting in *Wesberry*, the equality of the States arises from the structure of the Constitution, not from the Equal Protection or Due Process Clauses. *See Wesberry*, 376 U.S. at 7-8; *id.* n.10 (expressly not reaching claims under Fourteenth Amendment). Whereas the House represents the People proportionally, the Senate represents the States. *See* U.S. CONST. art. V, cl. 3 ("no state, without its consent, shall be deprived of its equal suffrage in the Senate"). While Americans likely care more about who is elected President, the States have a distinct interest in who is elected *Vice President* and thus who can cast the tie-

breaking vote in the Senate. Through that interest, Plaintiff State suffers an Article III injury when another State violates federal law to affect the outcome of a presidential election. This injury is particularly acute in 2020, where a Senate majority often will hang on the Vice President's tie-breaking vote because of the nearly equal—and, depending on the outcome of Georgia run-off elections in January, possibly *equal*—balance between political parties. Quite simply, it is vitally important to the States who becomes Vice President.

Because individual citizens may arguably suffer only a generalized grievance from Electors Clause violations, Plaintiff State has standing where its citizen voters would not, *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (distinguishing citizen plaintiffs from citizen relators who sued in the name of a state). In *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), this Court held that states seeking to protect their sovereign interests are "entitled to special solicitude in our standing analysis." *Id.* at 520. While *Massachusetts* arose in a different context—the same principles of federalism apply equally here to require special deference to the sovereign states on standing questions.

In addition to standing for their own injuries, States can assert *parens patriae* standing for their citizens who are Presidential Electors.[5] Like

[5] "The '*parens patriae*' doctrine … is a recognition of the principle that the state, when a party to a suit involving a matter of sovereign interest, 'must be deemed to represent all its citizens.'" *New Jersey v. New York*, 345 U.S. 369, 372-73 (1953) (quoting *Kentucky v. Indiana*, 281 U.S. 163, 173 (1930)).

legislators, Presidential Electors assert "legislative injury" whenever allegedly improper actions deny them a working majority. *Coleman v. Miller*, 307 U.S. 433, 435 (1939). The Electoral College is a zero-sum game. If the Defendant States' unconstitutionally appointed Electors vote for a presidential candidate opposed by the Plaintiff State's presidential electors, that operates to defeat the Plaintiff State's interests.[6] Indeed, even without an electoral college majority, presidential electors suffer the same voting-debasement injury as voters generally: "It must be remembered that 'the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.'" *Bush II*, 531 U.S. at 105 (quoting *Reynold*, 377 U.S. at 555). Those injuries to electors serve as an Article III basis for a *parens patriae* action by their States.

b. <u>The Defendant States caused the injuries.</u>

Non-legislative officials in the Defendant States either directly caused the challenged violations of the Electors Clause or, in the case of Georgia, acquiesced to them in settling a federal lawsuit. The Defendants thus caused the Plaintiff's injuries.

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[6] Because Plaintiff State appointed its presidential electors fully consistent with the Constitution, it suffers injury if its presidential electors are defeated by the Defendant States' unconstitutionally appointed presidential electors. This injury is all the more acute because Plaintiff State has taken steps to prevent fraud. Unlike the Defendant States, the Plaintiff State neither weakened nor allowed the weakening of its ballot-integrity statutes by non-legislative means.

c. <u>The requested relief would redress the injuries.</u>

This Court has authority to redress the Plaintiff State's injuries, and the requested relief will do so.

First, while the Defendant States are responsible for their elections, this Court has authority to enjoin reliance on *unconstitutional* elections:

> When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.

Bush II, 531 U.S. at 104; *City of Boerne v. Flores,* 521 U.S. 507, 524 (1997) ("power to interpret the Constitution in a case or controversy remains in the Judiciary"). The Plaintiff State does not ask this Court to decide who won the election; they only ask that the Court enjoin the clear violations of the Electors Clause of the Constitution.

Second, the relief that the Plaintiff State requests—namely, remand to the State legislatures to allocate presidential electors in a manner consistent with the Constitution—does not violate the Defendant States' rights or exceed this Court's power. The power to select presidential electors is a plenary power of the legislatures, and this remains so, without regard to state law:

> This power is conferred upon the legislatures of the States by the Constitution of the United States, and cannot be taken from them or modified by their State constitutions….

> Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated.

McPherson v. Blacker, 146 U.S. 1, 35 (1892) (internal quotations omitted); *accord Bush I*, 531 U.S. at 76-77; *Bush II*, 531 U.S at 104.

Third, uncertainty of how the Defendant States' legislatures will allocate their electors is irrelevant to the question of redressability:

> If a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency's action and remand the case – even though the agency … might later, in the exercise of its lawful discretion, reach the same result for a different reason.

FEC v. Akins, 524 U.S. 11, 25 (1998). The Defendant States' legislatures would remain free to exercise their plenary authority under the Electors Clause in any *constitutional* manner they wish. For example, they may review the presidential election results in their State and determine that winner would be the same, notwithstanding the violations of state law in the conduct of the election. Or they may appoint the Electors themselves, either appointing all for one presidential candidate or dividing the State's Electors and appointing some for one candidate and some for another candidate. Or they may take any number of actions that would be consistent with the Constitution. Under *Akins*, the simple act of

reconsideration under lawful means is redress enough.

Fourth, the requested relief is consistent with federal election law: "Whenever any State has held an election for the purpose of choosing electors, and has failed to make a choice on the day prescribed by law, the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct." 3 U.S.C. § 2. Regardless of the statutory deadlines for the Electoral College to vote, this Court could enjoin reliance on the results from the constitutionally tainted November 3 election, remand the appointment of Electors to the Defendant States, and order the Defendant States' legislatures to certify their Electors in a manner consistent with the Constitution, which could be accomplished well in advance of the statutory deadline of January 6 for the House to count the presidential electors' votes. 3 U.S.C. § 15.

4. Plaintiff State has prudential standing.

Beyond the constitutional baseline, standing doctrine also poses prudential limits like the zone-of-interests test, *Ass'n of Data Processing Serv. Org., Inc. v. Camp*, 397 U.S. 150, 153 (1970), and the need for those seeking to assert absent third parties' rights to have their own Article III standing and a close relationship with the absent third parties, whom a sufficient "hindrance" keeps from asserting their rights. *Kowalski v. Tesmer*, 543 U.S. 125, 128-30 (2004). Prudential doctrines pose no barrier here.

First, the injuries asserted here are "arguably within the zone of interests to be protected or

regulated by the … constitutional guarantee in question." *Camp*, 397 U.S. at 153. The Court has relied on the structure of the Constitution to provide the one-person, one-vote standard, *Wesberry*, 376 U.S. at 7-8 & n.10, and this case is no different. The structure of the Electoral College provides that each State is allocated a certain number of presidential electors depending upon that State's representation in Congress and that each State must abide by constitutional requirements in the appointment of its Electors. When the elections in one State violate those requirements in a presidential election, the interests of the citizens in other States are harmed.

Second, even if *parens patriae* standing were not available, States have their own injury, a close relationship with their citizens, and citizens may arguable lack standing to assert injuries under the Electors Clause. *See*, *e.g.*, *Bognet v. Sec'y Pa.*, No. 20-3214, 2020 U.S. App. LEXIS 35639, at *18-26 (3d Cir. Nov. 13, 2020). States, by contrast, have standing to assert such injuries. *Lance*, 549 U.S. at 442 (distinguishing citizen plaintiffs who suffer a generalized grievance from citizen relators who sued in the name of a state); *cf. Massachusetts,* 549 U.S. at 520 (federal courts owe "special solicitude in standing analysis"). Moreover, anything beyond Article III is merely prudential. *Caplin & Drysdale v. United States*, 491 U.S. 617, 623 n.3 (1989). Thus, States also have third-party standing to assert their citizens' injuries.

5. <u>This action is not moot and will not become moot.</u>

None of the looming election deadlines are constitutional, and they all are within this Court's power to enjoin. Indeed, if this Court vacated a State's appointment or certification of presidential electors, those Electors could not vote on December 14, 2020; if the Court vacated their vote after the fact, the House of Representatives could not count those votes on January 6, 2021. There would be ample time for the Defendant States' legislatures to appoint new presidential electors in a manner consistent with the Constitution. Any remedial action can be complete well before January 6, 2020. Indeed, even the swearing in of the next President on January 20, 2021, will not moot this case because review could outlast even the selection of the next President under "the 'capable of repetition, yet evading review' doctrine," which applies "in the context of election cases … when there are 'as applied' challenges as well as in the more typical case involving only facial attacks." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 463 (2007) (internal quotations omitted); *accord Norman v. Reed*, 502 U.S. 279, 287-88 (1992). Mootness is not, and will not become, an issue here.

6. <u>This matter is ripe for review.</u>

The Plaintiff State's claims are clearly ripe now, but they were not ripe before the election: "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotations and

citations omitted).[7] Prior to the election, there was no reason to know who would win the vote in any given State.

Ripeness also raises the question of laches, which Justice Blackmun called "precisely the opposite argument" from ripeness. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 915 n.16 (1990) (Blackmun, J., dissenting). Laches is an equitable defense against unreasonable delay in commencing suit. *Petrella v. MGM*, 572 U.S. 663, 667 (2014). This action was neither unreasonably delayed nor is prejudicial to the Defendant States.

Before the election, the Plaintiff State had no ripe claim against a Defendant State:

> "One cannot be guilty of laches until his right ripens into one entitled to protection. For only then can his torpor be deemed inexcusable."

What-A-Burger of Va., Inc. v. Whataburger, Inc., 357 F.3d 441, 449-50 (4th Cir. 2004) (quoting 5 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 31: 19 (4th ed. 2003); *Gasser Chair Co. v. Infanti Chair Mfg. Corp.*, 60 F.3d 770, 777 (Fed. Cir. 1995) (same); *Profitness Physical Therapy Ctr. v. Pro-Fit Orthopedic & Sports Physical Therapy P.C.*, 314 F.3d 62, 70 (2d Cir. 2002) (same). The Plaintiff State could not have brought this action before the election results. Nor did the full extent of the county-level deviations from election statutes in the Defendant

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[7] It is less clear whether this matter became ripe on or soon after election night when the networks "called" the election for Mr. Biden or significantly later when enough States certified their vote totals to give him 270-plus anticipated votes in the electoral college.

States become evident until days after the election. Moreover, a State may reasonably assess the status of litigation commenced by candidates to the presidential election prior to commencing its own litigation. Neither ripeness nor laches presents a timing problem here.

7. <u>This action does not raise a non-justiciable political question.</u>

The "political questions doctrine" does not apply here. Under that doctrine, federal courts will decline to review issues that the Constitution delegates to one of the other branches—the "political branches"—of government. While appointing presidential electors involves political rights, this Court has ruled in a line of cases beginning with *Baker* that constitutional claims related to voting (other than claims brought under the Guaranty Clause of Article IV, §4) are justiciable in the federal courts. As the Court held in *Baker*, litigation over political rights is not the same as a political question:

> We hold that this challenge to an apportionment presents no nonjusticiable "political question." The mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection "is little more than a play upon words."

Baker, 369 U.S. at 209. This is no political question; it is a constitutional one that this Court should answer.

8. <u>No adequate alternate remedy or forum exists.</u>

In determining whether to hear a case under this Court's original jurisdiction, the Court has considered

whether a plaintiff State "has another adequate forum in which to settle [its] claim." *United States v. Nevada*, 412 U.S. 534, 538 (1973). This equitable limit does not apply here because Plaintiff State cannot sue Defendant States in any other forum.

To the extent that Defendant States wish to avail themselves of 3 U.S.C. § 5's safe harbor, *Bush I*, 531 U.S. at 77-78, this action will not meaningfully stand in their way:

> The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. … There is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away nor abdicated[.]

Bush II, 531 U.S. at 104 (citations and internal quotations omitted).[8] The Defendant States' legislature will remain free under the Constitution to appoint electors or vote in any *constitutional* manner they wish. The only thing that they cannot do—and should not wish to do—is to rely on an allocation conducted in violation of the Constitution to determine the appointment of presidential electors.

Moreover, if this Court agrees with the Plaintiff State that the Defendant States' appointment of presidential electors under the recently conducted elections would be unconstitutional, then the statutorily created safe harbor cannot be used as a

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[8] Indeed, the Constitution also includes another backstop: "if no person have such majority [of electoral votes], then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot." U.S. CONST. amend. XII.

justification for a violation of the Constitution. The safe-harbor framework created by statute would have to yield in order to ensure that the Constitution was not violated.

It is of no moment that Defendants' *state laws* may purport to tether state legislatures to popular votes. Those state limits on a state legislature's exercising federal constitutional functions cannot block action because the U.S. Constitution "transcends any limitations sought to be imposed by the people of a State" under this Court's precedents. *Leser v. Garnett*, 258 U.S. 130, 137 (1922); *see also Bush I*, 531 U.S. at 77; *United States Term Limits v. Thornton*, 514 U.S. 779, 805 (1995) ("the power to regulate the incidents of the federal system is not a reserved power of the States, but rather is delegated by the Constitution"). As this Court recognized in *McPherson v. Blacker*, the authority to choose presidential electors:

> is conferred upon the legislatures of the states by the Constitution of the United States, and cannot be taken from them or modified by their state constitutions. ... *Whatever provisions may be made by statute, or by the state constitution, to choose electors by the people, there is no doubt of the right of the legislature to resume the power at any time, for it can neither be taken away or abdicated.*

146 U.S. 1, 35 (1892) (emphasis added) (internal quotations omitted). The Defendant States would suffer no cognizable injury from this Court's enjoining their reliance on an unconstitutional vote.

B. The Plaintiff State is likely to prevail on the merits.

For interim relief, the most important factor is the likelihood of movants' prevailing. *Winter*, 555 U.S. at 20. The Defendant States' administration of the 2020 election violated the Electors Clause, which renders invalid any appointment of presidential electors based upon those election results. For example, even without fraud or nefarious intent, a mail-in vote not subjected to the State legislature's ballot-integrity measures cannot be counted. It does not matter that a judicial or executive officer sought to bypass that screening in response to the COVID pandemic: the choice was not theirs to make. "Government is not free to disregard the [the Constitution] in times of crisis." *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, 592 U.S. ___ (Nov. 25, 2020) (Gorsuch, J., concurring). With all unlawful votes discounted, the election result is an open question that this Court must address. Under 3 U.S.C. § 2, the State legislatures may answer the question, but the question must be asked here.

1. <u>Defendant States violated the Electors Clause by modifying their legislatures' election laws through non-legislative action.</u>

The Electors Clause grants authority to *State Legislatures* under both horizontal and vertical separation of powers. It provides authority to each State—not to federal actors—the authority to dictate the manner of selecting presidential electors. And within each State, it explicitly allocates that authority to a single branch of State government: to the

"Legislature thereof." U.S. Const. Art. II, § 1, cl. 2. State legislatures' primacy *vis-à-vis* non-legislative actors—whether State or federal—is even more significant than congressional primacy *vis-à-vis* State legislatures.

The State legislatures' authority is plenary. *Bush II*, 531 U.S. at 104. It "cannot be taken from them or modified" even through "their state constitutions." *McPherson*, 146 U.S. at 35; *Bush I*, 531 U.S at 76-77; *Bush II*, 531 U.S at 104. The Framers allocated election authority to State legislatures as the branch closest—and most accountable—to the People. *See*, *e.g.*, Robert G. Natelson, *The Original Scope of the Congressional Power to Regulate Elections*, 13 U. PA. J. CONST. L. 1, 31 (2010) (collecting Founding-era documents); *cf.* THE FEDERALIST NO. 57, at 350 (C. Rossiter, ed. 2003) (Madison, J.) ("House of Representatives is so constituted as to support in its members an habitual recollection of their dependence on the people"). Thus, only the State legislatures are permitted to create or modify the respective State's rules for the appointment of presidential electors. U.S. CONST. art. II, § 1, cl. 2.

Regulating election procedures is necessary both to avoid chaos and to ensure fairness:

> Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.

Burdick v. Takushi, 504 U.S. 428, 433 (1992) (interior quotations omitted). Thus, for example, deadlines are necessary to avoid chaos, even if some votes sent via absentee ballot do not arrive timely. *Rosario v. Rockefeller*, 410 U.S. 752, 758 (1973). Even more importantly in this pandemic year with expanded mail-in voting, ballot-integrity measures—*e.g.*, witness requirements, signature verification, and the like—are an essential component of any legislative expansion of mail-in voting. *See* CARTER-BAKER, at 46 (absentee ballots are "the largest source of potential voter fraud"). Though it may be tempting to permit a breakdown of the constitutional order in the face of a global pandemic, the rule of law demands otherwise.

Specifically, because the Electors Clause makes clear that state legislative authority is exclusive, non-legislative actors lack authority to *amend* statutes. *Republican Party of Pa. v. Boockvar*, No. 20-542, 2020 U.S. LEXIS 5188, at *4 (Oct. 28, 2020) ("there is a strong likelihood that the State Supreme Court decision violates the Federal Constitution") (Alito, J., concurring); *Wisconsin State Legis.*, No. 20A66, 2020 U.S. LEXIS 5187, at *11-14 (Oct. 26, 2020) (Kavanaugh, J., concurring in denial of application to vacate stay); *cf. Grayned v. City of Rockford,* 408 U.S. 104, 110 (1972) ("it is not within our power to construe and narrow state laws"); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 509-10 (2010) ("editorial freedom … [to "blue-pencil" statutes] belongs to the Legislature, not the Judiciary"). That said, courts can enjoin elections or even enforcement of *unconstitutional* election laws, but they cannot rewrite the law in federal presidential elections.

For example, if a state court enjoins or modifies ballot-integrity measures adopted to allow absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the legislature has—prior to the election—ratified the new procedure. Without pre-election legislative ratification, results based on the treatment and tabulation of votes done in violation of state law cannot be used to appoint presidential electors.

Elections must be lawful contests, but they should not be mere *litigation contests* where the side with the most lawyers wins. As with the explosion of nation-wide injunctions, the explosion of challenges to State election law for partisan advantage in the lead-up to the 2020 election "is not normal." *Dep't of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring in the grant of stay). Nor is it healthy. Under the "*Purcell* principle," federal courts generally avoid enjoining state election laws in the period close to an election. *Purcell*, 549 U.S. at 4-5 (citing "voter confusion and consequent incentive to remain away from the polls"). *Purcell* raises valid concerns about confusion in the run-up to elections, but judicial election-related injunctions also raise *post-election* concerns. For example, if a state court enjoins ballot-integrity measures adopted to secure absentee or mail-in voting, that invalidates ballots cast under the relaxed standard unless the State legislature has had time to ratify the new procedure. Without either pre-election legislative ratification or a severability clause in the legislation that created the rules for absentee voting by mail, the state court's actions operate to violate the Electors Clause.

2. State and local administrator's systemic failure to follow State election law qualifies as an unlawful amendment of State law.

When non-legislative state and local executive actors engage in systemic or intentional failure to comply with their State's duly enacted election laws, they adopt by executive fiat a *de facto* equivalent of an impermissible amendment of State election law by an executive or judicial officer. *See* Section II.B.1, *supra*. This Court recognizes an executive's "consciously and expressly adopt[ing] a general policy that is so extreme as to amount to an abdication of its statutory responsibilities" as another form of reviewable final action, even if the policy is not a written policy. *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985) (interior quotations omitted); *accord id.* at 839 (Brennan, J., concurring). Without a *bona fide* amendment to State election law *by the legislature*, executive officers must follow state law. *Cf. Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Service v. Dulles*, 354 U.S. 363, 388-89 (1957). The wrinkle here is that the non-legislative actors lack the authority under the federal Constitution to enact a *bona fide* amendment, regardless of whatever COVID-related emergency power they may have.[9]

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[9] To advance the principles enunciated in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (concerning state police power to enforce compulsory vaccination laws), as authority for non-legislative state actors re-writing state election statutes—in direct conflict with the Electors Clause—is a nonstarter. Clearly, "the Constitution does not conflict with itself by conferring, upon the one hand, a … power, and taking the same power away, on the other, by the limitations of the due process clause."

This form of executive nullification of State law by statewide, county, or city officers is a variant of impermissible amendment by a non-legislative actor. *See* Section II.B.1, *supra*. Such nullification is always unconstitutional, but it is especially egregious when it eliminates legislative safeguards for election integrity (*e.g.*, signature and witness requirements for absentee ballots, poll watchers[10]). Systemic failure by statewide, county, or city election officials to follow State election law is no more permissible than formal amendments by an executive or judicial actor.

III. THE OTHER *WINTER-HOLLINGSWORTH* FACTORS WARRANT INTERIM RELIEF.

Although Plaintiff State's likelihood of prevailing would alone justify granting interim relief, relief is also warranted by the other *Winter-Hollingsworth* factors.

Brushaber v. Union Pac. R. Co., 240 U.S. 1, 24 (1916). In other words, the States' reserved police power does not abrogate the Constitution's express Electors Clause. *See also Cook v. Gralike*, 531 U.S. at 522 (election authority is delegated to States, not reserved by them); *accord* Story, 1 COMMENTARIES § 627.

[10] Poll watchers are "prophylactic measures designed to prevent election fraud," *Harris v. Conradi,* 675 F.2d 1212, 1216 n.10 (11th Cir. 1982), and "to insure against tampering with the voting process." *Baer v. Meyer,* 728 F.2d 471, 476 (10th Cir. 1984). For example, poll monitors reported that 199 Chicago voters cast 300 party-line Democratic votes, as well as three party-line Republican votes in one election. *Barr v. Chatman,* 397 F.2d 515, 515-16 & n.3 (7th Cir. 1968).

A. Plaintiff State will suffer irreparable harm if the Defendant States' unconstitutional presidential electors vote in the Electoral College.

Allowing the unconstitutional election results in Defendant States to proceed would irreparably harm Plaintiff State and the Republic both by denying representation in the presidency and in the Senate in the near term and by permanently sowing distrust in federal elections. This Court has found such threats to constitute irreparable harm on numerous occasions. *See* note 2, *supra* (collecting cases). The stakes in this case are too high to ignore.

B. The balance of equities tips to the Plaintiff State.

All State parties represent citizens who voted in the 2020 presidential election. Because of their unconstitutional actions, Defendant States represent some citizens who cast ballots not in compliance with the Electors Clause. It does not disenfranchise anyone to require the State legislatures to attempt to resolve this matter as 3 U.S.C. § 2, the Electors Clause, and even the Twelfth Amendment provide. By contrast, it would irreparably harm Plaintiff State if the Court denied interim relief.

In addition to ensuring that the 2020 presidential election is resolved in a manner consistent with the Constitution, this Court must review the violations that occurred in the Defendant States to enable Congress and State legislatures to avoid future chaos and constitutional violations. Unless this Court acts to review this presidential election, these

unconstitutional and unilateral violations of state election laws will continue in the future.

C. The public interest favors interim relief.

The last *Winter* factor is the public interest. When parties dispute the lawfulness of government action, the public interest collapses into the merits. *ACLU v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003); *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994); *League of Women Voters of the United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). If the Court agrees with Plaintiff State that non-legislative actors lack authority to amend state statutes for selecting presidential electors, the public interest requires interim relief. Withholding relief would leave a taint over the election, disenfranchise voters, and lead to still more electoral legerdemain in future elections.

Electoral integrity ensures the legitimacy of not just our governmental institutions, but the Republic itself. *See Wesberry*, 376 U.S. at 10. "Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised." *Purcell,* 549 U.S. at 4. Against that backdrop, few cases could warrant this Court's review more than this extraordinary case arising from a presidential election. In addition, the constitutionality of the process for selecting the President is of extreme national importance. If the Defendant States are permitted to violate the requirements of the Constitution in the appointment of their presidential electors, the resulting vote of the Electoral College not only lacks constitutional legitimacy, but the Constitution itself will be forever sullied.

The nation needs this Court's clarity: "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). While isolated irregularities could be "garden-variety" election irregularities that do not raise a federal question,[11] the unconstitutional setting-aside of state election statutes by non-legislative actors calls both the result and the process into question, requiring this Court's "unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront." *Bush II*, 531 U.S. at 111. The public interest requires this Court's action.

IV. ALTERNATIVELY, THIS CASE WARRANTS SUMMARY DISPOSITION.

In lieu of granting interim relief, this Court could simply reach the merits summarily. *Cf.* FED. R. CIV. P. 65(a)(2); S.Ct. Rule 17.5. Two things are clear from the evidence presented at this initial phase: (1) non-legislative actors modified the Defendant States' election statutes; and (2) the resulting uncertainty casts doubt on the lawful winner. Those two facts are enough to decide the merits of the Electors Clause claim. The Court should thus vacate the Defendant States' appointment and impending certifications of presidential electors and remand to their State legislatures to allocate presidential electors via any constitutional means that does not rely on 2020

[11] "To be sure, 'garden variety election irregularities' may not present facts sufficient to offend the Constitution's guarantee of due process[.]" *Hunter v. Hamilton Cty. Bd. of Elections*, 635 F.3d 219, 232 (6th Cir. 2011) (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)).

election results that includes votes cast in violation of State election statutes in place on Election Day.

CONCLUSION

This Court should first administratively stay or temporarily restrain the Defendant States from voting in the electoral college until further order of this Court and then issue a preliminary injunction or stay against their doing so until the conclusion of this case on the merits. Alternatively, the Court should reach the merits, vacate the Defendant States' elector certifications from the unconstitutional 2020 election results, and remand to the Defendant States' legislatures pursuant to 3 U.S.C. § 2 to appoint electors.

December 7, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE HOBBS' NOTICE OF ERRATA TO HER MOTION TO EXCLUDE THE TESTIMONY AND REPORTS OF PLAINTIFFS' EXPERTS (DOC. 65)

Defendant Secretary of State Katie Hobbs files this Notice of Errata submitting Exhibits 1-11 inadvertently not filed with her Motion to Exclude the Testimony and Reports of Plaintiffs' Experts (Doc. 65).

Respectfully submitted this 8th day of December, 2020.

COPPERSMITH BROCKELMAN PLC

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EXHIBIT 1

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TYLER BOYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOREHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD and MICHAEL WARD,

Plaintiffs.

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her capacity as the Arizona Secretary of State,

Defendants.

CASE NO. 20:cv-2321

EXPERT RULE 26(A)(2)(B) EXPERT DISCLOSURES AND FACT WITNESSES

COMES NOW Plaintiffs, Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmado, Kelli Ward, and Michael Ward, by and through their undersigned counsel, and file Expert and Fact Disclosure:

Experts anticipated for the Evidentiary Hearing:

a. William Briggs, is an expert witness that provided a declaration and statistical analysis for the present matter. Attached is his expert report in the attached Declaration. (See Complaint Exh. 2 and 2A-F).

i. Briggs' original expert report includes the only charts that he may refer to in live testimony.

ii. As stated in his expert report, the data relied on was created by Matt Braynard, and the topline reports of those data were attached as pdfs and submitted as part of his original report.

b. Dr. Briggs' rebuttal report in another case. (See Exh. 1, attached hereto).

c. In his rebuttal report, Dr. Briggs states that his work is entirely pro bono.

d. Attached is Dr. Briggs' CV, which includes a publications list. (See Exh.2F to the Complaint).

a. Dr. Briggs has submitted declaration in the Northern District of Georgia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

2. Brian Teasley, is an expert witness that provided a declaration and statistical analysis for the present matter.

a. His expert report is attached as Exh. 4 to the Complaint.

e. Teasley's' original expert report, declaration includes the charts that he may refer to in live testimony.

f. Mr. Teasley is appearing entirely pro bono.

g. Attached is Brian Teasley's CV is attached as Exh. 2, hereto.

a. He has submitted declarations in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

3. Russell James Ramsland, Jr.

a. Mr. Ramsland's report is attached to the Complaint as Ex. 17.

b. Mr. Ramsland's CV is attached hereto as EX. 3, hereto.

c. He has submitted declarations in the Northern District of Georgia 20-cv-04809; 20-cv-ED Michigan 20-cv-13134; ED Wisconsin 20-cv-0232.

4. Spider, whose identity is currently redacted for security reasons:

a. His testimony will be based on his report currently attached to the Complaint as Exh. 12; and in the attached declarations, EX. 4.

b. He is appearing pro bono, has not published in the prior 10 years.

c. He has the following background: Education: Texas A&M associate degree in robotics and engineering; Associates Degree ITT Tech, Texas in network systems; Experience: US Army 305th Military Intelligence; US Army (other) US Intelligence Agencies; Freelance computer security consultant

d. He has submitted declarations in the Northern District of Georgia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

5. Declaration of Matthew Bromberg Ph.D

a. Matt Bromberg's report is currently attached as a Declaration to the Complaint as Exh. 19, which includes his background and CV information;

b. He is appearing pro bono.

c. He has submitted declaration in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

6. Phillip Waldron. Mr. Waldron's background and the basis of his testimony is attached. Ex. 5. He is not getting paid for his appearance.

Fact witnesses

The following are fact witnesses that may be called at the hearing:

1. Anna Orth:
    a. Poll Observer
    b. Pima County
    c. 520-979-8330
    d. Anna Orth is anticipated testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

2. Janese "Jan" Bryant:
    a. Poll Observer,
    b. Maricopa County
    c. 208-859-3394
    d. Janese Jan Bryant will testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

3. Greg Wodynski:
    a. Digital Adjudication Observer
    b. Maricopa County
    c. 480-828-9425
    d. His declaration is attached to the Complaint as Exh. 22.

4. Les Minkas:
    a. Poll Observer
    b. Maricopa County
    c. 847-927-0856

5. Diane Serra:

a. Poll Observer
b. Maricopa County
c. 602-402-5836

d. Her Declaration is attached to the Compl., Ex. 5.

6. Judith Burns: Poll Observer,
   a. Maricopa County
   b. 810-923-5984
   c. Her Declaration is attached to the Compl. At Ex. 21.

7. Kathleen Alvey:
   a. Poll Observer
   b. Pima County
   c. 520-829-2117
   d. Kathleen Alvey is anticipated to testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

8. Linda Brickman:
   a. Maricopa County,
   b. GOP Chair
   c. 602-330-9422
   d. Her Declaration is attached to the Complaint as Ex. 23.

9. Mark Low:
   a. Poll Observer,
   b. Maricopa County
   c. 480-363-1154
   d. His Declaration is attached to the Complaint as Ex. 20.

10. Redacted Fact Witness, TM:
    a. Redacted witness TM's Declaration is attached to the Complaint as Ex. 13.

See Compl., Section I and Declarations attached thereto.

11. Senator Kelly Townsend:
    a. Senator in the AZ legislature
    b. Maricopa County
    c. kellyjtownsend@yahoo.com

    d. Senator Townsend is anticipated to information related to election violations.

12. Redacted - Venezuela Smartmatic Affidavit 11.116.2020, attached as Ex. 1 to the Complaint.

13. Joe Oltmann, his Declaration is attached to the Complaint as Exh. 6.Anna Mercedes Diaz Cardozo

14. Anna Mercedes Diaz Cardozo, her Affidavit is attached to the Complaint as Exh. 8.

15. Ronald Watkins, his Declaration is attached to the Complaint as Exh. 14.

16. Jane Doe. (name redacted) Will testify about illegal ballots being shipped around the United States including to Arizona on or about before Nov. 3, 2020.

17. Ryan Hartwig. Present at Phoenix airport and will testify about a suspicious airplane and activity at Phoenix airport on or around Nov. 3, 2020.

Respectfully submitted, this 1st day of December 2020.

/s Sidney Powell*
Sidney Powell PC
Texas Bar No. 16209700

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice forthcoming

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Brandon Johnson (D.C. Bar No. 491730)

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*Application for admission *pro hac vice*
Forthcoming

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Howard Kleinhendler
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EXHIBIT 2

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Response to Stephen Ansolabehere's Comments Regarding Absentee Ballots Across Several States

William M. Briggs

December 3, 2020

1 Summary

The criticisms made by Stephen Ansolabehere in response to my original report on absentee ballots are not relevant, make simple errors in logic, and even, in part, work against him to show my original argument could be made even stronger.

Ansolabehere repeatedly charges that because I was brief in saying "I assume survey respondents are representative and the data is accurate" that therefore the respondents were not representative and the data not accurate. This is a silly error and a wholly unwarranted conclusion. Not only was this data entirely typical of phone surveys, and therefore the data having all the usual strengths and weaknesses of the genre, it was extraordinary in that calls with respondents were recorded. The designers of the survey evidently knew its quality would be attacked—and were prepared for it.

There were no fatal errors in the survey data or calculations, as the well-paid Ansolabehere falsely claims. (*Five hundred fifty* American dollars per hour for the many hours he spent on his comments? My work is entirely pro bono.) Instead, I took pains to put forward the most conservative case, interpreting the data in a way that actually reduced the number of troublesome ballots.

Although Ansolabehere made many mistakes, I thank him for the opportunity of allowing me to make a point I neglected to emphasize in my original presentation. This is the striking unity of results across several battleground states. The data shows either an amazing coincidence in accumulated troublesome ballots in just those places they were needed most for Biden, or the data shows something more interesting happened.

What follows are answers to specific criticisms.

2 Rebuttal

Ansolabehere pads his account with many extraneous words and arguments. I will be much briefer, while also answering every substantial criticism he made.

2.1 Error Definition

My original definition of errors were this:

Error #1: being recorded as sent an absentee ballot without requesting one.

Error #2: sending back an absentee ballot and having it recorded as not returned.

These followed directly from the survey design. The survey began by asking "Q1 - May I please speak to <lead on screen>?" If the person was available, they were asked "Q2 - Did you request an absentee ballot?"

Finally, if they said yes to that, respondents were asked "Q3 - Did you mail back that ballot?"

Ansolabehere finds ambiguity in these three simple questions via a wonderful display of specious argument, one he repeats in many places. He basically says that because the questions *could* have been

misinterpreted in the various ways he suggests, they therefore *were* misinterpreted by a sufficient number of respondents, thus rendering the survey useless.

My answer is that this is a dumb argument. He has no evidence misinterpretations were made in the way he suggests. He could have spent the same amount of (expensive) time and came up with reasons why the survey was *not* misinterpreted.

For instance, the election was in the news and people were riled. They therefore welcomed the chance to set the record straight, and to ensure their legal ballots were counted. They were thus even more honest than they normally would be with telephone pollsters.

Of course, I have no evidence this, or other similar stories, are true. Just as Ansolabehere has no evidence his charges are true. All we can do, then, is to treat this survey like we treat all surveys: analyze the data as it is presented.

2.2 Ambiguous Wording

I will give one specific example of Ansolabehere trying to discover ambiguity. They are all much the same. He says:

> The wording of Question 3 is also very problematic. First, it does not ascertain whether the ballot was mailed back in a timely manner so as to be included in the record of ballots cast. Some or possibly all of the cases in question are late ballots, and thus not necessarily included in the absentee vote record. Second, Question 3 asks whether someone voted. Survey questions asking whether someone voted are notoriously subject to social desirability biases that lead to inflation in the estimated number of voters.

Again, Ansolabehere uses the possibility of a thing as proof the thing existed. There no evidence, not one bit, that ballots were sent back late. Indeed, as all news reports indicate, especially in Pennsylvania, certain late ballots were warmly accepted.

His second point is the same: because people lie on surveys, therefore they lied here in sufficient number. Would Ansolabehere apply this same reasoning to his own words? It is clearly nonsense. If accepted, his argument would toss out *all* surveys about voting.

2.3 Response Rate

Ansolabehere charges "The survey has extremely low response rates." He must know that the response rate here was not atypical. That is, it was low like many telephone polls are. But low does not imply too low. He must know this. Further, the mathematical extrapolations I made accounted for the size of the data.

Perhaps because Ansolabehere is a specialist in government, he does not know that when samples are low the confidence we have in extrapolations is wider. I will give one example, using Georgia, though this works for data from any state.

The original estimates of Error #2 for Georgia were that between 31,559–38,866 ballots were sent back but recorded as not returned, a "plus or minus" window of 7,307 votes. If we suppose we had *double* the response rate on the survey, in the same proportions as the original, then the Error #2 estimate becomes 32,945–38,096, a window of 5,151 votes. The 95% prediction interval shrinks, as expected, as we become more confident.

It does not shrink by much, of course, showing the analysis method is robust. If instead we allow a full ten times the original response rate, the plus-or-minus window shrinks to 2,234 votes.

Response rate is not a problem, and has been fully accounted for.

2.4 Top line Number Interpretations

Ansolabehere produces a lot of quibbles about the survey numbers, and uses the possibility of different interpretations of the numbers to say my entire analysis can't be trusted.

It is true that differences can exist in interpreting the top line numbers. I was aware of this when I did the analysis, which is why I everywhere used conservative interpretations. If I instead use one of the interpretations Ansolabehere suggests, the case about troublesome votes is made is even stronger.

I will use Georgia again as an example, though this applies to all states.

Again, the first question asked to speak to the relevant person. In Georgia, 767 were recorded as "Reached target", and an additional 255 were recorded as "'What is this about?'/Uncertain [Go to Q2]." I summed these two numbers to reach a total of 1,022.

One quibble is that the 255 who were uncertain should not be used in the total. If not, the sample size is, of course, reduced to 767. Yet we still have 142 who said "No" when asked if they received an absentee ballot. The ratio 142/767 is larger than 142/1022, meaning it will look like even more errors were made (of type Error #1).

The original estimate of **Error #1** (being recorded as sent an absentee ballot without requesting one) for Georgia was the window of 16,938–22,771. If we reduce the sample to 767 by excluding the disputed 255, the new estimate is 22,481–30,042. It goes up in just the way we expect it to. This proves using the full 1,022 is the conservative choice.

Another way to interpret the top lines is to use all people who got to the point of Question 1. Ansolabehere disingenuously prefers this because it makes his case appear stronger.

Besides the two options to Question 1 already mentioned (reached target, uncertain), there were also "Refused" and "Hangup". I treated these as non-responses, which is the usual interpretation. A person who hangs up without responding is the same as the person who never answers, as far as the answering the question goes.

In the spirit of generosity, though, let's use all 1,175 who reached Question 1 (instead of the original 1,022), including the hangups and refusals. The window for Error #1 becomes 14,778–19,903. The window shrinks, as Ansolabehere desires. *But not by enough.* This is still a large and troublesome window. The same is true for each state investigated.

Even stronger, the window for Error #2, the more significant error, *does not change.* This is because the calculations for this window are conditional only on those who answered Question 2 and 3.

Lastly, Ansolabehere disputes whether the answers spouses or other household members gave should be allowed. I used them in the totals. Ansolabehere would exclude them. This is really a nitpicking point because the total of these answers were small.

Here is proof. Again, the original window for Error#2 in Georgia was 31,559–38,866. This was conditional on the 257 respondents or their spouses or household members who said they mailed a ballot back. If we remove the 17 spouses or household members, the window becomes 29,372–36,512. It shrinks a bit. But again, *not by enough.*

All comments made here hold for all states.

3 Conclusion

The doubts cast on my original analysis by Ansolabehere either fail simple tests of logic, or are so small as to make no practical difference in the conclusion.

All his logical errors can be dismissed. Suggesting, as he often does, that mistakes *can* be made or that ambiguity *might* exist in the survey, is not proof that either *does* exist. I could have spent an equal amount of (unremunerated in my case) time suggesting ways the survey was better than most political polls. For instance, people are aware now more than ever of the importance of this election and they took greater care with their answers. I did not do this in the original report because I, unlike Ansolabehere, know the true value of such speculations.

The various numerical quibbles Ansolabehere has with the survey numbers either strengthen my case, or they are so small as to make no practical difference. Even with his own difficult-to-justify assumptions, the analysis reveals there still exist very large numbers of troublesome ballots in each battleground state. There are enough suspicious ballots left, even using his numbers, that could have changed the outcome of the election.

Finally, I reemphasize the remarkable coincidence that the amount of troublesome ballots was important to the election outcome in each state.

4 Declaration of William M. Briggs, PhD

1. My name is William M. Briggs. I am over 18 years of age and am competent to testify in this action. All of the facts stated herein are true and based on my personal knowledge.
2. I received a Ph.D of Statistics from Cornell University in 2004.
3. I am currently a statistical consultant. I make this declaration in my personal capacity.
4. I have analyzed data regarding responses to questions relating to mail ballot requests, returns and related issues.
5. I attest to a reasonable degree of professional certainty that the resulting analysis are accurate.

I declare under the penalty of perjury that the foregoing is true and correct.



3 December 2020

William M. Briggs

EXHIBIT 3

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Teasley

Using Data to Improve Your Marketing

Personnel Profile: Brian Teasley

Brian Teasley has over thirty years of experience solving problems in various industries. His marketing experience includes work with numerous Fortune 100 companies.

Brian has worked for Sprint Integrated Marketing, Bronner, Slosberg and Humphrey (now Digitas/Publicis), and USWeb/CKS/marchFIRST. Before starting Teasley, Brian was SVP of Customer Analytics at Harmonic Communications (a Sequoia Capital Company) in San Francisco.

His projects include work for:

Philip Morris, BASF, Sandvik Special Metals, Delco Batteries, Rosemount Aerospace Engineering, FHP (California Healthcare), American Express, Business Week, Sears, Federal Express, AT&T (local, long distance, wireless, Universal card), IBM, Kodak, Enron, Braun, Cantel (Canadian Wireless), Mastercard, Walgreens, and Nabisco, the U.S. Navy, HP, Prudential, Daimler/Chrysler and others

He has taught Business Statistics and Decision Science courses in the MBA programs of Iowa State University, Baker University, and was a guest professor at American University. He is a former adjunct faculty member at New York University (NYU).

He was awarded a U.S. patent - number: 20080774536 - for his “Location-based Information Delivery System for Pedestrian Use” and is the inventor of the world’s first handheld GPS tour guide system.

He has a M.S. degree in Applied Statistics from Iowa State University and a BA in Mathematics and Statistics from St. Olaf College. He is also a member of Phi Beta Kappa.

EXHIBIT 4

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Exhibit 3

Source 1

Subject Matter Expert
Computer Security/Analyst

Co-Founder/Executive of multiple technology focused companies in the areas of :

Government - Federal/State Contracts

Worked for one of the Top 10 GSA consulting companies as a software developer and software security contractor for a large government agency.

Contracted to a large government agency in visualization and processing real-time ground-based sensor data and management of radio packet modem communication systems.

Created a digital signature approval system for a large government agency.

Selected, tested, managed, trained and deployed a software tool for insider threat monitoring, identification and tracking in a large government agency.

Co-Founder

Cyber Security & Government Consulting and commercial technology provider concentrating on sensor data, mobile applications, video, security, and data processing.

A media company focused on generating insight into complex markets using live video, real-time alerts, in depth searching capabilities, and analysis.

An advertising agency and data analytics company that created a system to purchase, track, and optimize tv, radio and online advertising.

A robotics company focused on autonomous navigation in secure and dangerous environments.

A political tools consulting company focusing on communication, call to action systems, social outreach tools, and marketing services. Provide real-time and historic election data with custom insight and metrics.

A clean energy technology consulting, advising, and solutions company focused on devices and data visualization.

Executive

Consulting company focused on creation of secure intranet and extranet portals for large telecom hardware manufacture, venture capital firms, and large state agencies. And oversaw security audits and ISO certifications.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TYLER BOYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOREHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD and MICHAEL WARD,

Plaintiffs.

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her capacity as the Arizona Secretary of State,

Defendants.

CASE NO.

EXPERT RULE 26(A)(2)(B) EXPERT DISCLOSURES AND FACT WITNESSES

COMES NOW Plaintiffs, Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmado, Kelli Ward, and Michael Ward, by and through their undersigned counsel, and file Expert and Fact Disclosure:

After a general election and recount, Joe Biden has been declared the winner of Arizona's General Election for President by a difference of 10,457 votes. But the vote count certified by defendants on November 30, 2020 fails to recognize the votes are steeped in fraud. Hundreds of thousands of votes counted toward Mr. Biden's final tally were the product of fraudulent, illegal, ineligible and outright fictitious ballots. Plaintiffs support this claim through the evidence laid out in the Complaint which includes the following conclusions.

Experts anticipated for the Evidentiary Hearing:

a. William Briggs, is an expert witness that provided a declaration and statistical analysis for the present matter. Attached is his expert report in the attached Declaration. (See Complaint Exh. 2 and 2A-F).

i. Briggs' original expert report includes the only charts that he may refer to in live testimony.

ii. As stated in his expert report, the data relied on was created by Matt Braynard, and the topline reports of those data were attached as pdfs and submitted as part of his original report.

b. Dr. Briggs' rebuttal report, in this matter. (See Exh. 1, attached hereto).

c. In his rebuttal report, Dr. Briggs states that his work is entirely pro bono.

d. Attached is Dr. Briggs' CV, which includes a publications list. (See Exh.2F to the Complaint).

a. Dr. Briggs has submitted declaration in the Northern District of Georgia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

2. Brian Teasley, is an expert witness that provided a declaration and statistical analysis for the present matter.

a. His expert report is attached as Exh. 4 to the Complaint.

e. Teasley's' original expert report, declaration includes the charts that he may refer to in live testimony.

f. Mr. Teasley is appearing entirely pro bono.

g. Attached is Brian Teasley's CV is attached as Exh. 2, hereto.

a. He has submitted declarations in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

3. Russell James Ramsland, Jr.

a. Mr. Ramsland's report is attached to the Complaint as Ex. 17.

b. Mr. Ramsland's CV is attached hereto as EX. 3, hereto.

c. He has submitted declarations related to the claims in the Northern District of Gerogia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

4. Spider, who's identity is currently redacted for security reasons:

a. His report is currently attached to the Complaint as Exh. 12. And in the attached in the attached declarations.

b. He is appearing pro bono.

c. He has the following background: Education: Texas A&M associate degree in robotics and engineering; Associates Degree ITT Tech, Texas in network systems; Experience: US Army 305th Military Intelligence; US Army (other) US Intelligence Agencies; Freelance computer security consultant

d. He has submitted declarations related to the claims herein in the Northern District of Gerogia 20-cv-04809, ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

5. Declaration of Matthew Bromberg Ph.D

a. Matt Bromberg's report is currently attached as a Declaration to the Complaint as Exh. 19, which includes his background and CV information;

b. He is appearing pro bono.

c. He has submitted declaration in the ED Michigan 20-cv-13134, ED Wisconsin 20-cv-02321.

Fact witnesses

The following are fact witnesses:

1. Anna Orth:
   a. Poll Observer
   b. Pima County
   c. 520-979-8330
   d. Anna Orth is anticipated testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

2. Janese "Jan" Bryant:
   a. Poll Observer,
   b. Maricopa County

c. 208-859-3394
d. Janese Jan Bryant will testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

3. Greg Wodynski:
   a. Digital Adjudication Observer
   b. Maricopa County
   c. 480-828-9425
   d. His declaration is attached to the Complaint as Exh. 22.

4. Les Minkas:
   a. Poll Observer
   b. Maricopa County
   c. 847-927-0856

5. Diane Serra:
   a. Poll Observer
   b. Maricopa County
   c. 602-402-5836
   d. Her Declaration is attached to the Compl., Ex. 5.

6. Judith Burns: Poll Observer,
   a. Maricopa County
   b. 810-923-5984
   c. Her Declaration is attached to the Compl. At Ex. 21.

7. Kathleen Alvey:
   a. Poll Observer
   b. Pima County
   c. 520-829-2117
   d. Kathleen Alvey is anticipated to testify to election violations she observed, including the disparate treatment of Republican observers deprived Republican voters of their rights to equal protection of the law and should nullify any presumption that election workers applied the law in a fair, impartial and objective manner.

8. Linda Brickman:
   a. Maricopa County,
   b. GOP Chair
   c. 602-330-9422
   d. Her Declaration is attached to the Complaint as Ex. 23.

9. Mark Low:
   a. Poll Observer,
   b. Maricopa County
   c. 480-363-1154
   d. His Declaration is attached to the Complaint as Ex. 20.

10. Redacted Fact Witness, TM:
   a. Redacted witness TM's Declaration is attached to the Complaint as Ex. 13.

See Compl., Section I and Declarations attached thereto.

11. Senator Kelly Townsend:
   a. Senator in the AZ legislature
   b. Maricopa County
   c. kellyjtownsend@yahoo.com

   d. Senator Townsend is anticipated to information related to election violations.

12. Redacted - Venezuela Smartmatic Affidavit 11.116.2020, attached as Ex. 1 to the Complaint.

13. Joe Oltmann, his Declaration is attached to the Complaint as Exh. 6.Anna Mercedes Diaz Cardozo

14. Anna Mercedes Diaz Cardozo, her Affidavit is attached to the Complaint as Exh. 8.

15. Ronald Watkins, his Declaration is attached to the Complaint as Exh. 14.

Respectfully submitted, this 1st day of December 2020.

/s Sidney Powell*
Sidney Powell PC
Texas Bar No. 16209700

2911 Turtle Creek Blvd, Suite 300
Dallas, Texas 75219

*Application for admission pro hac vice
forthcoming

Of Counsel:
Emily P. Newman (Virginia Bar No. 84265)
Julia Z. Haller (D.C. Bar No. 466921)
Brandon Johnson (D.C. Bar No. 491730)

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369 Lexington Avenue, 12th Floor
New York, New York 10017
(917) 793-1188
howard@kleinhendler.com

CERTIFICATE OF SERVICE

This is to certify that I have on this day e-filed the foregoing Plaintiffs' Motion To File Affidavits Under Seal and For In Camera Review with the Clerk of Court using the CM/ECF system, and that I have delivered the filing to the Defendants by email and FedEx at the following addresses:

SOURCE 4

OPEN SOURCE INTELLIGENCE OFFICER – Allied Security Operations Group

INTELLIGENCE ANALYST

Trained intelligence analyst with over 10 years professional experience conducting civil and criminal investigations. Transform raw data into actionable intelligence by utilizing modern reporting tools and data visualization techniques. Leverage open/closed source intelligence to research, analyze and extract decision-useful information to create comprehensive behavior, reputation and threat assessments for individuals and entities.

AREAS OF EXPERTISE

Open/Closed Source Intelligence	Intelligence Systems/Databases
Threat Assessments	Data Analysis and Visualization
Due Diligence Analysis and Reporting	Creating/Filing Court Exhibits
Criminal Investigations	Indexed/Non-Indexed Web Queries

PROFESSIONAL EXPERIENCE Previous to ASOG

The *AkeeliGroup, Houston1 TX* September **2018-2019**

SR, INTELLIGENCE ANALYST

Provide extensive behavior, lifestyle and reputation assessments for corporate clients. Perform due diligence analysis and social link analysis using open source collection methodologies.

- Conduct in-depth investigations of individuals, and corporations using OSINT techniques, proprietary databases, analyst software, and data visualization software; Utilize link analysis to provide actionable intelligence analyses for clients.
- Develop and execute OSINT, digital vulnerability and cyber security training for C-suite executives.
- Domestic and global investigations that gather unique data going beyond traditional searches, exploiting metadata, postings that are tangential to the ultimate subject of inquiry and data sets not indexed by traditional search engines.
- Utilize intelligence sources include the deep web, dark web, social media sites, news organizations, proprietary databases, .and private investigative databases.

Social Surveillance, Houston, TX January 2017-Present

FOUNDER AND SR. INTELLIGENCE ANALYST

Launched a social media and investigative consultancy for professional sports franchises. Provide specialized investigations and training to meet the growing need for enhanced due diligence using Open Source Intelligence. Licensed training school #Y05219201 (TX); Licensed Private Investigator #00352311 (TX).

- Conduct in-depth investigations of individuals, corporations, and criminal enterprises using OSINT techniques, closed-source databases, and analyst software; Utilize link analysis software to provide actionable intelligence reports for clients; Licensed Investigation Agency.
- Develop and execute OSINT training courses and cyber security training for law enforcement, executive protection agencies, and business leaders.
- Consult for NFL teams on issues concerning security', privacy, and reputation management.
- Monitor and analyze a broad range of social media platforms for threats and/or changes in public sentiment pertaining

to events, organizations and/or high-profile individuals.

North central Texas Fusion Center, McKinney, TX July 2013-January 2014

INTELLIGENCE ANALYST

Served as an Intelligence Analyst and supported the Collin County Sheriff's Office Crimes Against Children Taskforce with investigation and prosecution of sex crimes and the planning and development of intelligence reports and products.

- Developed instructions, guides, and manuals in line with dissemination standards and methods dealing with conventional intelligence problems, questions, and situations.
- Evaluated and interpreted incoming intelligence reports and information related to terrorism, actual or potential threats against critical infrastructure, counterterrorism, counterintelligence, and other issues of strategic and tactical importance.
- Planned and conducted public meetings, briefings, and other activities in support of the Fusion Center to provide the dissemination of key intelligence information to federal and local law enforcement agencies.

Kina County ***Prosecutor's Office, Seattle, WA***

Januar

y 2006-August 2013

LEGAL SPECIALIST

Served as Legal Specialist Ill within the King County Prosecutor's Office, managed junior analysts as head of the Sexually Violent Predators division of Criminal Justice Internship at King County Prosecutor's Office.

- Led four staff interns with full responsibility for onboarding, managing and training and supervision of day-to-day wort< and execution of long-term projects
- Managed and analyzed confidential materials include victim data, surveillance, criminal histories, and police evidence; searched for and tracked witnesses, victims, and offenders across the nation
- Provided Investigative and trial support for nine attorneys and three paralegals; assembled briefs and exhibits for filings in County Court, Court of Appeals, State Superior Court and Federal Courts
- Developed presentation and facilitated training to over 500 employees on new electronic filing systems and implementation of new processes and procedures
- Collaborated with attorneys and paralegals in all phases of Sexually Violent Predator Commitment trial preparation, from initial investigation to final disposition .
- Drafted subpoenas, declarations and correspondence ensured compliance with Civil Rules of Procedure and Local Court Rules; scheduled dispositions, court reporters and testimony providers such as Expert Sex Offender Treatment Providers for availabilities
- Compiled thousands of pages of data and evidence (e.g. redacted, enhanced and edited surveillance video, interviews and phones calls) for relevant case and court file purposes
- Developed innovative ways to incorporate various media platforms such as video, phone, maps and analytic software for court exhibits and evidence

EDUCATION

Master of Science (MS) - Justice, Administration and Leadership

University of Texas, 2015

Cumulative GPA: 3.9/4.0

Bachelor of Arts
(BA) - Criminal
Justice
University of
Washington,
2007 Cumulative
GPA: 3.9/ 4.0
Graduated with Honors, Dean's list (4 times)

TECHNICAL SKILLS

- Certifications (ICS 100, 200 and 700);
- Michael Bazzel Open Source Intelligence Systems Training Certificate.
- Thomson Reuters CLEAR investigative research and risk management software
- Transunion TLOxp investigative research and risk management software
- Maltego and Analyst Software Packages (Analyze intelligence and construct criminal cases);
- Open Source Intelligence Analysis (Locate targets and build suspect target packages from any location)
- Web-Based Applications (Facebook, LinkedIn, Twitter);
- Microsoft Office (Microsoft Word, PowerPoint, Excel, Outlook)

EXHIBIT 5

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Exhibit 4

Declaration of NAME {redacted}.

Pursuant to 28 U.S.C Section 1746, I, **{redacted}**, make the following declaration.

1. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
2. I was an electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence. I have extensive experience as a white hat hacker used by some of the top election specialists in the world. The methodologies I have employed represent industry standard cyber operation toolkits for digital forensics and OSINT, which are commonly used to certify connections between servers, network nodes and other digital properties and probe to network system vulnerabilities.
3. I am a US citizen and I reside at **{redacted}** location in the United States of America.
4. It can be seen using open source methodology that the SSL certificates from *.dominionvoting.com were registered on the 24th of July 2019. This SSL certificate were used multiple times from locations ranging from Canada, Serbia, and the United States. These images verify that Dominion systems were connected to foreign systems across the globe. Also seen is that the SSL certificate is used for the email server that was the same for the secure HTTP connections.

443.https.tls.certificate.parsed.fingerprint_sha256:
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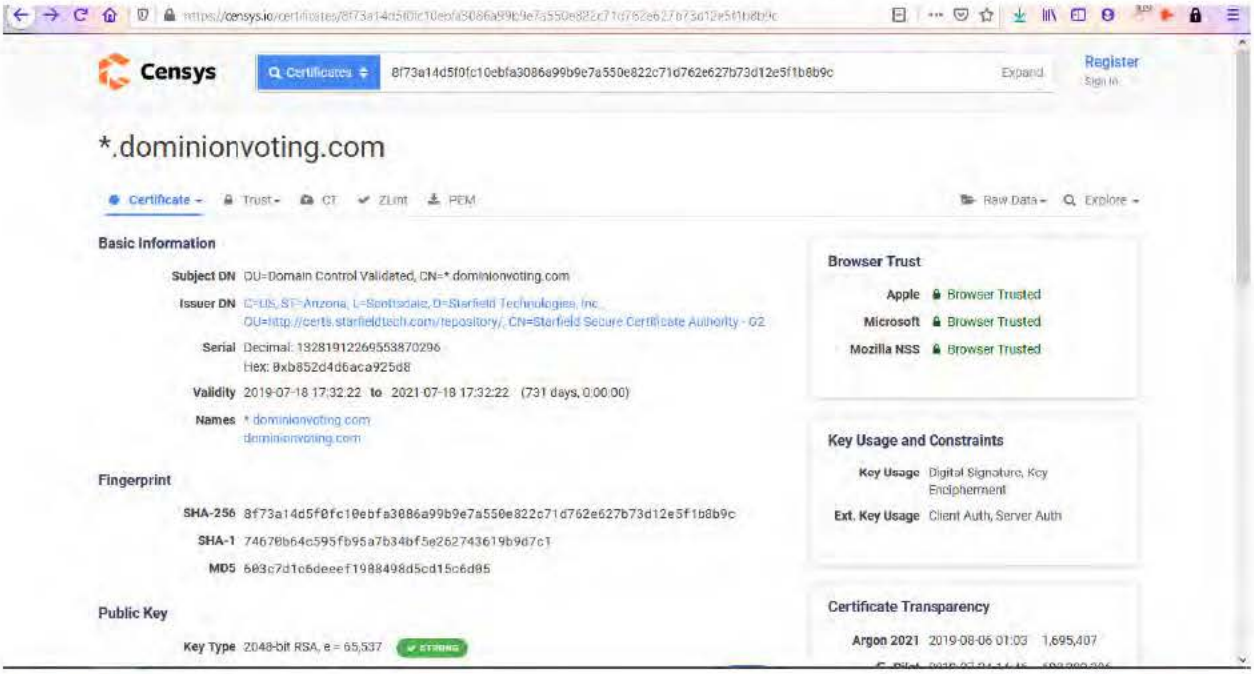

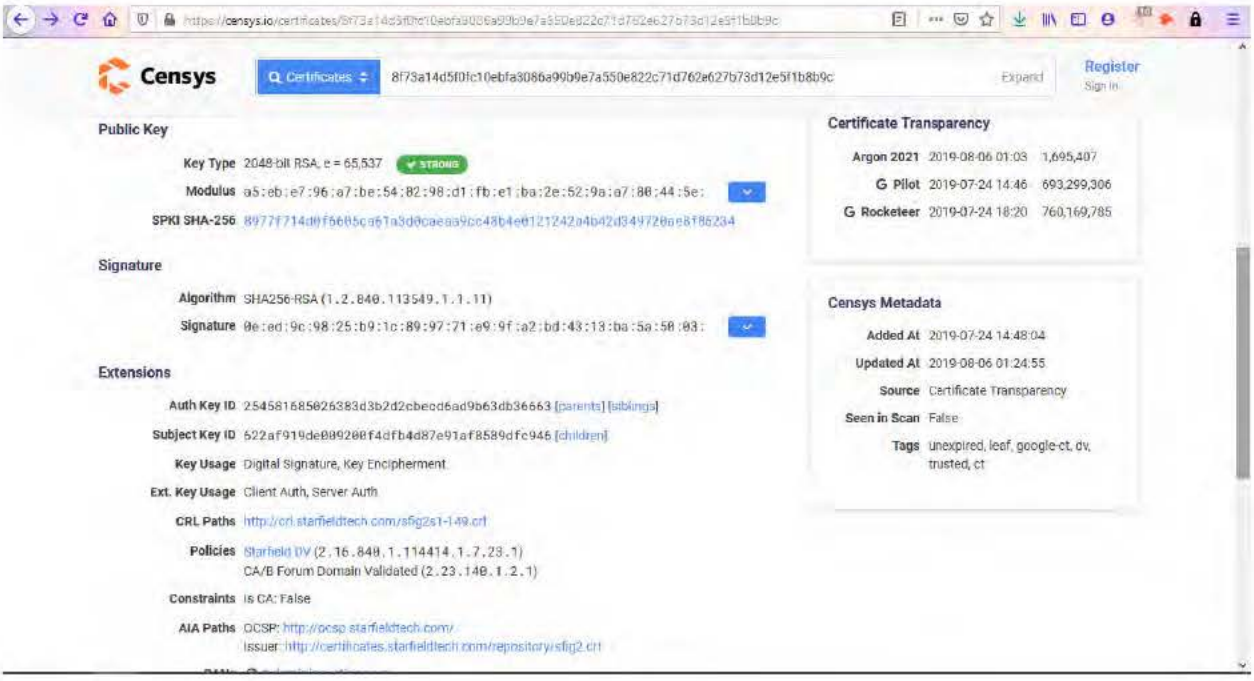

All share:

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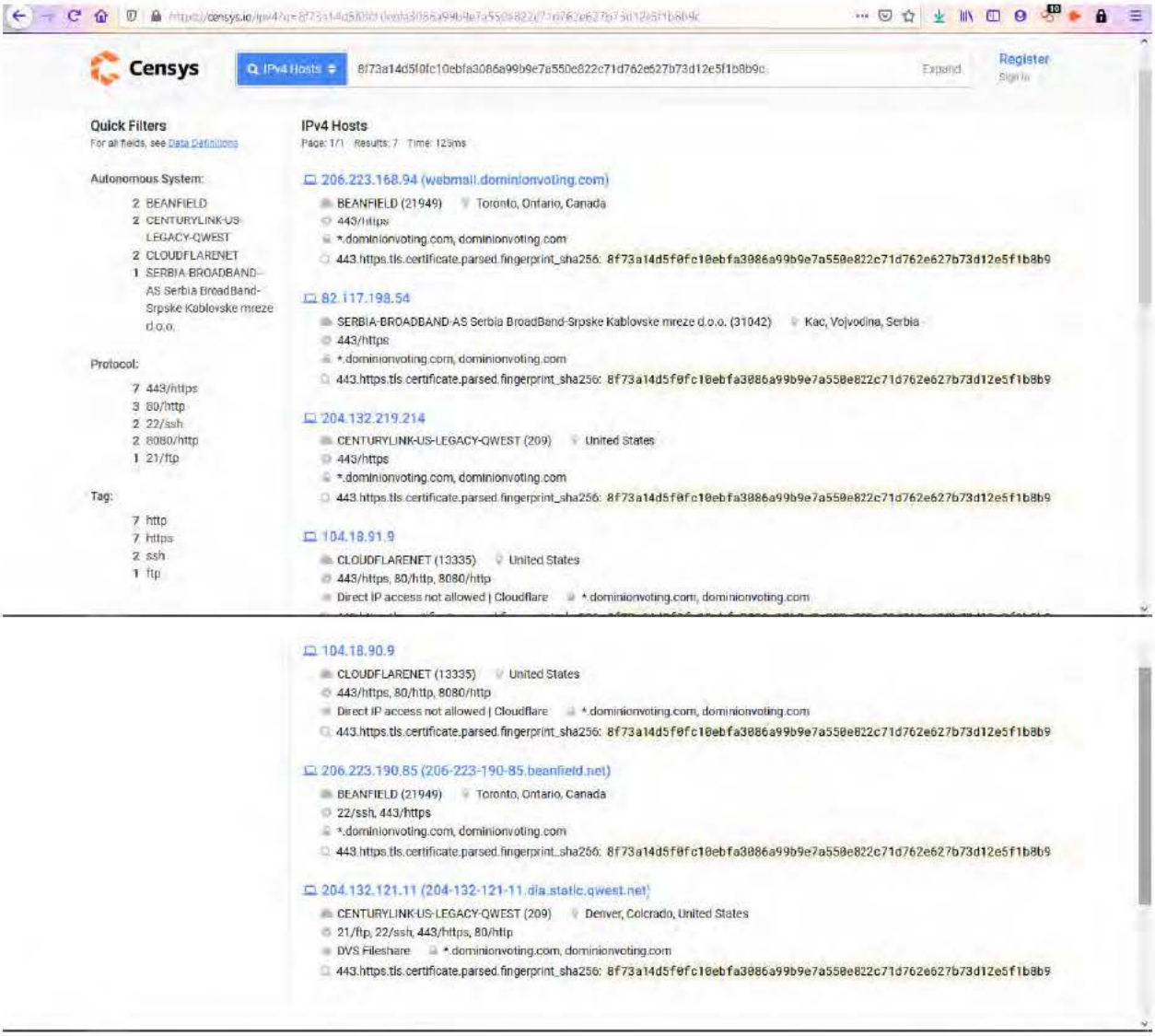



Email ip address

206.223.168.94

Serbian ip address

82.117.198.54

Dominion site

204.132.219.214

Cloudflare link

104.18.91.9

Canadian ip address

206.223.190.85

Denver ip address

204.132.121.11

Page: 1/1 Results: 7 Time: 155ms

206.223.168.94 (webmail.dominionvoting.com)

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I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge. Executed this November 23th, 2020.

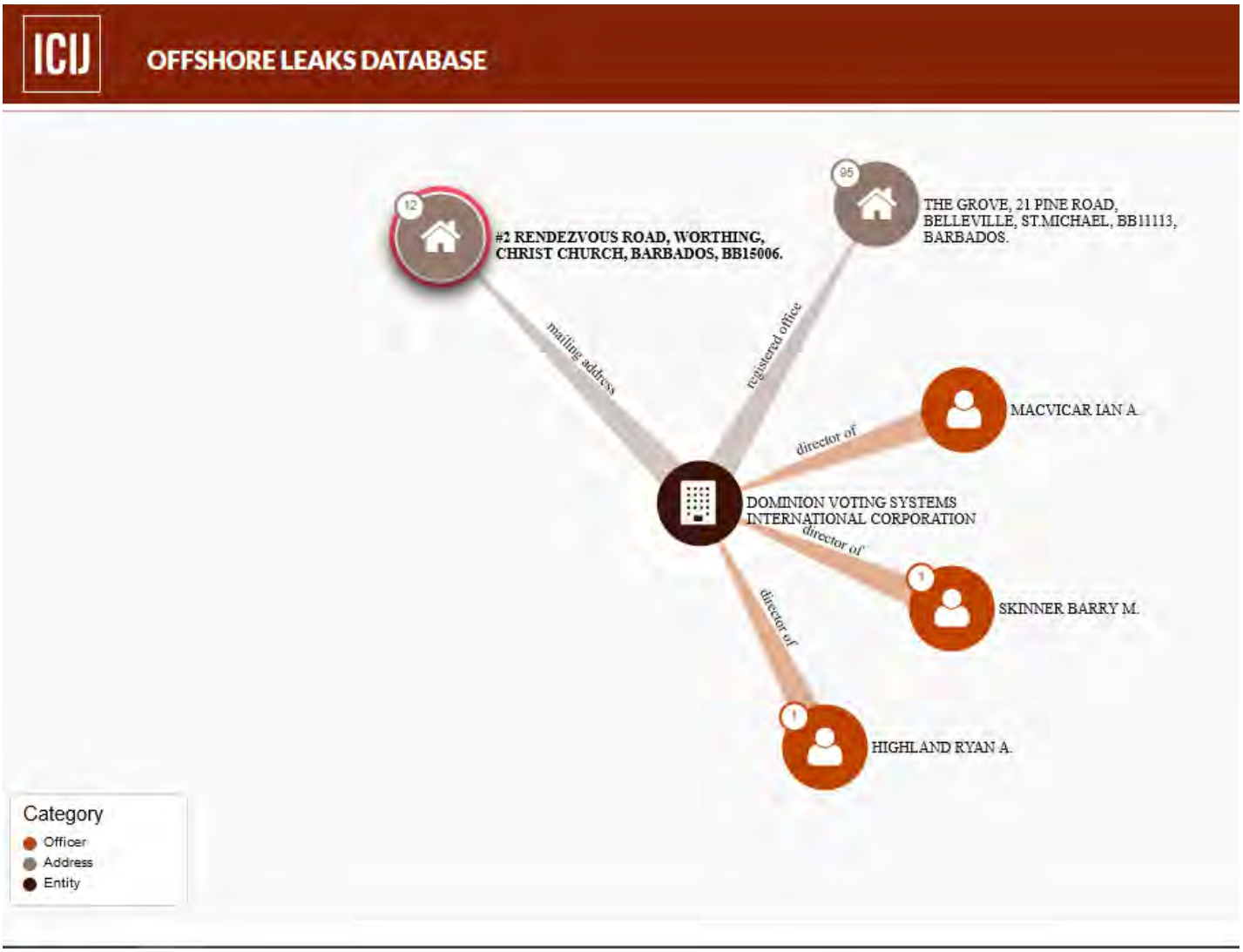
Declaration of NAME {redacted}.

Pursuant to 28 U.S.C Section 1746, I, **{redacted}**, make the following declaration.

5. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
6. I was an electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence. I have extensive experience as a white hat hacker used by some of the top election specialists in the world. The methodologies I have employed represent industry standard cyber operation toolkits for digital forensics and OSINT, which are commonly used to certify connections between servers, network nodes and other digital properties and probe to network system vulnerabilities.
7. I am a US citizen and I reside at **{redacted}** location in the United States of America.
8. The following link analysis was gathered through open source methodologies and are easily verifiable.
9. As Dominion and Smartmatic makes claims that they are not connected in any way, not only are they connected but their business registration was in the same building on a foreign island to obfuscate their business dealings.

https://offshoreleaks.icij.org/nodes/101732449





https://offshoreleaks.icij.org/nodes/101724285

SMARTMATIC INTERNATIONAL CORPORATION

Connected to **1 address**
Connected to **13 officers**
Connected to **1 intermediary**

Incorporated: 29-SEP-2004
Registered in: Barbados
Linked countries: Barbados

Data from: Paradise Papers - Barbados corporate registry
Barbados corporate registry data is current through 2016
Search in opencorporates
Got a tip? Help ICIJ investigate: contact us or leak to us securely



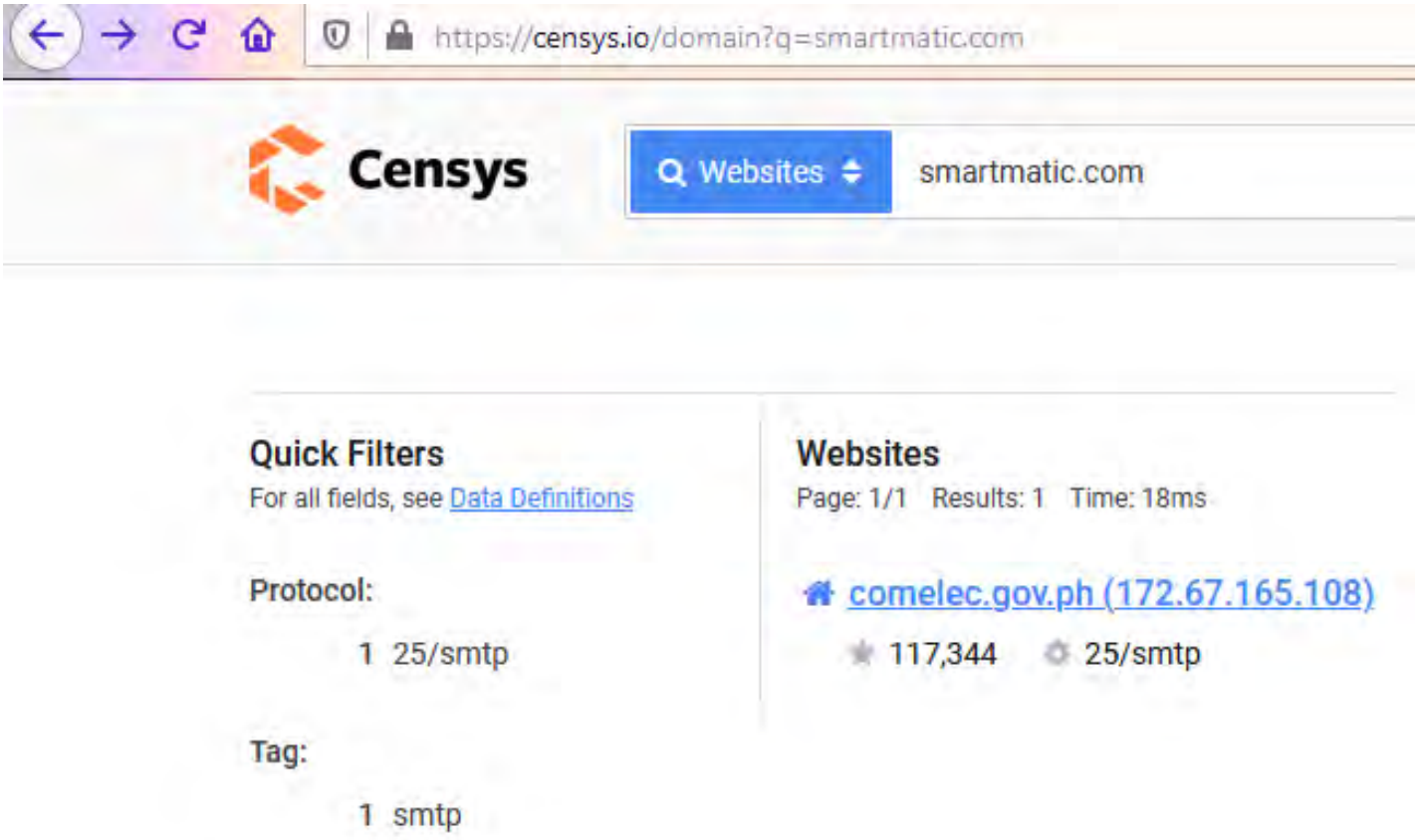
I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge. Executed this November 23th, 2020.

Smartmatic SSL Certificate

Declaration of NAME {redacted}.

Pursuant to 28 U.S.C Section 1746, I, **{redacted}**, make the following declaration.

10. I am over the age of 21 years and I am under no legal disability, which would prevent me from giving this declaration.
11. I was an electronic intelligence analyst under 305th Military Intelligence with experience gathering SAM missile system electronic intelligence. I have extensive experience as a white hat hacker used by some of the top election specialists in the world. The methodologies I have employed represent industry standard cyber operation toolkits for digital forensics and OSINT, which are commonly used to certify connections between servers, network nodes and other digital properties and probe to network system vulnerabilities.
12. I am a US citizen and I reside at **{redacted}** location in the United States of America.
13. Researching Smartmatic's website and reading their public manuals about the reuse of SSL certificate's, I started to investigate Smartmatic's SSL certificates. Upon searching their website is currently behind Cloudflare yet using the same SSL certificate it made it easy to locate where Smartmatic's website was located. Smartmatic's website is in the Philippine's on their Election commission's server (Comelec.gov.ph).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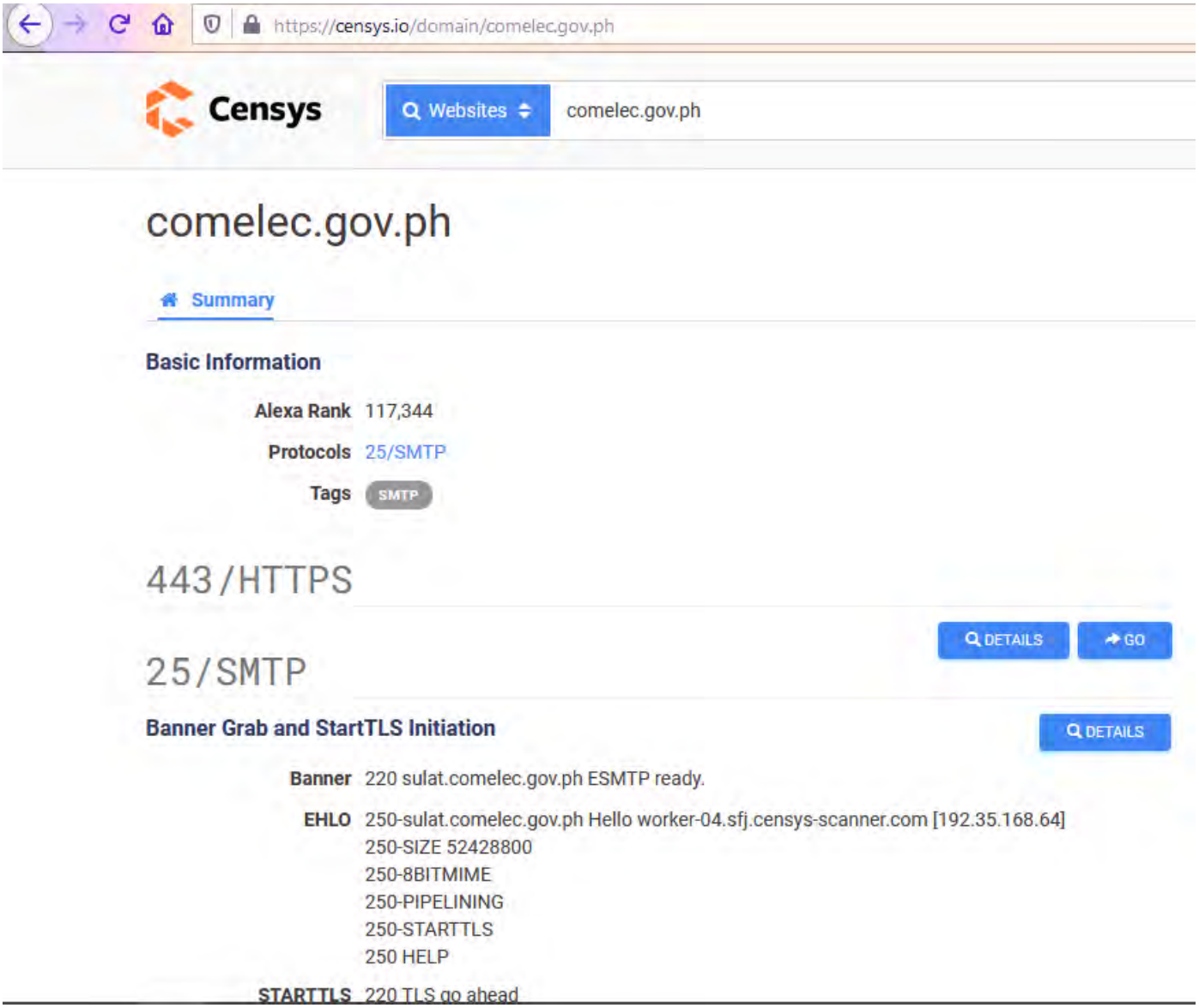
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443/HTTPS
DETAILS
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25/SMTP
Banner Grab and StartTLS Initiation
DETAILS
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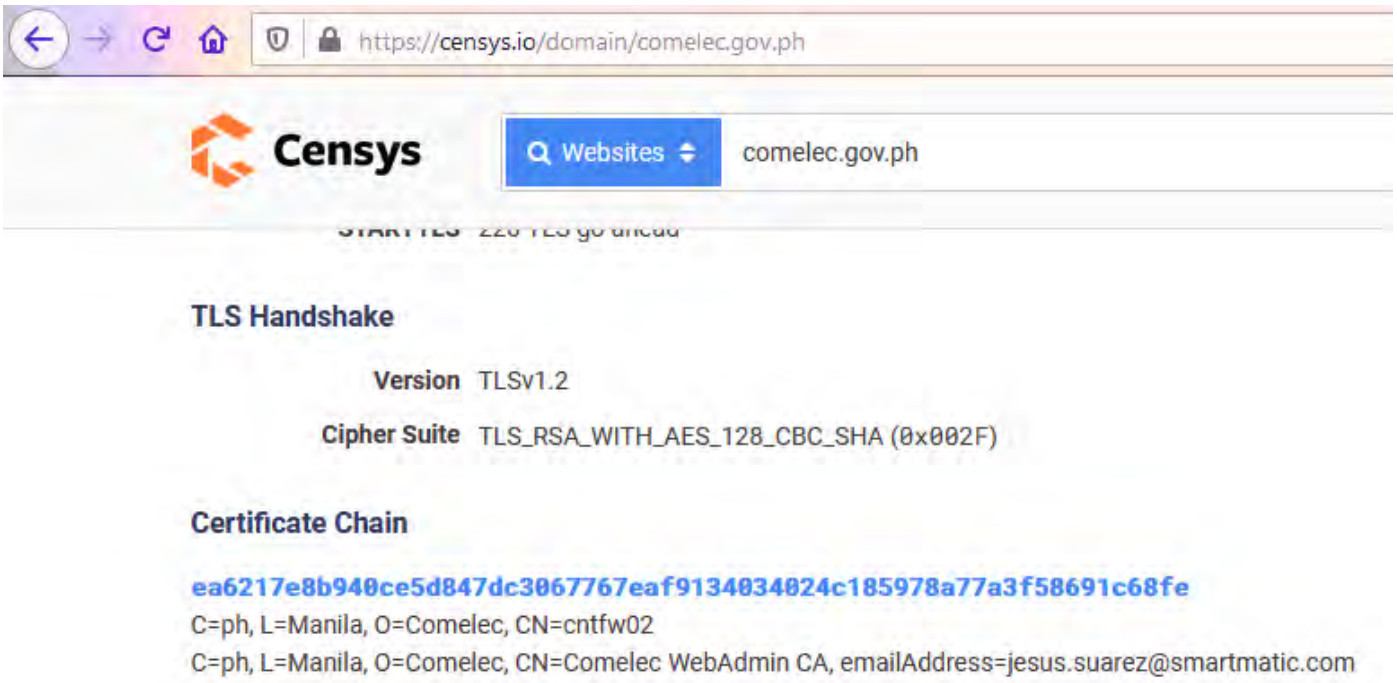
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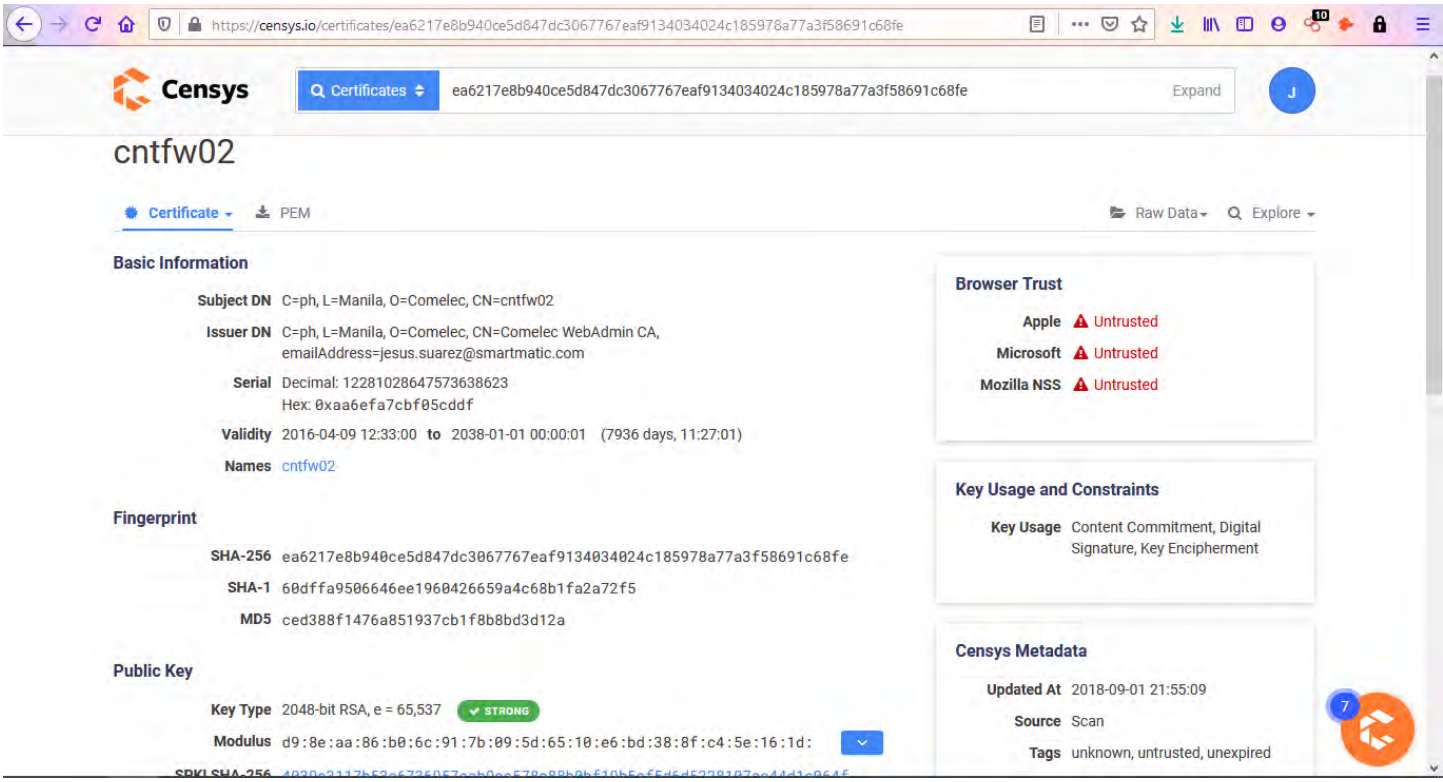
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MD5 ced388f1476a851937cb1f8b8bd3d12a
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Browser Trust
Apple Untrusted
Microsoft Untrusted
Mozilla NSS Untrusted
Key Usage and Constraints
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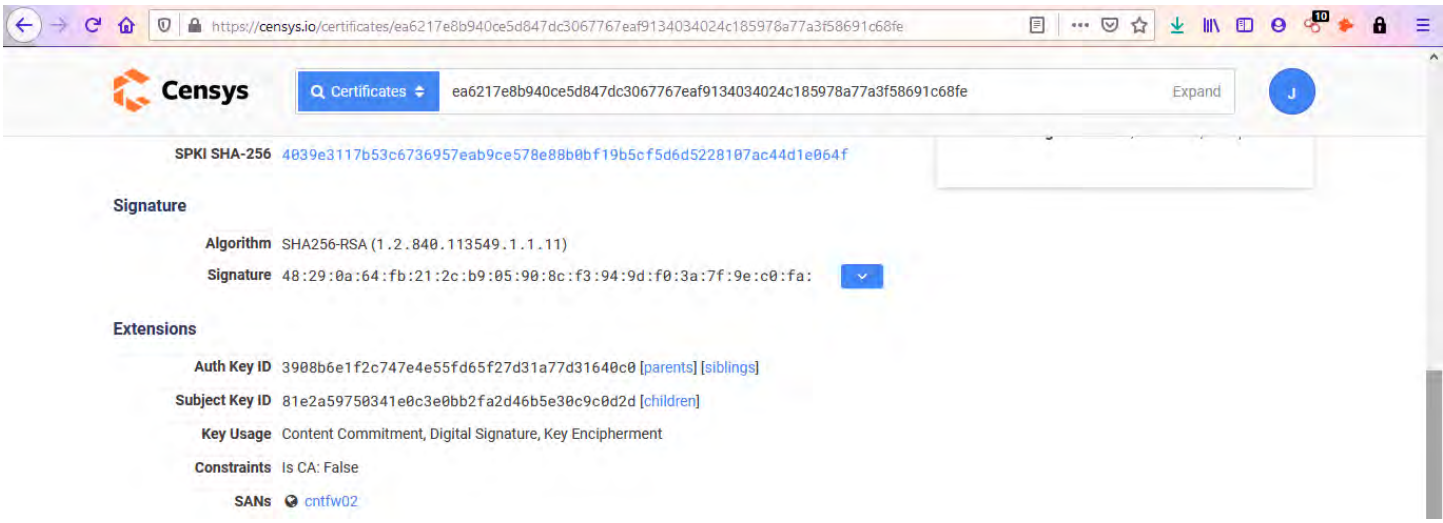
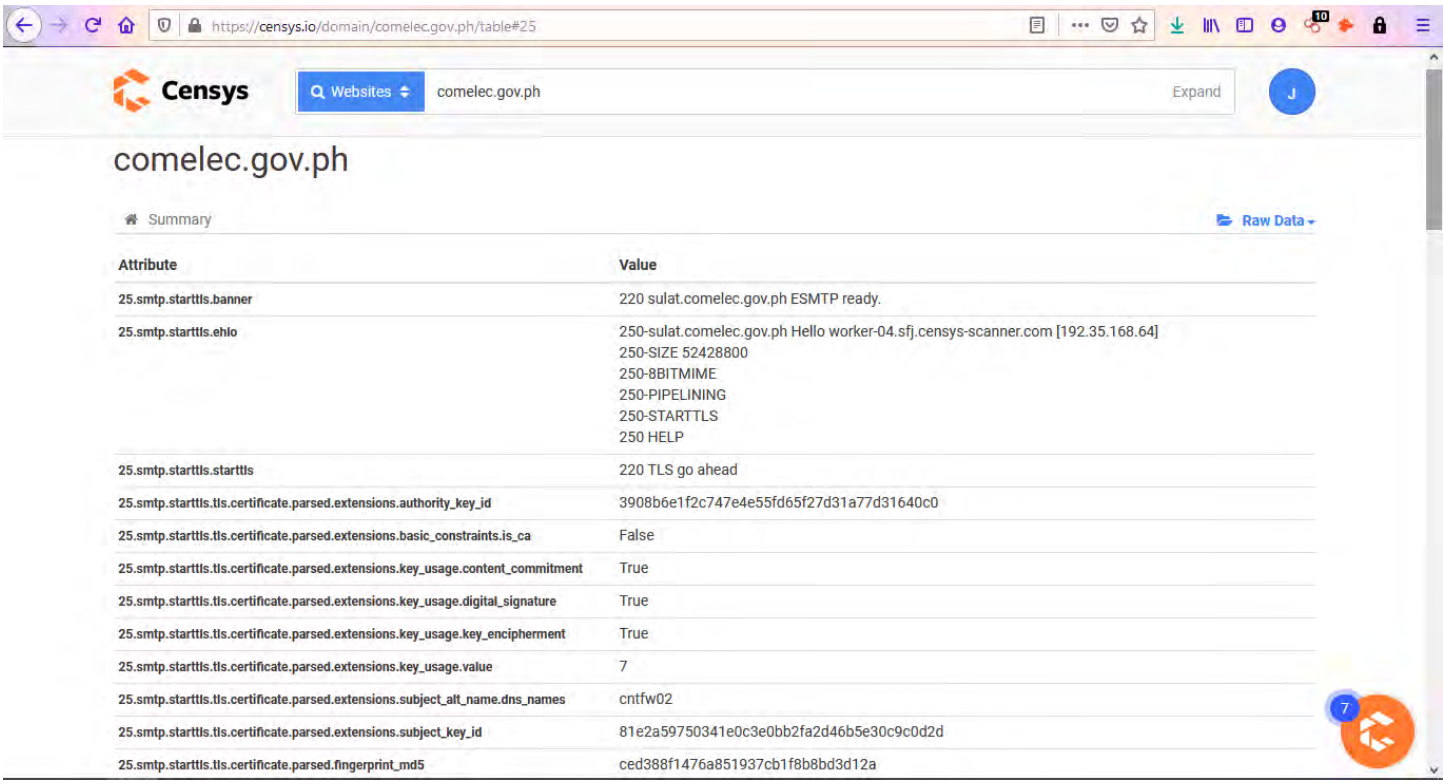
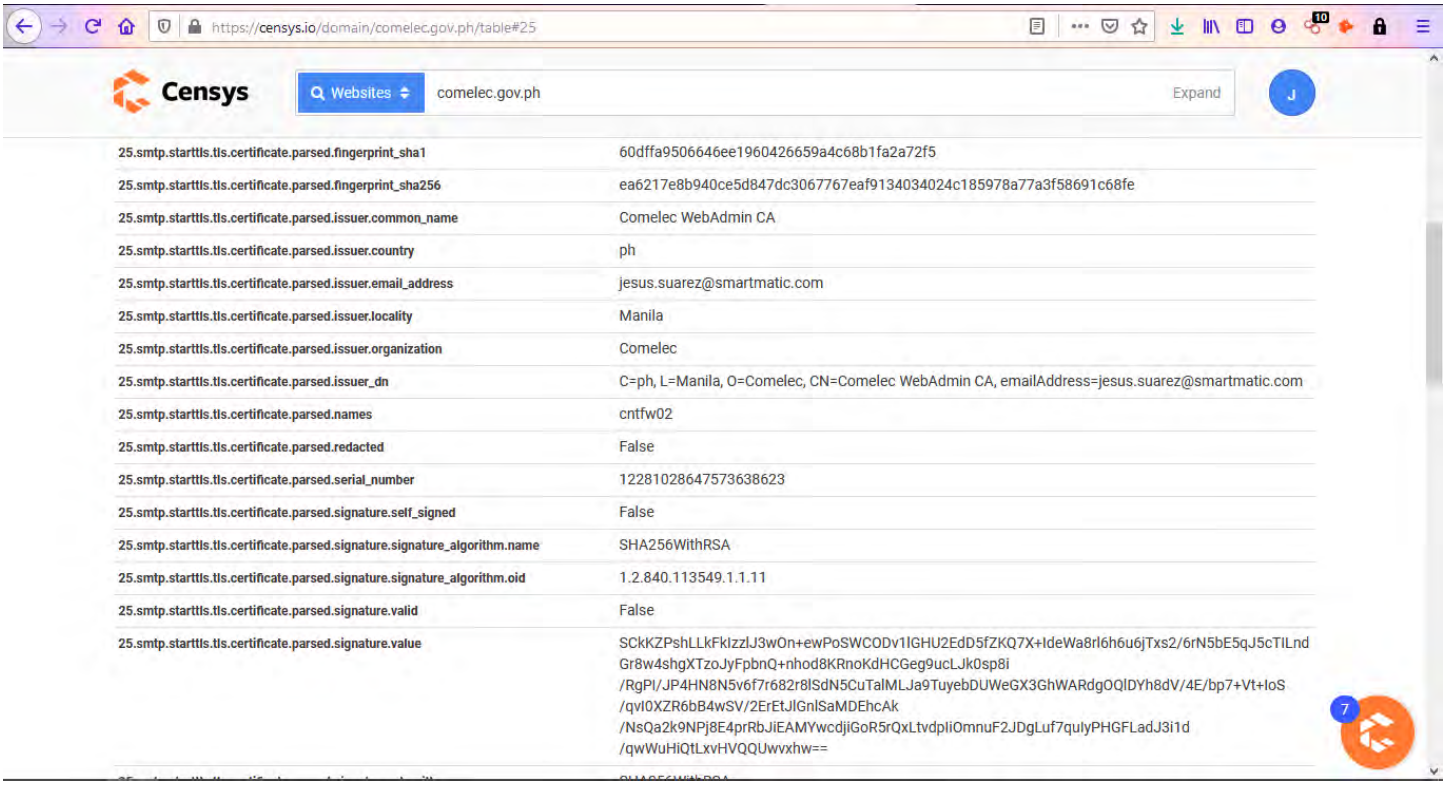


14. As can be seen in the images above the SSL certificate used was registered by the email address jesus.suarez@smartmatic.com on the 9th of April 2016.





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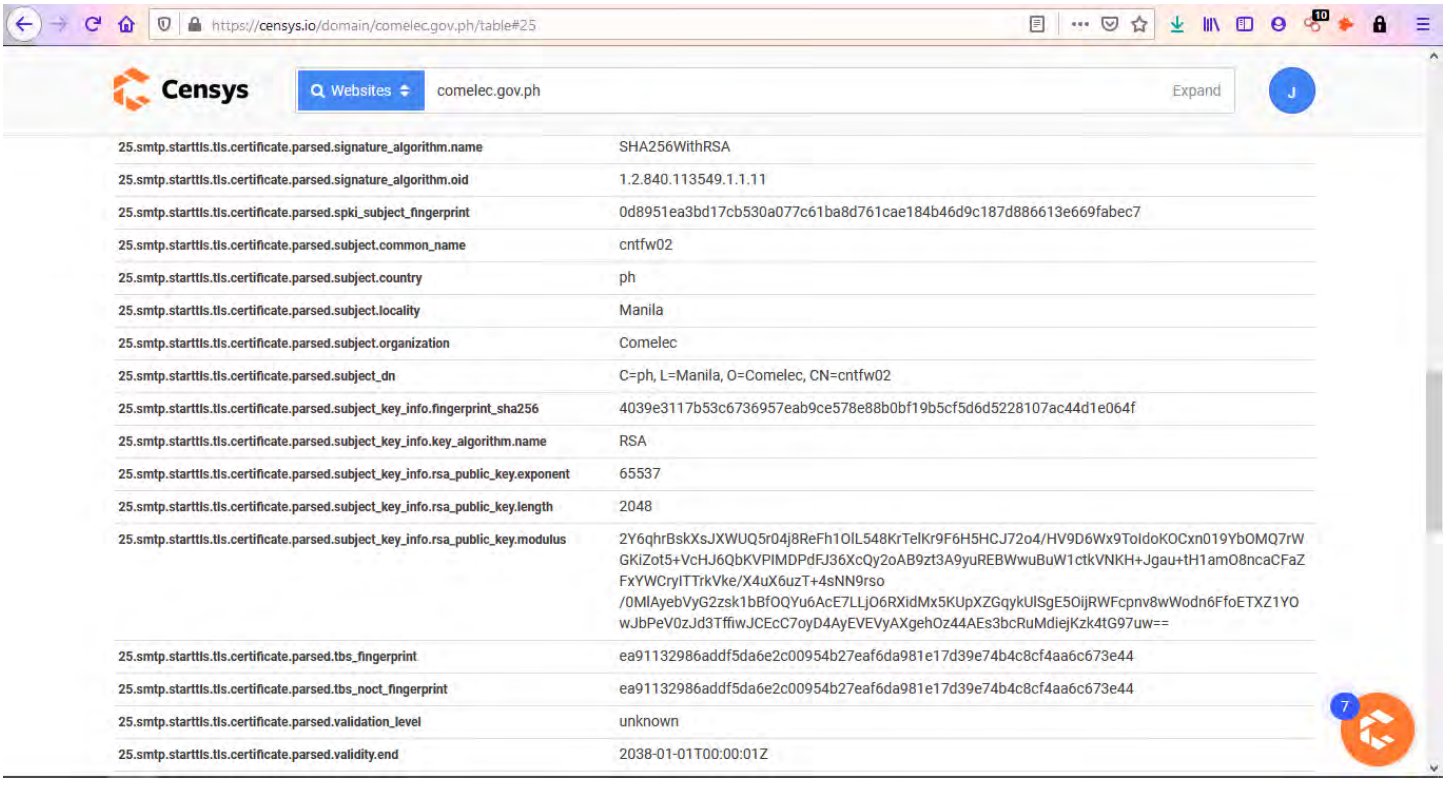

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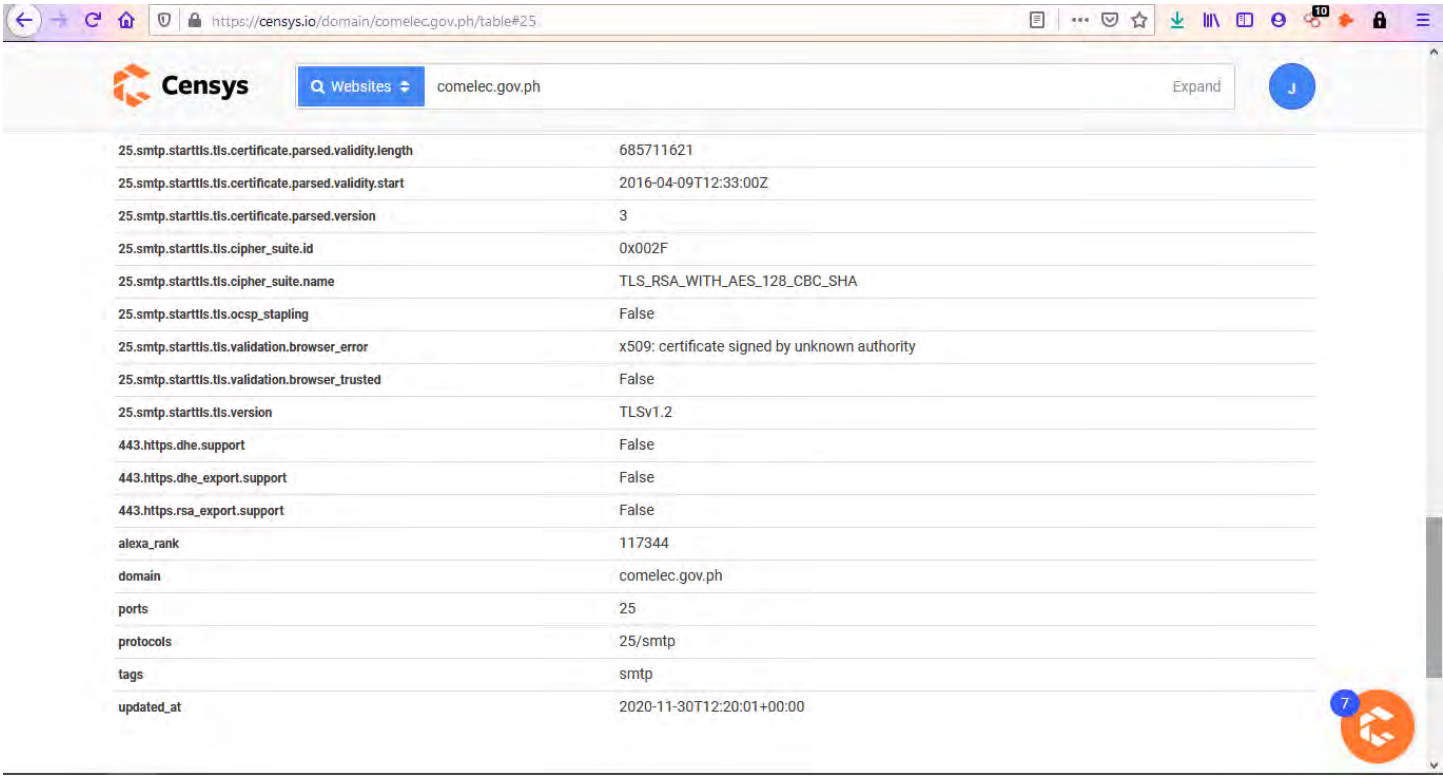
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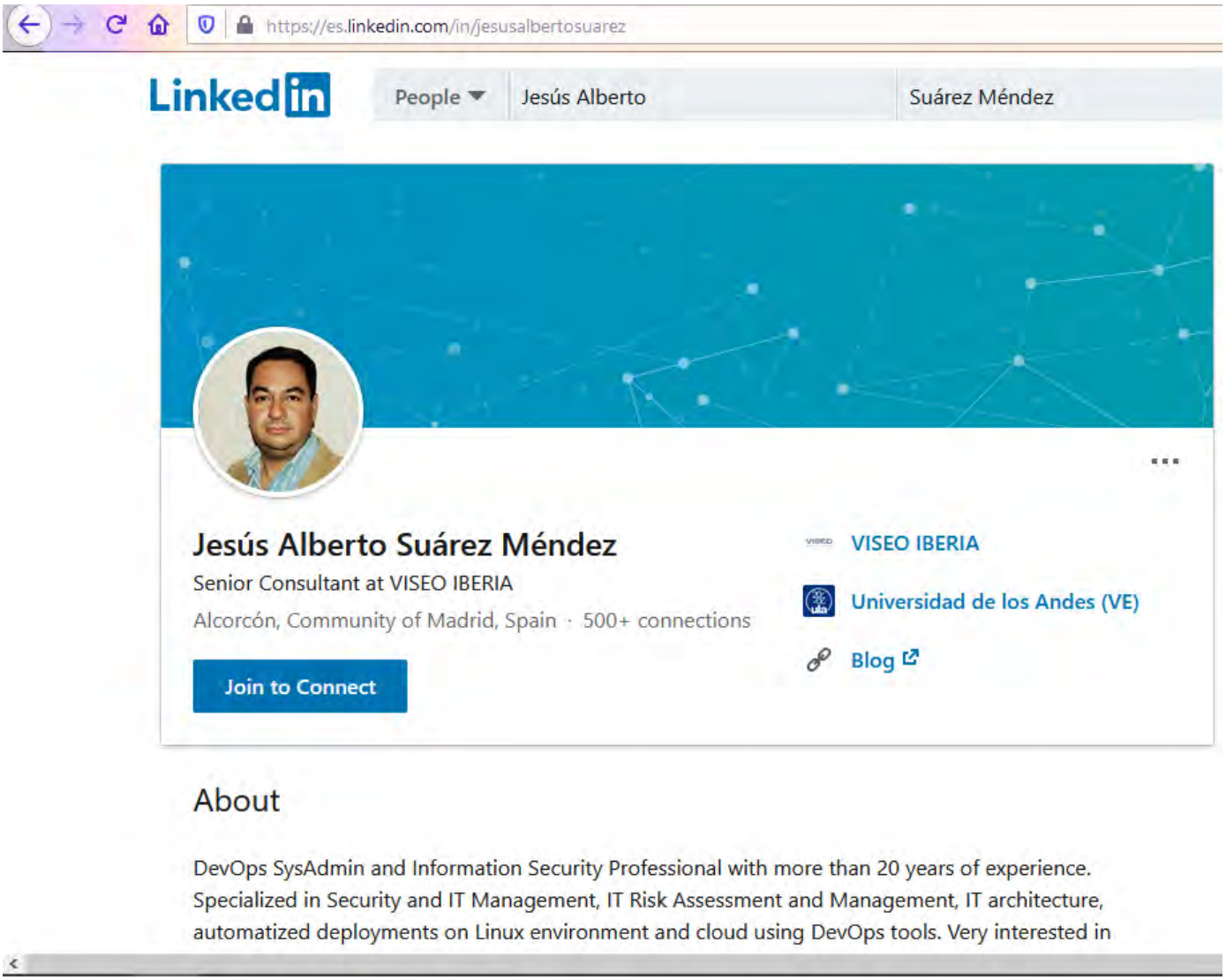
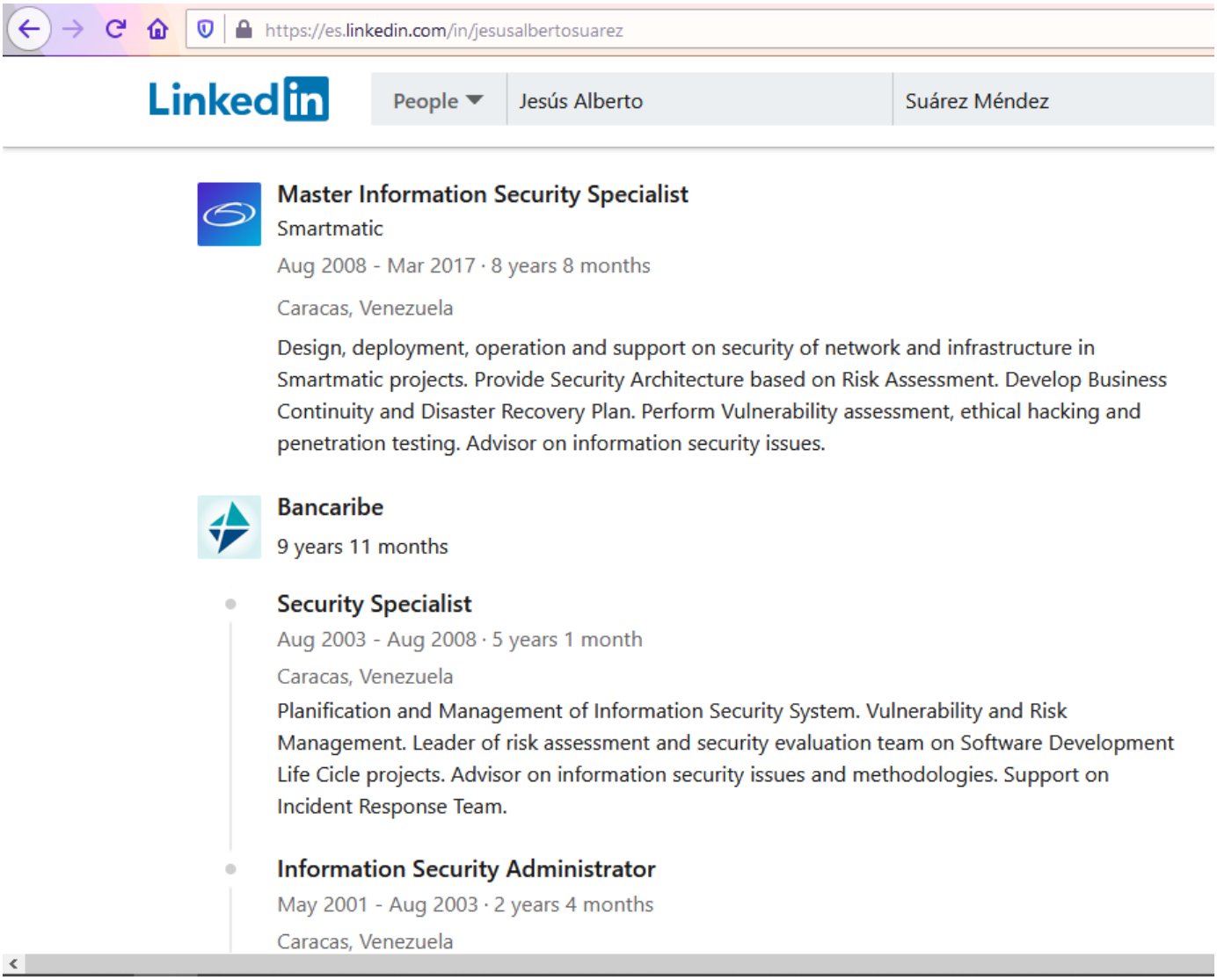

https://es.linkedin.com/in/jesusalbertosuarez
LinkedIn
People
Jesús Alberto
Suárez Méndez
Jesús Alberto Suárez Méndez
Senior Consultant at VISEO IBERIA
Alcorcón, Community of Madrid, Spain · 500+ connections
Join to Connect
VISEO IBERIA
Universidad de los Andes (VE)
Blog
About
DevOps SysAdmin and Information Security Professional with more than 20 years of experience. Specialized in Security and IT Management, IT Risk Assessment and Management, IT architecture, automatized deployments on Linux environment and cloud using DevOps tools. Very interested in



15. As seen from Jesus' LinkedIn profile, he was employed by Smartmatic as their Master Information Security Specialist from August 2008 – March 2017, within the time frame of the registered SSL certificate for Smartmatic and within Venezuela.
16. This evidence shows that Smartmatic was indeed connected to Venezuela as well as shows that their dealings with the Philippine's is still on-going as their website is in their election commission servers with matching and current SSL certificates.

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge. Executed this November 23th, 2020.

EXHIBIT 6

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Arizona State Legislature Holds Public Hearing on 2020 Election.mp4

The scanners to process ballots and upload. So basically it's a signal of a potential anomaly where we would want to go in and do forensic analysis on the ballots that were processed in those batches to analyze the way that these systems work is that you can run votes and run votes and run votes.

And if you get write in ballots or error ballots, it just accumulates them into a batch file. And there may be, you know, 2000, 3000, 4000, [00:00:30] 5000 votes in this batch file. And then the administrator or the tabulator can file and they they send it in and it records those votes in the user's manual. There's, you know, ways that it shows that the administrator can vote that batch, you know, 80 percent, 20 percent, 100 percent. However the the administrator chooses. And that basically is a tool to to allow them to move votes through the system faster. [00:01:00]

So Arizona was was a little bit different. It had a pretty strong rise up right up at the front, the first part of voting day. Whereas the other states and I can show you those have a gradual increase in votes. And this may have been due to the fact that Arizona allowed early counting and tabulation so those batch files could have been dropped in right away.

But this injection spike at eight six [00:01:30] forty eight p.m. and this is adjusted from Zulu time. So this is one hundred and forty three thousand one hundred votes that were injected that was in excess of what the machines could have processed. The real reason that we believe that this spike was a little bit of an anomaly.

And I should show the email that was sent to the Arizona legislature forcer. [00:02:00]

Yes.

So this was an anonymous email that was sent to all members of the Arizona legislature. And it was also sent to DOJ, this individual sent the email, wanted to remain anonymous, but had enough [00:02:30] concern that he sent this to the criminal division at the U.S. Department of Justice. He did not want to be included in the investigation, but the information that they recorded was what we would like the opportunity to investigate on your behalf or a forensics team of your choosing.

That doesn't matter to us, but says that please be advised that Pima County recorder located a 240 Norristown Avenue, Tucson, Arizona, in [00:03:00] Pima County, Arizona, and the Democratic Party added fraud votes in the initial count to the vote by mail totals released at 8:00 p.m. on November 3rd, 2020. So this coincides with what we observed in the data analytics at that date, that that spike. We weren't aware of this until this email, until after the fact. So there were approximately 35000 fraud votes added to each Democratic candidates vote totals. Candidates impacted [00:03:30] include county, state and federal election candidates through the utilization of the automated ballot count machines and Pima County elections, which were not dominion, but they had the same pretty much functionality. My

understanding is that 35000 was embedded into each Democrat vote totals below where the meeting notes in a meeting I was invited to by the Democrat Party in Pima County, Arizona, on September 10th, 20 20 no phones or recording devices were allowed. A presentation was given, including detailed plans to embed [00:04:00] 35000 in a spread configured distribution to each Democrat candidates vote totals. When I ask how in the world that will 35000 votes be kept hidden from being discovered, it was stated that spread distribution will be embedded across the total registered voter range and will not exceed the registered vote count. And the 35000 was determined allowable for Pima County based on our county registered vote count. It was also stated that total voter turnout versus total registered voters [00:04:30] determine how many votes we can embed.

This embedding will auto adjust based on voter turnout. Because the embed votes are distributed sporadically, all embedded votes will not be found if audited because the embeds are in groups of approximately one thousand. This is so county report can declare an oversight issue or error as groups of 1000 is a normal and acceptable error. So if you believe that you're one vote counts for one vote, this is. Maricopa [00:05:00] County embed totals will be substantially higher than Pima due to imbeds being calculated based on the total number of registered voters. When I ask, has this ever been tested and how do we know it works? The response was, yes, this has been tested and has shown significant success in Arizona, judicial retention, elections since 2014, even undetectable, and post audit because no candidate will spend the kind of funds needed to audit and contact voters to verify votes and [00:05:30] the full potential of total registered voters, which is more than 500000 registered voters this year. Our Secretary of state has removed precinct level detail for election night releases so candidates can't see precinct overvotes. This is what I have for the meeting. Just thought I'd report this. Not sure if you can do anything since I was unable to have a recording device in the meeting. Again, we hope this individual would we come forward and issue this as an affidavit. But this [00:06:00] is significant.

And we also noted that the reporting numbers from Pima and Maricopa County merged Election Day votes with right. And votes with absentee ballots. So there's no way to in the publicly available data to pass those votes into into the segments. And I believe we noted in the piece of information that was provided view that Maricopa [00:06:30] County had a one point nine million mail in ballot request. So and those there was a Maricopa County official on videotape that did say that they did not validate the signatures on the right and ballots this year.

So that's a one point nine million vote fraud potential, even if it's zero point one percent of the vote. There's [00:07:00] a lot of room for error.

Can we just review that quickly for one second so we get it right? Ladies and gentlemen, please. I know that you're passionate about this, but there are a lot of people in this world that want to hear this. And if we can't hear the witnesses over remarks, that deprives people of hearing the truth.

So what I take from your testimony, Colonel, is that 35000 votes were embedded [00:07:30] for each Democratic candidate in Pima County. Correct. That is that is the allegation of this email allegation by the gentleman who hasn't given us an affidavit. Correct. That they were distributed based on the voter turnout carefully so they wouldn't look suspicious. That's correct. And that's essentially what the Dominion Smartmatic. And that's that's essentially their modus operandi. Right, that that's there. They don't just put in 10000 [00:08:00] votes. They put it in carefully.

So it's hard to detect. They move the algorithms around to different precincts until they get the, uh, the aggregate number that they want and need. And then they shift the algorithms to, uh, to other precincts.

Did the Democratic candidates who got the benefit of those 35000 false votes include Biden and Harris?

According to this email, it was all local and federal races. [00:08:30]

So if that were true, then the result of the election is totally opposite the one that they're so anxious to certify, correct?

Yes, sir.

Now and again, this is what you said to every Arizona legislature, that now we don't know if the gentleman is telling the truth or not. Correct.

But would it be possible if you had the machines in [00:09:00] Pima County to be able to see if there's evidence of this?

In order to do that, there would have to be a full forensic audit from the the USB that drives the voting to the PCMCIA, CIA cars, to the tabulators, to the rooters.

I'm just asking, could it be done if you if you had the will to do it? Yes, sir. If you wanted to find out if the vote in Pima County were honest or not, wouldn't you do it? Yes, sir. And without doing it, you really have no idea. That's [00:09:30] correct. And the machines you used in in Pima County are different. But are they that much more secure?

These systems, these they all have similar vulnerabilities. Our team focused on Dominion. The are our partner team focused on S.A.S., and they're they're very similar as far as vulnerabilities.

Now, did he say anything that suggests the same thing happened in Maricopa County?

This gentleman [00:10:00] appeared to be a an I.T. specialist in Pima County, so he only wrote allegedly to what he observed.

And do we have any knowledge that anyone from the state of Arizona attempted to look for him?

I believe the legislators, some of the legislators did try to to locate this gentleman.

Anybody from law enforcement.

Not [00:10:30] that I'm aware of, but again, I'm I'm not law enforcement, so I'm not sure, but even if you can't find him, you could determine the validity of this or maybe determine the validity of this by doing a forensic audit. Correct. There's a there's an available scientific tool that would tell you I mean, did Biden get 35000 phony votes?

That's correct, and it's not being utilized, [00:11:00] as far as you know, by the state of Arizona, Pima County, I believe that total vote total was less than less than a million and in Pima County, so it would it would be possible and feasible to do a full audit about audit. And I also was informed that your state, through the the Counterterrorism Information Center and the DPS here in Arizona, [00:11:30] do have the capability to analyze and validate ballots for INQ consistency. So if there were mass produced ballots in Maricopa County that were stuffed, your DPS, I've been informed, has the capability to analyze those ballots for paper consistency and inconsistency. So if there were mass produced ballots, you could determine that on your own.

Excuse me, Colonel. So I think what you're saying, and I'm going to repeat this back to you, [00:12:00] these might be preprinted ballots to simply move through the system. Is that what you're suggesting?

There are indications we have affidavits from Pennsylvania that there were ballots that were prepositioned in a bobtail trailer, a tractor trailer truck, and that these ballots were the thought was if this was a cache, that they could go and grab the amount of ballots they needed and take them to the specific tabulation centers. And [00:12:30] that's an affidavit that's from from our Pennsylvania, where currently a.

So repeat one more time the piece of information then I think people were shocked about because it is hard to believe. Did you say that a Pima County official said that they didn't validate any of the mail in votes?

That was Maricopa Maricopa. They didn't validate the signature. They didn't validate the signatures [00:13:00] on the mail in ballots.

And that's one point nine million. Correct. And do we know who that is? I would have to get the video. Well, could you get it for us? Oh, yes, sir. Now, you have to do it right now before the end of the year.

That would render every one of the one point nine million votes that absolutely never checked for fraud, deceit, mistake, and if their mailman votes, that can't be done. Now, [00:13:30]

they've been separated from the envelope, correct? Would indicate. So those are basically one point nine million votes that are illegal votes or that had the potential to be illegal votes that weren't validated the signatures, what can we can we determine now if any of them are legal or illegal?

If the envelopes were separated from the ballots, there would be no way to tell. A ballot [00:14:00] for candidate, you could still go back and look at the envelopes to validate the signatures, but you wouldn't know what the ballot and that's the reason you're supposed to have an observer when you do that. That is that is part of the chain of custody procedures, I believe, in Arizona.

And when they talk about chain of custody, after they're talking about. Right. Correct. Because a lot of witnesses are going to talk about that . So let's just sum up a few of the things that you also found. Tell us about the green button in Maricopa County [00:14:30] on the machine. And there is one witness that's going to testify that all day she saw election officials constantly pressing the green button when somebody was vot ing.

So what what that was when the voter wasn't sure. And I believe this was also linked to another witness that's going to talk about with the differences in the pens and the sharpies that the Maricopa elections division in early voting, [00:15:00] they specified that only use ballpoint pens for voting. And on Election Day, they specified only use sharpies. And the idea is that as the bleed through on the ballot, as the scanners would cause an error and an error ballot by creating the error ballot, the election officials basically would slide those votes into a batch file that could be adjudicated by the election administrator or the operator. [00:15:30] And the the green button was to say, OK, there's an error, but go ahead and push cast ballot. And it punches that into into an error file that can be adjudicated by the election administrator.

Now, you examined the voter database and your team did say or you examined the voter database, you and your team, those were actually some local Arizona folks that examined that. [00:16:00] So you took that from, I suppose, great data. Oh, I see. OK. He spoke directly to local investigators here. And you have here voter database discrepancies, 6000 voters at least entered into a database with no sex and default date of birth. And they're nonexistent in Lexis Nexis.

Correct. And I believe there will be a witness to to discuss that later this morning.

So [00:16:30] unless those can be those can be discovered, those votes would have to be would have to be eliminated.

Correct. And it was explained to me that the way that happens is that they you can register online for a driver's license at the same time, you can register for voter registration. But the driver's license doesn't require the same information as the voter rolls. And so those kind of go into a queue that the secretary of state would approve for the voter rolls over time. But

[00:17:00] there appear to be 6000 voters there on the voter rolls and the voter database with no sex and a default date of birth.

So whenever they entered zero one zero one, you know, nineteen hundred or whatever that date was, they also discovered over 2000 votes that used a false address and address of a vacant lot. Correct.

You already told us about the 1915 487 mail in votes that [00:17:30] were not verified with regard to signature in Pima County. In Maricopa County. Correct. Also in Pima and Maricopa County, Republican poll watchers were very often forced to stay inside, outside and unable to view the vote process.

Correct.

Is there an estimate of the number of illegal immigrants that voted in in the election? Has anyone done an estimate [00:18:00] of that?

The American Immigration Council suggests that there are about three hundred thousand ineligible voters. And then the, uh, one of the local newspaper reported that there were another three hundred and.

12000, I believe, nine incarcerated felons and other illegal other ineligible voters as any attempt being made to investigate that, to determine if they [00:18:30] can locate a sufficient number of illegal immigrants voting illegally, that would have a bearing on the outcome of the election.

That would really be done by the, you know, the county election.

But has it been done or not? They're going to certify the vote apparently without doing it.

I'm not I'm not aware if it would be you'd have to be an idiot not to think that illegal aliens, immigrants voted. Right. It's very possible. How many are there in [00:19:00] Arizona? Approximately anybody's guess. But what's the lowest number?

Anybody help me with that and for the the local legislatures, five million, four million, I wish we knew, sir. I wish we knew.

Mr. Chairman, what's the lowest number we could represent?

Mr. Chairman, my colleague, Representative Townsend, I have had several discussions [00:19:30] over the past few weeks about that number, and she could provide that to Mr. Giuliani.

Mr. Chairman.

Mr. Chairman, thank you. And Mr. Giuliani, Mayor Giuliani, I. I can't tell you how many people are in this state that are potentially can vote illegally as an illegal alien. But I can tell you that there is a way for them to vote under the federal only voter program, meaning that someone here illegally or a fake [00:20:00] name, anybody that can put together a voter registration card with a fake name or if they're not eligible to vote and are not in the Invid system here in Arizona when they register to vote. If they're not found in the MVD system, the DMV system, they're not there, then they're contacted to see, do you have a birth certificate? You have anything to prove your citizenship. When they don't answer, then their name is relegated to the federal only voter list, which there's 36000 in the state of Arizona, [00:20:30] of people who can't prove their citizenship, can't prove they exist other than when they show up to Election Day. All they have to do is show their bank statements, their title to their car, anything you can reproduce on your own computer with your fake name on there or whatever. And until a bank statement and you get a ballot and you can vote for president and your congressperson and senator. So up to 36000 plus people in Arizona could potentially vote. And I do have the numbers of who [00:21:00] has voted in Maricopa County is 4100 of the true federal only and another 4000 that are out supposedly out of state. So those alone haven't been researched deeply enough to know does that name even exist as a person and are they here? Is that someone here who's here illegally or not? So we don't know upwards of 8000 people in Maricopa County alone who have cast a ballot who weren't able to.

Well, [00:21:30] that's pretty astonishing. So I will say I may be wrong, but let's say there were five million illegal aliens in Arizona. It is it's beyond credulity that a few hundred thousand didn't vote, particularly given Representative Townsend's explanation that there's an encouragement that goes on to have them vote.

Now, every one of those votes would be an illegal [00:22:00] vote. Every one of those votes denies a lawful voter of their franchise just wiped it out. Has there been any attempt to try and investigate that after the election, even on a sample basis, like going to a district where there are a large number of possible illegal aliens and go back, check the names and see where their 5000 were there, 10000 [00:22:30] or 20000? Has there been even an attempt to do that? Sure. None that I'm aware of.

I mean, I think you can I can I speak to that mayor, please? Yes, please.

So we put in two years ago, we put in an election integrity unit in the attorney general's office. And I've been on the phone with them, asking them, what are they going to be doing? How can they look into this? And they told us that they don't have the authority to go out and look for crime. They have to have it presented to [00:23:00] them so they can't go out and do an audit. They can't go out and and actively research this. I also was told the same thing by the Board of Supervisors, that they cannot perform an audit above and beyond what's already been done. That's in statutes. So all we're really left with that I'm aware of is having and as much as I appreciate this forum today and I'm very grateful for you, we need an actual committee hearing like on the chair of the elections committee. If we were to hold an actual committee hearing, we would have subpoena power [00:23:30] to go and look at the machines. So look at these

things, you know, and inspect them and get down to it so we can do an audit. We just need to conduct a committee hearing to give us that subpoena power to be able to do so.

Mr. Julian, so when when this vote is certified, if that's not done, there is no question, any reasonable person's mind that the vote totals contain large numbers of illegal votes. From [00:24:00] people who are not citizens of the United States, the question is how many? And the officials certifying have made no effort to find out the truth, which seems to me gives the state legislature a perfect reason to take over the conduct of this election because it's being conducted irresponsibly and unfairly. Why [00:24:30] and why and why doesn't your state legislature exercise its responsibility under the Constitution for.

Mr Giuliani, that that is the essential question that we are here to ask now any anything else, Colonel, you did a great job.

He's available for any more questions if you are done.

If [00:25:00] you're done, Mr Giuliani. We do have a number of questions from the panel members for you, sir. Good. Yes, sir. Right. The first thing I'd like to ask is you spoke on system capability. And I know that much has been made of the excoriation of the state of Texas on the Dominion equipment, software and all that. Can you provide just a very short comment on what [00:25:30] why they said not only are we not recommending as we're prohibiting the use of this equipment in our state of, in a nutshell, vulnerabilities that were issued, not addressed or not fixed.

There were too many system vulnerabilities.

Ok, and you also referenced a comment about OHS, and I'm struggling. Why did OHS say security for this election was the best? Did it ever been? Do [00:26:00] you have any insight into that?

And my experience in life, there's generally two factors for individual. I mean, it's either competence or commitment. So they were either incompetent or not committed to learning the truth at the senior level, operative level.

And does OHS know about the information that you've shared with us so that you're sharing with us in the process of this? Have you shared that with them [00:26:30] specifically and much more so beyond what you're saying here? You've gone into much greater depth?

Yeah, our ah, we have relationships with our local.

We have relations with our local OHS personnel in Texas, both the the intelligence agencies, um, when I started working on this project in August, I called them up, said, you guys have you guys have got to come out. Look at it. They [00:27:00] did. They spent an initial three hours

going through this data. Uh, at the end of that, one of them said, I think I need to go outside and throw up.

Besides that, did they do anything about it?

They had multiple follow ups. Um, they drove up to our Dallas counterpart team, received over 600 gigabytes [00:27:30] of data that had been accumulated over over time. Our team provided them over 200 gigabytes of confirmatory data. And they analyzed that, um, after they. After they analyzed, there was a scan, a passive scan done, they conducted a limited scan and determined that there were vulnerabilities. They held numerous [00:28:00] meetings with their folks, the cyber, the sister cyber side and the **INR,** which is the intelligence assessment division.

And I'm sorry, could you let the folks who were watching know what this is?

This is the the the agency in DHS is responsible for cyber infrastructure.

Ok, members, any other questions? Representative Besuki, one note that might be important. Members of the elections division [00:28:30] of SECV, I was told, would never attend the meetings or the briefings that were conducted internal to DHS on the material that we had presented. And I'm sorry, who is that that did not participate in the election security division with inside of DHS? OK, thank you. Represent BCG.

Thank you, Mr. Chairman. And thank you, Colonel. I just wanted to make sure I have this correct. So when we're talking about Mr. Crepe Krebs, is that correct? Correct. OK, he stated the [00:29:00] most secure election in history. He stated, we're not connected to the Internet. He stated, no votes leave this country. This is all things you've stated. He stated publicly. So he used his website. Right. So are you willing to say under oath that you have seen the connection to the Internet, you have seen it go off shore to Germany, Frankfurt? Are these things that you have personally seen and can say that is not true?

Our our white hat hackers? [00:29:30] Yes, they have that traffic in the packets, so.

Why would he why would he make that kind of comment? Do you think?

Either not knowing, believing the myth, um, or not wanting.

The truth to be known.

Thank you, Senator. Really? Yes, thank you. Thank you, Mr. Chairman.

Good morning, [00:30:00] Colonel. I've got a couple of questions on the Board of Supervisors during one of their hearings had said that that the techs for equipment that's by the way, the county doesn't own this equipment. It's leased by Dominion and Smartmatic. But is it irregular or is it S.O.P for the tech reps to be there during the election process?

Yeah, that that's been something we observed in Michigan, Pennsylvania, whether [00:30:30] they're full time committee employees or contractors.

There are Dominion employees that are there to run the equipment because the Board of Supervisors hearing they had they'd actually made comments that they actually provided them an office space with in the county for them to handle this stuff. My question is, a couple of weeks ago, they did a test just to show that how the system was secure. And he did it before and then after test. So everybody can see that [00:31:00] the Board of Supervisors and county elections that see this is this is not what you're hearing is false, obviously, or is it during that test is can they find the anomalies in there during that, that basically what I always call a dog and pony show that show up in one of these tests, in a forensic examination?

No, just see.

Come here. Look at this is how we certify the machines and calibrate the machine. Whatever [00:31:30] zeroed out this that obviously these Bhanot anomalies would not be showing up at that moment, correct?

Correct. And it's our understanding that Dominion had a software update, at least in a couple of states. I'm not sure about Maricopa County, but like the day before the election.

And bartone questions. I did have one question, thank you and Colonel, excellent information, you [00:32:00] described Web traffic increased during the elections as opposed to how do you measure the increase?

Um, are you talking just in in in on the Dominion Network? Yes. They just look at volume, volume of data that's moving through the pipes.

And I'm not of our hacker team is that's they're the experts. I just kind of the big picture know how to dance. [00:32:30] But they do they do measure volume traffic. Matter of fact, on the Frankfurt server on Election Day, there was a German cybersecurity professor that was noting that the increase in traffic would you know, he related back to covid and said, you know, we haven't even hit our indoors winter season yet and we've hit the highest traffic. And he specifically noted that one of the reasons was the American elections was an exponential [00:33:00] increase.

I don't think it's an exponential, but I think it went from seven seven point something terabytes a second to 10 terabytes. So it went to a lot of, you know, a pretty big increase.

Not an exponential, though, to my unqualified mind. I don't know exactly what that means, but it sounds big.

The volume jumped up pretty significantly on November 3rd and 4th to that particular server in the pipes. Thank you. Yes, ma'am.

So. So [00:33:30] essentially about 33, 34, 35 percent increase.

I would have to go back and look at the numbers.

But I mean, you're from seven to 10 ballpark. Yeah, that's big. I can't. Yeah. All right. Very good. Senator, go. Do you have any questions? Yeah. Thank you, Mr. Chair.

Colonel, he talking about the NGO system and that was you said Hugo Chavez. [00:34:00] He was a partial owner in that. Now, that's that's the beginning of Dominion.

Um, NGOs was a separate company, but Dominion acquired Sequoia Systems that were spun off of Shugo. And they also acquired Premiere, which was spun off of Diebold, but they all have in common the Common Core of the common code really goes back to Shugo. [00:34:30] And that one or or chart that it put up there kind of showed the licensing agreements that go back and forth between Shugo and Dominion. So it's the the licensing for the for the software in the code.

So it still stems from the studio system. That's correct. So and then you're stating Dominion owns the data.

So does that mean when they see the vote count that they [00:35:00] own, that not the counties, the state, they process it, they retain it, it's in their backup servers?

So they have they have the votes themselves as well, when that's supposed to be property of the state, they've got they've got the data, they've got the voter voter data, voter registrations.

And then you said Dominion sits on the board and Mr. Crap's. Is that right?

That [00:35:30] was on the, uh, the website there. When you say the board, what is the board? It was their Election Security Advisory Council, OK.

Thank you, sir. Thank you, Mr. Chairman.

Let's see, Representative Roberts, you're next. Thank you, Mr. Chairman. Colonel Walton, earlier you were talking about the methods via Internet and internal methods. As far as I [00:36:00] think you use the term, I forgot exactly how you said it. There was basically methods from the Internet and then also internally that there could be manipulation of votes. So my question is, is there. Do you have any knowledge of where the machines in Arizona connected to the Internet at any point in time? And if not, or if so, are there logs internally [00:36:30] in these machines that if we were to be able to subpoena these machines and demand them so they could be examined, could could we see all of those changes that were made?

So when you watch. CBS, CNN, any of the the mainstream media where they got the live updates, that data is passed live. I mean, it's it's as the votes are updated. So it's, [00:37:00] you know, nobody's. Getting on a plane and flying the hard drive to New York. I mean, it's uploaded and it's connected. So it's it is connected to to the Internet and whether it's locally, I mean, they can move votes with the cards, the voter cards, those can be preloaded and laptops with with the software that could be interdicted and upload fake votes is in the allegation from from Pima County, you know, in [00:37:30] batches of a thousand, they can scan blank ballots and then the administrator can allocate that batch of blank ballots to one candidate or another, either in 100 percent or any percentages that they they allocate in the, you know, according to the user's manual.

So to that point, just indulge me just a moment. Would you say that that is what we saw in the 2008 election with Governor Beven, where we actually saw on television [00:38:00] real time the movement of some 500 votes from one candidate to another?

I mean, it was so stark you saw them go down on one and up on the other. And the exact number, would that be a manifestation of what you're talking about?

So the the the working hypothesis from our counterparts on that, because they've worked out and watched it and they actually went to Kentucky to assist the team there. It was it that was a server level interdiction. So they went up to the server, downloaded a case case we [00:38:30] filed, change the votes and reloaded it.

Thank you, Robert.

So just to kind of tack on to what we were just discussing, it's my understanding because there was an article here in Arizona from the Arizona Daily Independent, there was a quote unquote, whistleblower that was talking about issues that they had observed. And so one of the things they were talking about was that the data from the machines was being moved via the hard drive. So what [00:39:00] you just described as far as the real time data being uploaded and all of that stuff, just for the layman, that same type of manipulation, whether you plug into an Ethernet cable or what have you or you're doing it on and a user interface, the same type of malfeasance could could be accomplished in that method as well.

And I think in looking at these systems, we identified, you know, almost a dozen ways that you could [00:39:30] inject or interdict to manipulate votes.

On that note, you said earlier that pretty much all of these machines have vulnerabilities. So is there any system out there that you're aware of that is worth exploring or do we just need to go back to the paper ballot?

There is a he developed a system with some capital infusions. It's a system called [00:40:00] votes votes and it's a block change type system. Again, it's when I first became aware of this, I

went and talked to some friends of mine who were bank presidents. And I said, OK, why can't we apply banking principles? Because if you want anything done right, you go talk to the money people.

That's that's that's supertaster stuff. And he said, oh, yeah, this is it. It's an app.

You can do it as an app with a tie it in with real I.D. and a block chain type solution or, you [00:40:30] know, the next generation solution. But there are systems and I believe the voting system is deployed right now, I believe and I know West Virginia is one that I remember reading on on the website.

Thank you, Senator Allen.

Any questions? Yes, thank you. Thank you, Mr. Chairman. Appreciate it. Thank you.

Here today, I'd like to go back to the Board of Supervisors [00:41:00] letter where they talk about certifying the Maricopa County election. And they have five points that they make for the reason why they call this a reliable election. And my concern is, of course, over the Dominion tabulation equipment. They said it was vetted by Bipartisan Equipment Certification Advisory Committee before the contract was finalized. And as required [00:41:30] by law, the committee tested the functionality and accuracy of tabulation equipment before it was used in any Arizona election. Well, after listening to your testimony, that does not give me any confidence because the machines, of course, can perform very accurately. It is after it's after the fact after the election starts, after the ballot is is starting to be put into the machine that that these problems start arising. So is [00:42:00] that accurate to say that that this does not should not give us confidence about this being a reliable election?

Ma'am, anything that is software based can be manipulated and changed with the click of a button or, you know, you got two USB drives, plug one in and you get one algorithm, you pull it out, you plug another one in, you get a different algorithm. And we also believe on the connectedness, these can be pushed down from the top [00:42:30] and shift it down. So think of it like a casino or a state lotto. Your whoever owns the eye in the sky, you can control the margins, and that's really, I think, what what we're looking at.

Well, certainly from your testimony, I can see that. And I have one more question, if I could, Mr. Chairman.

I believe Senator Braley has it to that point of view. All right. Go ahead. Are you all right? Please proceed.

Well, [00:43:00] I was going to switch down to the one percent early ballots that they did, and I had a question about that. So, Sunny, if you have something to what I said before. Go ahead.

Thank you, Mr. Colonel. So basically what you're saying, for example, since the tax are already there on site during this process. So if a machine jams up and naturally they call the tech over there to go fix the unjam, they can literally without anybody noticing because they're the techie people, they can stick a thumb drive in there and upload, change the [00:43:30] numbers, manipulate whatever.

We there was an affidavit in in Pennsylvania from I think it was last week, a gentleman supervisor had a Ziploc bags full of USB drives, and they noted that he was inserting the USB drives into the machines at a much higher rate than would be necessary or that they had seen in the past. So, yes, you know, it's [00:44:00] OK.

So now I have it to that point. Forgive me, but what I think you're saying is that they have just created an electronic footprint. Either in the days to download that you're seeing real time that you'd be seeing some kind of a spike, or is there something that's captured on the machine that it's itself like a memory card that is resonant on the machine? Not that is actually talking to the hard [00:44:30] drive.

The the machines, for the most part at the voting machines are just run by, you know, removeable software and data cards to the cards that actually hold the votes. The the backup servers is really where the true story would would reside. As far as the upload download, the change, the the er warnings for the mismatch errors.

So would you be able to show [00:45:00] with specificity. A machine in Maricopa County going all the way across the pond. Inserting data into a server or would it be an aggregate of all the machines that were in Maricopa County, for example? Is it by individual tabulator or is it by the server here that collects? Can you help me understand that piece? Let me I'll [00:45:30] put that probably goes back to your headache graph.

I'm thinking schematic that shows.

The reason I ask the question is we're still looking for evidence and if that is in the evidence package, that's certainly something that we would want to know about. If we don't have it today, something that could be forwarded to the body [00:46:00] would be great.

Uh, let me see if I can make this bigger.

So this is the many voting, the high level, it's a block diagram of how everything's connected and I can print this off and provide it to you or whoever would do your your [00:46:30] audits. But it's kind of hard to.

Kind of hard to see when it's blown up, but you've got the ballot boxes, ballots taken out. This tracks all the way through the image gas central to ballot images. And this is really what's voted. The ballots are scanned into these image casters and there's an electronic image created. It goes into results files and then it goes into validation, adjudication, auditing,

reporting and publishing and then to democracy [00:47:00] suite in Ms. The Democracy Suite servers, the database servers, the document management servers, and kind of shows you how this all goes out to to the world from from this whole system, election data. You know, this is kind of the top feed to all these servers.

But this is really it's it's a network. I mean, it's a computer. Company itself is not networked, it has to be.

So let me reframe the question, we probably [00:47:30] would not be able to identify any specific tabulation machine showing up on the server because it's all aggregated.

Yeah, it's it's these tabulation machines go through this process, but the results files.

So if you work it backwards from the server, you would be able to go back to a ballot image.

An electronic ballot image. All right, thank you, Senator Allen. Yes, no question. [00:48:00]

Thank you, Mr. Chairman. The other thing in this letter by the Board of Supervisors was they commented again of what made this a reliable election, that the Election Day ballots from two percent of vote centers and one percent of early ballots as required by Arizona law. And it yielded a 100 percent match to the results produced by the tabulation equipment. So. That should give us, you [00:48:30] know, and all the counties do this, they do this hand count, this little audit of a small percent of the votes to see how it matches up to the machine. So could you explain how we shouldn't have confidence in that particular? How can they how can they make that match up to the machine then when they just arbitrarily pick out one percent? If they're if there's vote dumps that are happening and things that are happening throughout the process, I would just say [00:49:00] it's it's.

So we learned a long time ago, garbage in, garbage out. If you've got one point nine million votes that aren't, signatures are verified and they're just reading bubbled in, you know, ballot, then, yes, the ballot cards, when they run 1000 ballot cards through, are going to come out with a thousand so that, you know, that small batch would represent what those particular ballots say.

But there is again, there's [00:49:30] that's why there's a chain of custody requirements. That's one of the verification requirements at each step along the way. So if each one of those if one of those steps is broken, then the validity of the whole process is is in question. You know, you just don't know.

Right. Thank you. I think we're we're definitely, sir, in a new day when it comes to what is taking place across this country with voting. And we're going to have to probably really look at that. Thank you. Representative Townsend, do you have any questions? Thank you, Mr. [00:50:00] Chairman.

Colonel, I just have a quick follow up to some of the stuff we've been talking about as far as the security of the machines themselves. And as we know, like whether or not something happened or didn't happen, I'm most concerned with voter confidence. And if there's all these holes, then we're going to really deflate or collapse voter confidence. So I would like you to reassure me on one particular item in the tabulation room at the Mixtec here in Phoenix. In years past, [00:50:30] it was you had to have a special badge and only people that were certified to be in that room with the machines in the tabulation and all that were allowed in there this year. I was told yesterday we had teams of 25 adjudicators in that room, in the tabulation room with those machines. Would it have been possible for someone in that scenario to wander over to the machine and have a conversation and put in this thumb drive you're talking about? Or is it deeper than that or [00:51:00] something that's happened from remotely? Or how secure are these machines? Because we know that there's no chain of custody on the hard drives and on, you know, the machines we saw in a video left alone for almost a week in one of the voting centers, untended, unsecure. You know, how could somebody, a regular person with nefarious intentions, walk up and change this whole election by putting in a thumb drive and changing an algorithm? Is that something that could have happened?

Or we don't have to worry about that either. [00:51:30]

An individual that has knowledge of the systems and have to. You know, operate in the system could have an impact again from the server, but they could they could be sitting in Nigeria and, you know, as long as they got an Internet connection, they could get to that particular server. If they were had access to, you know, the data from the malware that's on the server, they could get the login and password from [00:52:00] a Pima County operator or a Maricopa County operator. So there are just so many places that they can be interdicted or penetrated. There's just there's just too many to. You know, to describe it, there's a lot of a lot of ways it could be interdicted, Mr. Chair and Colonel.

So I'm hearing you say is I can't be confident that a volunteer of a political party that, you know, the [00:52:30] entire recorder's office and the elections director could everyone could have been on the up and up. And this is the most secure election ever. But if one random volunteer with the right information were to be in the tabulation room, could have been breached the security of the of the machine. Correct. And therefore, we cannot stand here and say we are confident with that kind of access to these machines, machines left in buildings for a week. We cannot say with certainty that this is [00:53:00] a secure election and we have 100 percent confidence that nothing went wrong.

And you just brought up that the chain of custody issue. And that's that's a critical vulnerability path so that the chain of custody was broken, then you really you really don't know. You can't you can't say with confidence that it was a fair.

Thank you, Mr. Chair. And, Colonel, last point, if you were in charge, would you want a recount? Would you want an audit? Would you want a do over? [00:53:30] What would you do?

A forensic audit will tell you what was processed. But to the mayor's point earlier, as soon as those mail in ballots, which were one point nine million requested and I think.

A good a good roughly return, if those signatures weren't verified, then, you know, you can count the same things over and over again. But, you know, it's you're starting with flawed. Results already [00:54:00] an audit, a full audit would be able to tell you if those were, you know, bad, bad ballots or preprinted ballots, you know, you could do a full forensic audit on the actual ballots. But once the envelopes are separated from the ballot on that many mail in ballots, it's it's it's almost it's almost impossible to go back without doing a forensic analysis of each ballot paper.

Ok, and Mr. Sharon, Colonel, do you have any [00:54:30] information about potential shipments of ballots to Arizona and other places from North Korea or something like do you have any information like that?

There were several affidavits that were provided to the legal teams. I don't have those affidavits with me now, but there were. Affidavits and suggestions, and I think more of those are in it processed to to obtain more affidavits on those processes.

Mr. Mayor, thank you. Can [00:55:00] you tell us whether or not you have got the I don't know if you heard the question or do you have affidavits that counterfeit ballots were somehow shipped into Arizona?

All right, thank you, Representative Cook, any questions? Yes, yes, Mr. Chairman, thank you.

And I'll make it brief, but I do have some stuff that I'd like to say is that, Colonel, when I ran for office in 2016, I got a phone call one day that one of our county recorder's office [00:55:30] information had been breached and all of the voter information was for sale on the Dark Web.

That was my first instance of being as a becoming representative about this hacking and computer stuff and was out there. I just went through my third election as the top vote getter.

And I would like to say that I continuously have been tried to be hacked on my personal or ledger account or whatever is out there on the Internet. I later learned from people, [00:56:00] Colonel, that the reason why this is done out of the country and according to your graph, is that it is harder for us to track these people down and prosecute them when these computer anomalies and things happen from outside the country, inside our country and state. Would that be true?

We would not have the legal jurisdiction to go seize or search a server outside of the U.S..

Thank you, [00:56:30] Colonel. And would this make sense that if you had a simple phone number and then you went on the Internet and then researched that phone number of where you received a text message and it was from Ukraine, would that not be a red flag that your

phone or information was trying to be attacked or infiltrated? Correct. It would be OK. So moving on to that. Colonel, what I've noticed is that about these voting machines and these plugged [00:57:00] in USB drives when in fact, when we watch across this great country of ours, in many states, we have very few amount of counties compared to other states. In here, you've got to target two counties if you notice that rule Arizona and rule Arizona legislators are up here and we're ready to go to work today. Our constituents demand it and we demand it as their representatives to work for them to solve these problems. But [00:57:30] but what happens, Colonel, is that the same thing when we look at this country on a map and counties that vote for the President Trump versus counties that don't, it's the population of the masses. So I'm going to get to my point about Maricopa and Pima County. We all in Arizona, we call it the great state of Maricopa because Maricopa County has more legislators at the legislature than rule Arizona does. If we [00:58:00] add all of ours up, we still don't have the numbers to be an equal voice at the state legislature. But we have to work harder, which we can't. So if we look at Maricopa and Pima County, if I was going to now we're going to get down to vote centers, OK, targeted vote centers, Colonel, I wouldn't have to have a USB drive or to infiltrate every voting machine in every vote center in Maricopa in Pima County. Would I or would I just need to target [00:58:30] those individual voting centers in those two massive counties in the state to do what you are saying, to take votes and shift them over in those numbers? What do you understand what I'm asking?

I've seen analysis that boil down national elections to zip codes.

Oh, to just zip codes.

Mr. Chairman, I get fired up when I [00:59:00] get into this stuff because I read and hear everything that that these people have said, it has happened to me. And I just thank you again for your information, confirmation. But when I go back to the 2016 hacking, what I see is a pattern, Colonel, is that there is a plan, there is a larger plan, and it's not a conspiracy theory. And I'm not nuts. But if I wanted to engage in a plan in 2016, Colonel, would I not start hacking and getting the voter databases and information [00:59:30] projecting of why do we have what is the number two thousand or twelve hundred voters, I believe in Maricopa County registered that I believe have voted at a vacant lot. I mean, if I really wanted to go down the road, isn't that the way you would target it?

Yeah.

And again, it's you can interdict this in multiple levels and multiple methods. And I think that's what's happened.

It's a there's so much out there. And it's [01:00:00] it's to your point, you know, you're not a conspiracy theorist, but it's really hard. They've made it so hard for the public to understand it. And we call that in deception operations, ambiguity increasing.

Thank you, Mr. Chairman. Colonel, I have the last question is, and what concerns me over what I've read and seen is that could the data that you say could be traced back only to the scan ballot at this point? So it can't go back to the individual voting machines? Could [01:00:30] that be Bletch Bitz or whatever that stuff is? Could that be could could the tracks as long the longer we take to actually get the machines and check these things out, could there be time to erase that information and cover up? If there was a crime or.

Misdeal, there could be another batch. Files will go back to the precinct and the machines on the tapes so you can track it all the way back to the machines in the precincts by the tapes. And it's what we showed in the Antrim County, those [01:01:00] those printouts on the on the precinct level so that you can go back.

But really, all that's necessary, there's not really a glitch, but it's just pulling the USB drive out of the out of the voting machine and the tabulators.

So the the machines themselves, other than the servers, really don't have a lot of resident information. The tabulation machines here, they can have some stored images. But the [01:01:30] you know, where they you retain these you know, the federal election requirements require and I can't remember the U.S. code title. Forty six rings a bell, but the 22 month retention of federal elections records, it would be done in those the ballot images and, you know, electronic backups. So the data is retained. And, you know, you can do forensics on it as long as it's the actual the actual servers [01:02:00] and the actual machines.

Colonel, thank you for your time, your patriotism. And, Mr. Chairman, I yield any remaining time I may have.

Thank you. I believe Senator Going has one more question, and I just need to remind the panel time grows short . I think Mayor Giuliani has significant more witnesses and evidence that he'd like to have heard.

Thank you, Mr. Chairman. Colonel, I just want to get on come back to the Dominion situation [01:02:30] here where the where the backup servers. I'm sorry, where are the backup servers?

I am not exactly sure I can try to get that information provided to you and this company.

I think the mayor said they were a foreign company. The Canadian is out.

So we know we know there are sites in Toronto. Their offices are in Canada. So we know that we know that there were data there. [01:03:00] They also have servers in Serbia and other other places. But as far as knowing for sure where the data from Maricopa County went and resides, we don't know that. But they've got backup servers.

So an audit because we talked about that a little earlier. First off, would that find where the where the server is and where the information would be traced, tracing the flow of [01:03:30] the information? Yes, sir. The audit would do that. Right.

And but it also tell us whether or not it's true or not, that the one point nine million signatures were or were not verified. Right. So we would have an absolute no.

Colonel, could you get a little bit closer to the microphone? I'm getting a lot of people are saying I can't hear the guy talk.

Thank you to the adjudication of the signatures on the the ballots that would [01:04:00] be totally separate, wouldn't be necessarily a digital forensic process. But that audit would be, you know, have to be conducted at the county level and all those on all the envelopes.

So if we did an audit, we were able to do that. Tell me the things that could come out of that.

Well, if the signatures on the envelopes were invalid, you could necessarily [01:04:30] get a percentage of the votes that would be disqualified. But again, when when the ballots are separated from the envelopes, you know, you can't tell which ballot came from which envelope. So really, all that would tell you as a percentage of that, the percentage of those mailing or absentee ballots that were not legitimate.

So what would the what could the server tell us?

The server would basically tell [01:05:00] you all of the electronics of once the ballots are processed, the batches and the the images that that will tell you where all those goes. And it'll also tell you any changes to the software, any updates, algorithms that were in place. And that's all present at the at the code level. And that's really what these companies have balked at, providing access to the code because they said that that's their intellectual property and it's they've been successful at preventing folks from [01:05:30] analyzing the code.

So they're they're utilizing their their system for our elections.

But it's their property. And in counties and states have signed up for that.

Thank you, Senator Berling, final question. Yes, Mr. Chairman. And Colonel, just for clarity, not only can these machines be manipulated with a thumb drive and everything else, it [01:06:00] can be changed remotely outside the voting center.

That's that's correct. And there are references in the user's manual that show how they get to do that. Thank you, Mayor Giuliani.

Anything else with your witness, sir? No, I think all right. I think we covered everything. Thank you, sir. Do you have a next witness? I'm looking at the clock, and I know that we've got a time management issue with one of our witnesses.

Yes, I think we should call and a fourth, OK, because she has an [01:06:30] appointment and we'll call her first. OK, and then after that, Senator Colbeck, we need to make sure that we have him at the airport by one o'clock. All right.

Thank you very much, Anna Horth. OK, OK. This is an author and a horse and a horse.

Anna [01:07:00] Horth. We'll check on her. And let's go back to. All right, Senator Colbeck.

Just so folks know that we've got folks in a separate room just so that we can bring them out and have some kind of order here, Senator Colbeck.

Thank [01:07:30] you, sir, if you would, could you please introduce yourself?

Yes, my name is on Michigan, former Michigan State Senator Patrick Holbeck, and appreciate the opportunity to speak with you. Mr. Chairman, the esteemed panel members for eight years, I was sitting on the other side of this testimony. I was where you were sitting. And hopefully I'll be able to provide that kind of a unique perspective and want to look out for in this election.

If you'll excuse me, I'm going to try to get my presentation up here and get that going. Kick [01:08:00] it up.

The technology is great until you want to use it, it's more difficult when you can't see.

Nice job on the resolution of the screen here. By the. OK, and just for background purposes, as [01:08:30] we're looking for to recognize my USB flash drive.

Here we go. Much better.

And [01:09:00] voila. OK, well, we still don't have it on the screen yet. There we go. All right, and if you if you would please put it in play mode so we can see. Right. Please proceed.

All right. Thank you very much. It was a perfect compliment, I think, to Colonel [01:09:30] Waldron's testimony here, because I kind of got a unique experience regarding this whole election process. First of all, I am a former Michigan state senator. I served on the Senate, Michigan Senate Elections and Government Reform Committee. I took those duties very seriously to the point of diagramming out all of our election process, some pretty good understanding of how elections are supposed to work from a book perspective. Um, but another perspective that's useful to this discussion [01:10:00] is that something that I couldn't do while I was running for office is actually I served as a poll challenger in Detroit at the ADA County Board for the Election Day from five p.m. through the next day into the evening of the

following day on November 4th. So I was actually at the Detroit the county boards. He may have heard about all the things that happened there on the cardboard up on the windows. Yes, I was there. I was one of the people blocked from returning back into the Detroit Avy County Board [01:10:30] so I could resume my duties as poll challenger as a training our next batch of poll challengers as to what they need to look out for and what we had been seeing.

And coincidentally, by the way, that was when they were counting the military ballots, which just so you guys know, that's when they duplicate the ballots because the military ballots come out in a format that's different from those that can be read by these tabulators. And if you don't have a Republican and a Democrat watching that, it's right for malfeasance, [01:11:00] if you will. And that's exactly what happened. So along with that background, I'm actually a certified Microsoft small business specialist. In addition to being that I actually did cabling design the International Space Station. So I have no problem working with technology. So it's kind of a unique background. And, um, and just so happened that I was right there in the Detroit area accounting board on the night of the election. So I'm going to focus in on just highlight three areas of the diagram that Colonel Walton just showed you, because that's [01:11:30] important for everybody.

Understand, for people on the ground. These are the key piece of technology you talked about. Image can't control. That's the equipment that I witnessed out of the Detroit Accounting Board. It features a high speed scanner and a workstation associated with that. These were networked in turn with adjudicator machines, which anything that was rejected by the high speed scanner would go over to this adjudicator machine that was part of the absentee ballot counting suite, if you will, for Dominion.

In addition, they [01:12:00] had something that was called Local Data Center, where all the election officials would work from a central computer workstation with a series of laptops, et cetera, that that were connected to the rest of these computers won't get involved a little bit later here. But that image cast central area is one of the key pieces of our key systems, if you will, that are on the ground for the absentee ballots. In particular, if you're at an in-person polling location, you'll have the image cast precinct set [01:12:30] up. And that's on the right hand side of this diagram. Up on the top is kind of the local data center and the kind of the eye in the sky, the overarching look at what's going on with the election. And we'll get into that a little bit more detail later. And as you guys know, Dominion Voting Systems was used here in Arizona, in Maricopa County, and they were using some of the same equipment we were just talking about regarding cast precinct and also Mimecast Central that can do the scanner there. So [01:13:00] I. I said that I was in your position before. Right. So if I were in your position, these are kind of some of the key questions I would be asking in regards to all that we're hearing about this testimony regarding this election. No one was a chain of custody for the election. Artifacts broken up. Thank you very much, Senator elect Townsend, for bringing that up. That is a key term for everybody to understand. Chain of custody. And we're going over overrule diagram specifically where some of my comments are going to focus in on in that chain of custody.

All [01:13:30] right. And the key is to hit the right area.

All right. And was there evidence of election fraud? There can be fraud that happens that may not even violate statute, but you know that the intent is there to defraud the election and they take advantage of loopholes that we had in the law. For example, in Detroit, we know that there was an ability for people to vote both at the poll and absentee. So some people's votes were more important than others. Was there evidence that election statutes were violated? Yeah, [01:14:00] in Michigan, we have evidence to suggest that's exactly what happened. Was there evidence of foreign agents with the ability to manipulate the election data and third parties getting access to that data? We believe that we've seen evidence of that as well. But the other thing I need to ask is. Well, all right. What are we going to do about it if we see all this happening and what options do you have as legislators? All right, so let's go to this chain of custody and I could go into [01:14:30] a lot more detail on this chain of custody and all, but I'd like to simplify it into just four key artifacts, qualified voter file, i.e., who's registered to go off and vote in your st at e. Number two poll. But that's a precinct specific extract of the data from your qualified voter file. The ballot itself, pretty important artifact, right? But then in the spirit of the old Stalin quote, it's not he who votes that counts. It's the one who counts the vote that counts. You got to look at the ballot tabulator and how the votes [01:15:00] are tallied. And that was my focus when I went to the Detroit Avy County Board. I was one of those folks that was not specifically assigned to any particular county and station. I was looking at the big picture and we'll go over what I found here in a sec.

First of all, everybody hopefully has seen the idea that there's been a lot of voter anomalies. This is our first clue that something's happened. When you're on the ground, you can see all the things that are happening, you know, onesie, toussie style. He say, hey, wait a minute, that that envelope with bacteria or you [01:15:30] can see that they adjudicated something in favor of the Democrats or the Republican or something like that. That's easy to go off and see, but it's very difficult to see the big picture that comes out afterwards with experts like Colonel Waldron. And in this case, we first started seeing issues when people were talking about benefits, law being violated. That's actually using criminal court cases to determine whether or not fraud existed. So that was a first indicator that some of the analysis we've seen flagged that that's not proof. I mean, it's getting them. It's telling you that it's [01:16:00] you've got something off here that you got to investigate. Then we've seen linear regression analyses and there's a lot of noise. And but it seemed to indicate a pattern of vote distribution that indicates some data manipulation. Then most recently, we have actually seen folks who believe that they've identified specifically what the algorithm that was used to switch some of the data. So some other things that were kind of odd and you don't see while you're necessarily on the ground, but in retrospect, you'll be able to get access [01:16:30] to it. This is actually documented as part of the affidavit that was submitted in a lawsuit that's put in Michigan by Sidney Pollen and in other states. And you guys have voted quite a bit. You guys are most of you already served in office. Right. Do you remember any of your votes being tabulated with a decimal point on the back of them?

I, I don't remember any of my eight year serving in the Michigan Senate, anything, any time where I actually had a decimal point after a vote tally.

So that would suggest that a partial person was voting.

Well, [01:17:00] sometimes, you know, there are people that tried to make you feel like a partial person when you serve. But no, that wasn't the case here. And so you guys have probably all heard about what I call the little switch, the Antrim County. We've heard testimony on that already today.

And some of the things that could possibly happen, getting into the possible technical reasons for that is maybe have an internal ballot bar, code switch on it where they have one bar code style or ballot style that's flagged. [01:17:30] And then when they associate a specific scan of a vote, they flip it over to a different bar code. So that may have the voters or the the candidates flipped in it. Something else is something called a rank rank choice voting algorithm. That's one of the modules inside of the Dominion Suite. And this is where you might see evidence of this is the only place that I know of. At least I can start putting infractions, fractions into your vote, because if you meet a certain vote threshold, it'll go off and switch that. It'll it'll [01:18:00] prioritize the votes for the second choice, if you will, and give them 10 percent of the first choice of whoever of the ten percent or whatever number you specify.

It'll actually get into the point of allocating percentage of the votes to one of the candidates. Another thing is data manipulation via remote access. And another thing to look at as you guys investigate what happened here didn't happen inside Arizona is take a look at your public accuracy test.

And there are people that this [01:18:30] is usually in Michigan, at least it's specified what the standards are for that by the secretary of state.

And if you don't run all the possible permutations of votes that might happen on a given ballot, you may leave gaps that can be exploited. And I would submit we're going to show one of the examples of where we believe one of those gaps is that you could maybe flip a vote from a certain candidate to a write in candidate and preload this with. Right. Can't write in candidates. And we think we have evidence [01:19:00] of that happening in Detroit.

So if you want to go off and check into this, one of the things you're going to need to do so. Yeah, yep. As look into a compact flash cards, event logs and paper vote tallies. So these are tabulated data card.

That's where the compact where that's where a lot of the election data would be wanted to look at. It's going to be located. So please make sure you get your hands on that. Then we talk about the big switch. Am I going to get a. A detail on this, suffice it to say, in Michigan, you know, our current vote [01:19:30] deficit for President Trump is being projected as 154 thousand one hundred eighty eight votes.

We got more than that that we can tie back to potential fraud. So in state of Michigan, I know a lot of people have written us off in this context. But I tell you, Michigan is in play because of what the level of fraud we've seen. So here's what our Detroit 80 county board looked like and essentially it was set up.

So there's 503 precincts in the city of Detroit. They put in 134. These image cast Central Station to all the way around. That's where the [01:20:00] poll books were located. And there are about two to five precincts per image cast, central unit. We had five poll workers per station. Overall, I would submit there's probably less than 10 Republican workers at the whole night sitting at those. And by law, we're supposed to have a Republican, a Democrat adjudicating ballot. Here's what I said, that I was looking at a big picture when I got in there. I was looking at the big picture. First question I asked was one of these chief election officials. His [01:20:30] name was Chris Thomas. I said who I worked with when I was serving in the Senate. I said, what? How are you going to protect the chain of custody around the tallies of the individual tabulators and and your report outs to the county and all points beyond that. So we talked about the idea of just getting reported out to New York Times. You can see it on CNN and all that kind of stuff. Show me how that chain of custody is protected. And this election official who is state elections director of Michigan for two decades [01:21:00] said, I don't know. Now, this is kind of important data point, don't you think so?

And I would imagine on the rest of the night I said, you know what? He finally acquiesced and said, Tell you what, I'll let you know.

And then finally, the last statement he had on it, because I was pretty persistent, was saying, you know, what am I going to tell you until after tomorrow? And I go, well, you know, the primary duty of a poll challenger is to make sure that the election process are executed effectively and efficiently and accurately and transparent manner. [01:21:30] He did not allow that to be done. Now I can see physical transfer data. I can watch when somebody moves a flash drive from a tabulator to a central station and I can go off and verify vote counts at that hand. I can't get inside wires to go off and trace electrons through the Internet cables that I saw a position. And that's the next point I want to highlight. And this is something important for you to understand. Here's how these were connected. A lot of these election officials will square up and down that none of these machines are connected to the Internet. And that's [01:22:00] based on propaganda being pushed by companies like Dominion Voting Systems. They will say that they have an air gap. They will say that they have firewalls in place. They have encryption in place. And I hope to demonstrate here that that doesn't mean a heck of a lot. And any hacker worth their salt knows that if one computer's connected the Internet, they're all connected to the Internet firewall or not. And so here's a diagram that I put together based on and this is literally midnight the next night before I forgot everything. I want to make sure I document everything that was there. [01:22:30]

I went through and physically traced all the cables from all the tabulators and adjudicators to the local data center at the big at the top. So it's that local data center that we have election

officials that did confirm that that was connected to the Internet, but they said none of the tabulated or anything else were connected to the Internet. I can show physical connection between those tabulator tabulator machines, Internet cables to routers or magnets, which is tough to tell from 12 feet away.

But [01:23:00] it's a router type of device connected to all the other devices on this network. And as Colonel Walburn pointed out, it's designed to work as a network. And so all these tabulators were connected to one another, all the adjudicated or connected to one another. The local data center that they acknowledged was connected to the Internet were connected to these tabulators and adjudicators. So and so if that wasn't enough, we went around to all the different computers and observed on the bottom right hand corner of all the computers. I can't do this because it defaults in a certain [01:23:30] slide presentation mode. If you have laptops that are window enabled and you're connected to the Internet, you roll over that and you've got a Windows 10 device, roll your mouse cursor over on the bottom right hand corner, you'll see a land Internet connection icon and you roll over, it's going to pop up and say connected to the Internet.

They wouldn't do that test for me to go off and demonstrate that. Yeah. So, guys, it's serious stuff. And I also want to highlight I took a snapshot of what the Wi-Fi connections were at that point in time. And one of them is called Avy, Underscore, [01:24:00] Connect.

I wonder what that was connecting part of their spec that they have in the contract with the state of Michigan that are supposed to be connected to Ethernet cables, and they even have cellular based modems that they can plug in to a lot of these items to transfer the data over the Internet. They've got to Dominion Tech Support Manual that's connected to the Internet. There's no denying that this was network connected. And by the way, even if they say a. Wasn't connected to the Internet in the Detroit County, where I can [01:24:30] trace a physical connection that says that the system that was used to tabulate 170, 2000 plus votes in the state of Michigan with all network together. So even if it wasn't some guy sitting in an ice shanty in Antarctica connected to the Internet, that one guy in the city of Detroit that had access to all that information could modify the votes locally there.

So why does it matter? Well, we already talked about these man in the middle attacks we talked about in the City Powell [01:25:00] lawsuit that's out there. There's additional exhibits that highlight that these passwords are available on the Internet. And when you have a man in the middle attack, you think you're getting the right data. You think you're talking to the right person. But, yeah, you're talking to an in-between guy. We also got nasty left a key under the mat. What I mean by that, all the specs on what files to look for, what their file size is, everything else, or the voting system is left up on the Internet for everybody to go off into. I went there myself. I could download this file, took that extract from it. You can find out everything [01:25:30] you need to go off, manipulators, a hacker.

And we've got Challenger observations on the ground that attest to each and every one of these. And I just want to highlight one of them, the poll worker observation that we actually he

actually observed the fact that the printout of the tape said that there were a write in candidates on it. Yet when you actually hear your test in his affidavit that there were no write in ballots submitted, Senator Colbeck, we're out of time.

Yeah.

So thank you very much [01:26:00] for your testimony. We also appreciate the slide deck that you presented. And if you are willing, would you please distribute it that to the members of this panel? And I'm sure Mayor Giuliani would like to have it as well.

I will leave a comment for everyone. Any questions for this gentleman here or would you like to move on to north? We can move on to. All right. Thank you very much. Senator North, would you please come up to the witness stand?

I [01:26:30] guess at the table, not a stand, I was just corrected, the witness said.

Thank you for coming in. Thank you for having me.

Would you please give your name and Mayor closure's my name is Anna and I'm a resident and registered voter in Pima County. I [01:27:00] volunteered as a poll observer .

Can you get a little bit closer to my car? Thank you.

Again, my name is Anna and I'm a resident and registered voter in Pima County. I volunteered as a poll observer on October 16th, and then I signed up to work as a poll worker on November 3rd in a neighboring precinct.

Would [01:27:30] you like me to just give you an overview? Is that. Yes, please do.

Ok, well, I. I wrote in because I was aware of some irregularities that happened while I was a poll observer and some different activity that I just felt uncomfortable with on Election Day. So I'll go ahead and start with what happened on the [01:28:00] day that I was an observer. I was certified prior to that to be able to watch the two people that would be correcting the the problematic ballots, which I guess are called they were duplicates.

When I walked into the room, they said, I'm sorry, you're not you can't be in here. You're [01:28:30] going to go into the another room. So I had to walk back to the front desk. I was escorted from from that area back to this to one area where the ballots were being separated from their envelope. And I I was there were 30 to 32 people doing this and there were probably 14 to 17 tables that where [01:29:00] they are sent to people. And it was supposed to be a Democrat and a Republican. But not every table had a Democrat, but not every table had a Republican. So many of those tables had either a libertarian or some. There was one table with someone from the Green Party and then there were three or four tables that had a Pima County worker at the at each of those tables. And they worked there at the elections office

[01:29:30] because when people came in from the building, they talked to them. And their conversations led me to believe things like, oh, did you leave your lunch? Did you bring lunch? And they said, no, it's over at in my office. I'm going to go get it later. And she was back in five minutes. So similar situation, conversations that went on with people who came in, with those with those workers.

I found it difficult for me to be able [01:30:00] to oversee 32 people and what they were doing. I was able to catch a few of the things that were mistakes or where ballots were just they were taking them out of the envelopes and putting them on in a pile. And their job in this particular building room was to watch, to make sure that the ballots were in [01:30:30] one direction and then they would double check the count of the ballot to the envelope due to, I imagine, to check it against the envelopes that came in.

Each table was given a bin to put these in, and these bins would then go to another area where they were being stacked up to be tabulated starting on October 22nd. [01:31:00] Many of these had mistakes or they were written in pencil. And the workers as I went around had questions. You know, is this a good ballot? Is this not I was told by the gentleman that ushered me out of the place where I was supposed to be and said, you aren't to talk to anyone. You do not communicate with them. If you have an issue or you see an issue, you need to go to the supervisor, which is at the front of the table [01:31:30] that burned the room. So as I saw things, as I went around to each table, I would go to the supervisor and I let her know.

You know, they don't know what to do with this this ballot pencil or whatever, and she'd say, no, it's fine, it's fine.

So as I went back to the tables where I saw these issues under my breath, I said, you need to go tell her, you need to go talk to them about this. And so [01:32:00] many of them said, what do I do with this ballot? It's in pencil. Oh, it's fine. It'll go through. Or it was some people wrote over their ballot, over the little oval circle where they were supposed to mark and. Those were put into a pile, a separate pile that would be called duplicates, those duplicates then went to another table and were then taken to the room where I had been ushered out of. And there was one person there [01:32:30] were supposed to be a second person. And I said, is there a Republican at that table? Because I said, is there a Democrat and a Republican? And he said, well, we hope so. They have to if they get here, but it'll just be, you know, just be me and hopefully a second person. So I as I saw these ballots along this area, that was that they marked as doop, which I understood to stand for duplicates that were going to be fixed. [01:33:00] They would then be taken to the table, to the room where I could see a glass. It was a glass wall between us and they were taken around to the other side to be dealt with. I didn't get to see that at that point. So when I left and the other person took over for me at one o'clock, I was there for five hours. I shared with her.

I said there's a lot of mistakes that are happening. They're just they're [01:33:30] not putting them in the order that they need to be in. So when they get folded, they become a duplicate because they can't be counted. The machine wasn't going to accept them. So it had to be then

taken out of the pile and put in to a duplicate. So when I left, the man who had ushered me out of the room, the first room. He came to get me at one o'clock and walked me straight over to the front desk and he said, I hope everything [01:34:00] went well. And I said, well, my concern is not necessarily where I was. It was hard for me to watch 32 people by myself. But more concerning is when these ballots were opened in the other room. And so to give you kind of a sense of how it worked as the ballots, however they were collected, were brought into an initial area of the office of the elections in Pima County. And in that room, [01:34:30] they were then the envelopes were then opened up and the signatures were checked.

So then they would go through a double door where they were then sent to the room that I was in, where there were as many people as I explained before trying to put them in in order, not necessarily of where they were from, but how they came in. So just let's just say there were maybe 200, 250 per box, I'm not sure. But they they came from different [01:35:00] zip codes, different areas. It was whatever was mailed in. And then those were then put aside to be counted after the 22nd. It was my concern was the amount of ballots that were considered to be problematic, that were then leaving the area that I was in, going to a room where there were only supposed to be two people and yet not even sure there was two people. So that was my experience as an observer [01:35:30] that I shared. I thought that was concerning. The other thing is when I came back to drop off my ballot, I had to drop it off outside and there was no longer a police officer. And we found out that it was because our mayor or not my I live in our valley.

But the Tucson mayor had asked had wasn't allowing a police officer in front of the office anymore because it was upsetting to [01:36:00] people to come and vote.

And so I asked the man so might have put my ballot out here and he said, yes. So I said, how can I be sure someone isn't going to come and take this big box? And he said, no, we're you know, we're watching it. And I said, Who's you? And it was him and an elderly woman who was about 85. I don't know. I'm sorry. Meaning that she was she looked fragile and I don't know how that could be protected, but I was a little concerned about that. It did make it in because [01:36:30] when I checked my ballot, it was counted. But another question is how how do we know who we voted for? That's a separate issue. But my point is, is that I don't know if my ballot actually has the the people that I voted for. And, you know, as I said, that's something separate from what I experienced there as an observer. I as a poll worker, I was assigned to be a provisional [01:37:00] ballot clerk, and that was on Election Day. And on that day, I had worked the primary in August. So I had an idea of who would come by, what the issues were. But this time we had so many more people who needed a provisional ballot than we had been allotted to have in this one precinct. So that was concerning. But the people [01:37:30] that came to me were I had so many people who said I didn't ask for a mail in ballot. My wife isn't listed as a as an early ballot person, but I am.

And that those are the kind of people that we had a lot of. But secondly, I had people who had just moved here from other states and most of them were from two apartment [01:38:00] complexes. It was it was concerning because as we counted them, we probably had over 40

people who were in one apartment complex with one address who had moved here from other states that I began to turn away a little. I'd say, I don't know. Within the hour we were so busy that I took a break and went outside and a gentleman with a yellow shirt said, [01:38:30] hi, I'm I'm with I'm with the Democratic Party. I'm here from California and I'm here at this precinct specifically. I came from a Phoenix in Maricopa County, a precinct there. And we're here to help turn. Arizona blue, and I don't know if we're just looking at me, he decided that he felt safe saying that to me, maybe he assumed [01:39:00] that I would be OK with that. I was shocked. And he and I said, oh, so what? He said, oh, I said, so what is what is your plan? What are you doing? And you said, well, I have lawyers on call to contact immediat ely. If you if they don't allow them to vote people to vote. And I said, well, there was a cutoff date and he said, no, every count, every vote should count. So that made me nervous, of course, [01:39:30] because I didn't know the law specifically and I didn't want to do something.

That would cause a problem, so I thought and he said, oh, I've only had to turn away. Now, just a couple people were turned away and I was able to help.

One person to go back in. Well, that that was probably sent to me because I was the provisional ballot [01:40:00] clerk, so of course, that was somebody that I had to take care of. So I went back in and thought, well, this is unusual. I'm concerned that somebody outside is going to be calling an attorney on something that I did because I said no. I sent somebody away and said, I'm sorry. I mean, if you don't have any proof that you've lived here or proof of having registered, I. I can't I can't give you a ball ot. So [01:40:30] I called the recorder's office and explained this and she said, well, you have to let them. All votes will count, but it's on a case by case basis . So at that point then I had to call in to the recorder's office every at every single ballot. And you have to understand, we ran out of spaces. So, I mean, and we were at like 200. I'm sure you can check on this, to be sure. But we were over the amount of ballots we had. But [01:41:00] every time I called the recorder's office, they would ask me for their name and their their birth date of birt h. And when they would look that up, she the person on the phone would say, OK, well, you can go ahead and let them vote. And so I was trying to find a constant that I could go by so that we could speed up the process. I mean, is it is it if they've moved here and they have this and if they've moved here [01:41:30] in a certain date, what is it? And they would not give me any consent.

They just said, you just have to call for every case is different. So my concern and why I wrote in was that I had two people right after having a slew of people who came in from other states wanting to vote without having been registered and allowed to vote per the recorder's [01:42:00] office. I then had someone come in from Maricopa County and one from Pinal County. It just happened right after. And each of them, when I called in, they said, nope, you're going to have to have them go back to Maricopa County and the other will have to go back to Pinal. And I said, well, how is that that this person from Wisconsin and this person from Michigan and this person from Kentucky was able to do that, and she put me on hold for a second and then came back and said, well, it's just that [01:42:30] we have their records more accurately than we have for Maric opa. We just can't we don't have we're not able to process the Maricopa County ballot. So I had to send them away. But then as the other people were

coming through, it made me question why that was happening. So I. I asked them. Do you have information that will prove that you are a resident, that I can I [01:43:00] can verify that you are registered to vote here and they would pull out their card and it very clearly said that they were Republican. They had a voter card. So to to test this theory out, I called the recorder's office.

And ask them and they were denied, I had to deny them, and so I was in a frenzy trying to [01:43:30] take care of all of these people, but I found that the discrepancy between every.

Every vote counts, and only those that the recorder's office would allow was indicative.

Of how they chose who they wanted to, allowed to vote, and there was.

Consistency [01:44:00] in the.

Voter preference that they chose and that. Concerned me, because by the end of the night, which was at eight, 15. After [01:44:30] we counted all of the votes and they got put in the box and we were waiting for. Someone to come get them. I'm in the car and the.

The election was was already.

Outed for Arizona, which I found appalling. [01:45:00] First of all, after working 16 and a half hours, taking in votes, but. The experience really led me to believe that it was not there should have been a a system that we could have followed because I understood that registered voters [01:45:30] ended on a certain date and you couldn't come in and vote. But I was having to allow people to vote that literally had just moved here within two weeks, three weeks. And they were all from two different. Not all that, I take it back. There was a large majority, a large percentage of people who were had addresses from two apartment complexes. And the last thing is that I had a homeless man who came in with the with the registration [01:46:00] and a reason I know he's homeless because I said, where do you live? And he said he didn't speak English. And he said, I don't have a home. But when I was at a shelter, they registered me at the recorder's office. So when I called about it and they said, well, he was probably registered to be in this precinct. And I said, but he doesn't live here. And they go, well, it's anybody who was registered downtown can vote. And so I found that to be odd. And [01:46:30] last week for work, I was on the other side of town and I saw this gentleman on this side, sun, with his shopping cart.

And I.

I swung into the parking space and called him and just said, hi, can I talk to you? And when he saw me, she ran off. You know, who knows why? But my my point is, is these are the kind [01:47:00] of people that that had apparently permission to vote in a precinct that was literally 25 miles away because they had a voting card that was given to them from downtown, that it was a downtown precinct that allowed him to vote here. So my my point is, is that if somebody from Pinal County in Maricopa County can't vote, how is it that, in my view in this precinct, how is it that a homeless man from another area [01:47:30] of the town and also people from other

state were able to get permission to vote? And that was concerning to me, and that's why I'm here.

Mister, thank you very much. Mr. Giuliani, do you have any questions specific to this witness? Sure. Please proceed. Try just just to give you a marker on time. It's 12 or two.

So you were there for 16 and a half hours on Election Day. [01:48:00] Yeah, yes. Wow. And you were supposed to work with the ballots that were being that were being examined.

I was working with the voters, the ballots of voters who were not able to walk into the precinct to vote normally on a ballots. So some of them came to me saying it says that I got an early ballot.

And I never got it. Others [01:48:30] said it says it doesn't even say that I'm on their.

It says that I've already voted or I'm not allowed to vote here. Those are the kind of. So these were ballots that had difficulties. Yes. And there were 20 or 30 to 35 people that were looking at those ballots that you had to observe. No, that was OK. I know. And I just described to you my experience as a poll worker on Election Day. Those 30 people that we mentioned earlier were. [01:49:00] But were when I was a poll observer on the 16th of October.

Or at the elections office in your county and you were unable to see what they were doing.

I thought it was a room as big as almost maybe.

It half the size of this banquet room, and I was an observer [01:49:30] watching.

And as far away as we are, I could walk behind them, I could walk behind them, but I couldn't walk behind 35 people at the same time. And what were they doing? They were taking them out of the envelope. They had already been they had been brought in from the recorder's office where that where the ballot had been opened, the envelope had been opened. And according to [01:50:00] what I was told, the signature had already been checked in another room.

But you didn't see the signature?

No, I didn't get to see that they would take these out. And they what? Did you ask to see it? Yes. And I was not allowed. Yes.

So they said and I wasn't allowed to talk to anybody. But I as I said before, I could talk to the supervisor, these people who sat in each of these tables who [01:50:30] were representative of.

Mostly one party with Democrat Party, and they would take them out of the envelope and then put them in a pile and then separate the on the inside envelope in Arizona. We have an outsider both in the inside and then the ballot. Right. Right. So the ballot was then collected

from the bin. So each table would get in a bin and they would separate [01:51:00] them, put the ballots in in a pile, put the envelopes in a rubber band, put them to the side, and then mark that they had so.

Such and such amount of of regular ballots and such as?

Amount of duplicates, problematic ballots that then have to be taken to a table.

And they would separate [01:51:30] those, take the duplicates, mark them, put them at a table which which were then taken to the original room where I had been ushered out of, not that I was not to put them in a room that you were excluded from the exam and. The signatures, yes, no, they started examining the signatures, then removed to this. Through and then from this room, they were then piled to then tabulator examination of the signatures.

No, [01:52:00] not in this room. The only room there was nothing you observed no examination of signatures. And they refused to let you do that.

Right. I was only allowed to watch these people put these in piles. So when I was not sure.

So how many how many ballots do you think? Just a rough estimate. How many ballots? 1100. I 2000.

I would say each box had between 200 and 250 ballots. And I was there for five hours. And during that time that I was there, each table went [01:52:30] through six to seven to eight, depending on how fast they were and how many mistakes they made, because many times the ballots were clipped, were straight and they had to recount them.

Or I would hear them say, so how do we how do we do that arithmetic?

All right. Well, let's see. Two hundred and fifty times eight. Somebody who's not nervous, maybe you can say 2000. That's per table. And there were about 16 to 17 tables of two people doing [01:53:00] this at the same time.

So. So as I best understand this, there were 2000 ballots on 17 tables. Yes. That you or anyone else might know have got you got a chance? No Republican got a chance to observe that, as far as you know.

Well, I was the only observer allowed.

I didn't at one time, so a gal took over for me at one o'clock when I left and I told her I'm exhausted. I [01:53:30] don't know how you can watch all 17, but stand behind one of the tables and you'll see that this particular table keeps folding them.

And tearing them and once that happens, it has to become a duplicate. And when this becomes a duplicate. It goes to that table and it goes to the room where we don't get to see what happens to that. So. You can't talk to them, but you can do this and tell them, look, that's that's that's that's Foldit or that's crooked or. [01:54:00]

And I said, if you see one again that has pencil on it, the supervisor is saying, yes. She told me specifically that it could go through. I mean, told me that it it couldn't, but told them that it could. So I said there's some discrepancy in what she's telling me and what she's telling the. So, you know, just do your best to try to keep an eye on this particular cable is doing this. That particular cable when I [01:54:30] walk by is. Doing that, that one over there has a Pima County worker on it and she works here with them. And there's no Republican at that table, so it's it's it's it's very concerning and and so when I was ushered out, they came specifically.

Twice to me and said, please don't talk to anybody and. You cannot live on your own, make sure that [01:55:00] when it's time, what time you have to leave so we can walk you out when they walk me out, the gentleman said, I hope everything went well.

And I said, well, I'm concerned because here they were. You know that my only concern is the handling of the ballots, which makes them ineligible to go through the machine correctly. But it's the room before me and the room after me that it's a concern I don't get to see.

Let me just let me ask you about that. So certain number of ballots were now put aside as duplicates. [01:55:30] Yes. Duplicates means that they had a problem. Yes. That they have to be duplicated. Right. So, I mean, there were two ballots, right? That's duplicates can sound like two ballot. What I meant was there's something wrong with it and therefore we may have to duplicate. Yes. And that's the room that I was originally. And they were put aside, put aside. They were brought into another room and two people. You were not allowed to go in? No, I was not allowed to go back there. So you you were cut off from that also? Yes, [01:56:00] I was. We were cut off from observing the problem ballots.

Yes. I was specifically taken out of that room, ushered out and brought into this room, which really was just the room, as I explained. And how many how many could you estimate that is on each table would have an average of six. I would say maybe one sixteenth.

The [01:56:30] pile, so, you know, let's say an average of maybe 10 to 20 gallons, but by the time I left, there were these bins were filled. They would fill them, they would go correct them or whatever it is that they did and brought them back.

Best estimate, I would say my guess would be close to in the time, the day that I was there, just five hours, maybe 2000 ballots, OK? Yes. [01:57:00]

And you had a sense. That when there was problems with ballots or.

Whether someone should vote or not, the choices that were being made were to allow people that appear to be voting for Biden and the Democrats to vote and declining those who appeared to be people [01:57:30] who might be voting for Trump.

Well, the Republicans well, yes, I began to get that sense after I saw that people from other states who weren't even registered in the state of Arizona were being allowed to to vote. I was given direction that I had to give them a provisional ballot because as they walked out, there was a gentleman out there who told me he was specifically there to make sure that every vote [01:58:00] voter who wanted to vote could vote. And so that was on Election Day, though, Mr. Giuliani. That's not on the observatory, the data on it and on that day that that happened. And then when I would get a voter who was from another county and had some indication sometimes they had a shirt that either said Trump on it or they they [01:58:30] showed me their voter card and and said, I you know, they gave me some indication that they were a Trump voter.

And I had to call on them like I did for every single person that came in to the recorder's office. And I was told to send them away. And so it was at that point that I started to see that there this isn't this isn't this can't be right. This can't be right. [01:59:00] So I tested this in and out. And then especially as you recognize that, yeah, and so when I said they all you all live at this apartment complex and you all live at this other one. And and they said, well, yeah, we have to, you know, we're all coming in to vote. And so I said, well, are you ready? How long have you lived here this year? The precinct here? Well, I've lived here. I've lived there. And they still were allowed to vote, many of them.

Were [01:59:30] not residents for more than a month, other people said they were registered in another state, but that they were here.

And and then, as I said, I think that the nail in the coffin for me was when this poor little old homeless man and I speak Spanish. So I spoke to him and said, you know, how are you here? And he said, I was told to come vote. I want to vote. And I said, OK, well, you know, do you wear.

Do [02:00:00] you live and he goes, well, I lived in a shelter downtown. Well, downtown is 15 miles from where I live, so I'm sure that's not his precinct. He should be voting.

So you thought there were about 2000 like this?

Roughly, I would say easily, just in the five hours that I was there on one specific day, and that was on a Friday. They were going to be counted. They were being collected to be tabulated.

Last question. The gentleman who said he was there [02:00:30] to turn Arizona blue.

Yes, that was he. What was his official position?

He had he had a sign of specter of some kind. No, he was an observer, a poll observer that was from California, from L.A. and in and on a break, I walked out there and and I said hello and just walking. And he said hi. And I said, What are you doing? And he said, Well, I'm a poll observer for the Democratic Party [02:01:00] and I'm here. I said, Oh, is he? Because the weather is hot here. It's not as hot as it is at home. And I said, well, where are you from? And he said, I'm from California. And he said, what do you do here?

And he said, Well, I'm here specifically to help turn this precinct blue.

But this is one of our problem ones, and I said, oh, and as I said to the panel over here, I don't know why he felt comfortable telling me that, but he said, I [02:01:30] and I said, you came all the way from L.A. because no, actually, my precinct in Maricopa, where it was another one that we were we're focusing on and now I'm here.

What was he doing? Was he campaigning with you, encouraging people to vote for for Biden? What was the what activities did he take part in to turn Arizona?

Well, as I understood, because I was inside working his job [02:02:00] was to make sure that anybody who was turned away to vote, that he would have people he could call attorneys, in his words, because I I have a couple of attorneys that I'm connected to right now that if anybody is not allowed to vote, I can make sure that they're represented. And so anybody who was not allowed to go in that polling place, I was the one that they would be talking to.

So, of course, that [02:02:30] was that was somewhat directed at me, since I'm the one who would say, no, you can't vote. So I don't know what else he was doing. But he said there was a group of them that were coming and they said there some time after you began doing that, he was there.

Well, we started at five o'clock in the morning just getting ready. So when I went out for my first break, I was maybe around 10 o'clock and he had been there and they were they I [02:03:00] I'm sorry. I don't remember what he had on his shirt, but they were they were very clear that they were they had T-shirts. They said that they match another person came in to take over for him and it was a yellow shirt with something written on the front.

Right. Well, thank you very much for your service and courage to testify. I just make one point, Mr. Chairman, of her testimony alone. And I see no reason why she isn't telling the truth. [02:03:30] By the way, she is under oath in the sense that she submitted an affidavit under penalty of perjury to what she just testified to. Thank you, sir. That 34000 vote on unobserved change in election is not just any one witness.

Sir, thank you very much. Thank you, members. I know, I know everybody wants to ask a question. We need. Well, [02:04:00] everybody has one. It is now 12, 15. I expect this hearing at the rate that we're going, we will be here until late into the night. Please be brief with your question, and I would appreciate it if there's no follow ups just so that we can have a lunch

break and kind of set the expectation for the folks who are here and get back at it and we'll try to make. The witnesses focus a little bit more. All right, thank you, Mr. Mayor.

Leo Suchi, [02:04:30] I'm sorry, Representative Suchi, your first and Mr. Birling.

Thank you, Mr. Chairman. Thank you for being here. Just a quick question about the voters that you said were coming in that were from. At a town or they just move there, whatever their reasoning was, did they have an Arizona?

With an address or anything to show you where they on the voter rolls or these, they were not on the voter rolls, they had out-of-state driver's licenses. I don't know why, but. Have [02:05:00] a either an electric bill or not.

Or some kind of a build that they showed me on their phone, showed me that they lived in this particular precinct with that I would call the the recorder's office and you would verify through them that they were indeed legal to vote. Right. And so then when I said, well, when did you move here? Well, I moved here on such and such a date. But you had to have registered, I think, in Arizona [02:05:30] by the 15th and then it was extended to the 22nd or the twenty or so it was. It was just questionable that they were still allowed to vote. But I had a longtime voter who wasn't allowed, who wasn't from another precinct, and yet someone could vote from another state. Perfect.

Thank you, Senator Birling. Yes, sir. Thank you, ma'am. When the votes that needed to be duplicated, the ones that need to be corrected, when they went to the end of the room, did you notice anybody in there that was actually overseeing [02:06:00] that correction, a Republican or a Democrat?

No. As I mentioned before, that's the first room I went into. And he explained to me that he this is the room where that would happen, but that I was not allowed to be in there.

When you were in there before they sent you somewhere else, did you see a Republican and a Democrat observed he was only one. You know how he was registered. Do you know if he's registered Republican or Democrat?

I, I don't know, but I have an idea.

But that would be the bottom line is we'd [02:06:30] appreciate no speculation. Thank you very much. It's a violation of the law anyway, because you're supposed to have both. Well, thank you. All right, members, one question and then we're going to break for lunch, Representative Townsend.

Thank you, Mr. Chairman. And I just have a really quick question. We had our county recorder in Maricopa County instruct voters to cross out mistakes on their ballots for the November election. And we later had a judge say no, that was likely breaking the law. You can't do that.

We've [02:07:00] also heard from adjudicators saying that they had seen a full Republican ballot, but all the way down, but that President Trump's name was crossed out and. The other candidates was circled in, is it possible, in your opinion, in that other room that you weren't allowed to be in when there wasn't a second person watching the.

The adjudication. Were there pens allowed, were there were they would someone be able to cross [02:07:30] out one candidate and vote for someone else?

Well, again, I wasn't in their. Or to be able to say this accurately, but there's only, you know, can make an assumption if. If a room requires two people in an observer that a person by themselves. It's possible of course, it's possible that that's what happened, but those are the kind of ballots that I'd see that because [02:08:00] I was able to see the.

As it came through in this room, there was they were either all for.

Gop or all for the Democratic Party, but one of the president, little Oval, had been marked off or no crossed, which makes it a problematic ballot [02:08:30] so that.

That would have to go into the other room that you're asking me about, and again, I wasn't in there to be able to speak accurately about what this person could or could have done or didn't do. And that, to me was the big problem in this whole issue. I I'm useless to be able to watch people just putting them in order. I should have had an observer watching.

Ok, thank you. All right. Sir, thank you very much for your [02:09:00] testimony. Ladies and gentlemen, here's how we're going to manage the lunch break as you leave. Please wait a minute before you walk out the door or you won't get back in as you're walking out the door, you'll be given an ar mband. And in order to come back in, you'll have to show that armband we are going to break. It's now 12, 22. We will be back here at one o'clock. It's going to be a short break. Thank you.

All [02:10:00] right, welcome, everybody. Again, this is live, as well as with Blake with Bright Side Broadcasting [02:10:30] Network. We are live on the ground here in Phoenix, Arizona, where Team Trump is doing their legal hearing regarding election irregularities in the state of Arizona. We've heard from three witnesses already, and it looks like we're going to be going late into the night. So we will be taking a lunch break and reconvening at 1:00. So don't go anywhere. We'll bring you the live coverage right back. But. Before we go anywhere, we have a couple things we just like to point out from what we've heard [02:11:00] already today. And I think our partners over at my pillow, we know that getting a restful night's sleep is crucial to waking up on the right side of the bed and with Christmas right around the corner. Now is the perfect time to stock up on all these products from a company with a Patriot owned company. Visit my pillow dotcom to stock up on all the guests for yourself and your loved ones. My pillow guarantees ultimate relaxation with a wide variety of items to choose from ranging. [02:11:30] From ultra plush towels, dog beds, mattress toppers and keys. The dream sheets and so much

more, including one of their biggest savings so far, which is the regular my pillows valued at sixty nine, ninety eight. If you use codas and you can get those right now for just 29, 98, a huge savings. Again, my pillow dotcom has hundreds of products to choose from. And if you use code [02:12:00] Arizpe and at checkout you can get up to 66 percent off your entire order. This is the perfect time to support a conservative company right before the holidays go out and get your shopping done. Now, you do not want to wait till it's too late.

That being said, I mean, what what do you. I think so far a lot has happened today, we've heard a lot of information, there's there's been an awful lot of information presented.

And I think that Mayor Giuliani's remarks at the beginning [02:12:30] about how there's a narrative out there that the election was the most secure ever. And I think he believe he said, please don't interrupt that narrative with the truth. And that's really, really what I think. I mean, I believe that we're in a situation where there's limited media coverage of this event, and it's not because of the information being provided isn't newsworthy. It's not because there aren't facts here that are being discovered or being given to the lawmakers of Arizona for consideration.

It's because they're [02:13:00] exactly other networks are perhaps just not feeling that there's a story here. And in fact, this would be the largest political. Story of this century and even last century, I mean, it's a scandal of immense proportions. If, in fact, voter fraud can be proven, they're not even looking for it, and I think that's that's disturbing, not in the slightest.

And we've been to Phoenix a lot. We know Fox five, [02:13:30] Phoenix is had all the rallies and I thought that we'd at least see them here today. But like you said, they don't even care.

I mean, not even enough to give an ounce of oxygen to breathe on their nightly news routine. So it's it's shocking. It's upsetting, but. We honestly don't need them, what we have around 200000 watching alone on YouTube, so thank you to everyone. For tuning in, this should not be a polarizing topic, I think people on both sides of the [02:14:00] spectrum right now should be worried about election integrity hearing these. Witnesses, factually, it just doesn't make sense, Dominion Software is in Smartmatic.

Software Systems Huge, which is owned by Hugo Chavez and has been raised in so many corrupt Central and South American countries like Venezuela, I mean, that alone should tell you that's not something that we want to be utilizing here in the United States when it is our [02:14:30] election integrity, the presidential election of the United States.

Something's got to give.

Yes, and both the army colonel and the former senator from Michigan presented pretty clear evidence that these servers were connected to the Internet, that they weren't air gap, they were not just, you know, not immune from tampering by some form of malicious actor who went on to gain access to those totals. So saying that it's the most secure election ever. I think

[02:15:00] that's been completely blown out of the water today. I think there's just no way that anybody can look at the. Data and look at the information and and hold that to be true, I think that that story should be dead in the water at this point.

Yeah. With having the Ethernet cord connected to. The server, this does allow for Internet access and in turn it allows for communication.

Between these servers to the black, what do they call the [02:15:30] black box? No, no, no.

Dark deep web. Deep web. I mean, anyone anyone like he said, any hackers can get on and change this, so. Quote, I want to take away from that is that your Venmo account is more secure than your 2020 vote, and that is what a information warfare specialist said today.

Absolutely. I believe that, you know the compact. Flash cards that they are using to transfer [02:16:00] votes and just really it's really I don't. But just the fact that some of the media service run on Windows 10 alone is enough for me to speak. Really give pause to it, I mean, the fact that these things are so easily manipulated. By operators and then even one one operator with the correct permissions at a remote workstation through the network, as these machines are designed to work, has the ability to change totals, [02:16:30] is completely off putting. You know, Janet Ellis had a great quote, too. And that's that was that. We're not asking you to overturn an election. We're asking you to ensure that corruption does not stand. And I think that's the core of what all of these hearings are about, to educate the American public that. This is the election took place, the results are there, but the results that we're looking at are fraudulent, are are at the very least beset by [02:17:00] the allegations and the possibility of fraud and the fingerprints of fraud. It's it's completely there and what she's tasking the lawmakers is to do is basically admit that you're not overturning an election, you're taking back your constitutional authority as a member of your state legislature to appoint the electors that you feel are appropriate for your state.

Thank you. And we are about to wrap it up here. Great commentary, Blake. But [02:17:30] to wrap it up here, we need to clear this room. But we do want to remind you guys that Rightside Broadcasting Network is almost entirely viewer funded, meaning we rely on your donations to go from rally to rally, hearing and hearing and to cover the White House and the march for Trump, which is currently going on today. So it's a bus tour covering twenty three cities in two weeks and we cover all of that. There's a lot going on right now. We're providing as much content as possible. So if you've enjoyed seeing a little bit of different avenues. Here at our then [02:18:00] keep those donations coming and we'll keep providing you some of the greatest coverage that we possibly can. There's a number of ways you can support us. The first one is by clicking that dollar sign in the bottom right hand corner of the YouTube Supachai. And the second way is via our website, whether you donate or not. Check out our website. That's W w w darris B network dot com forehead's donate the third way by sending a check and we love to read these letters that come with the checks and that is send those to our SBN at fifty and [02:18:30] 50. Opelika Road Suite six box three four for Auburn, Alabama, three six eight three zero moderators. Thank you for being here today and drop those addresses down below. We

are going to hop out of here for exactly thirty minutes and we will be right back. So don't go anywhere. This is the stream you want to stay on.

EXHIBIT 7

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

PHIL WALDRON

PROFILE

Proven senior leader, with specific expertise in the federal operations, I conduct business development and strategic planning to achieve annual revenue goals in a tremendously complex, highly regulated, and rapidly changing field. I have a unique background with extensive industry experience enabling identification of business opportunities from a customer's perspective. I drive access through contracting, system-based electronic systems integration. I work with matrixed teams to identify shared business goals and focus capabilities and resources on specific business needs. I develop and build relationships with key internal and external decision-makers, including executives and Key Opinion Leaders to expand the level and scope of my influence to develop business-to-business opportunities. I have a proven track record of results-focused leadership and team building. I have a current Military Retiree Identification and retain a Top Secret Clearance.

EXPERIENCE

COLONEL, UNITED STATES ARMY (Retired)

As a senior officer in the US Army Reserve, I was responsible for planning, coordinating, budgeting and executing Unconventional Warfare, Strategic Communications, Strategic Influence Operations, and Psychological Operations. I enabled decision-making for senior civilian and military officials at the Under-Secretary and Four-Star level. I gained extensive global operational experience working with a wide range of highly matrixed Inter-Agency Teams on problem solving and course of action development. I also worked with coalition, host-nation, and tribal faction leadership to build ad-hoc organizations to enhance US and Allied Strategic Objectives. I was specifically trained in Key Leader Engagement, Negotiation, and Cultural Adaptation, and worked alone or in small indigenous teams to engage with influential personalities. I developed skills in analyzing all-source intelligence to identify opportunities, develop unique concepts for operational execution, and produce negotiated agreements.

US Army Reserve Officer Apr 1997 to July 2016:**

- Senior Officer assigned to the United States Northern Command as the Strategic Information Operations Planner. Also served in Joint and Interagency designated special mission units for specific named operations, NATO, CENTCOM, SOCOM, SOUTHCOM, AFRICOM and the Defense Clandestine Service – Special Operations Directorate
- Analyzed, planned, coordinated, and integrated the execution of unconventional and sensitive strategic operations, requiring Top Secret / Sensitive Compartmented Information (TS-SCI) Clearance and Polygraph
- Responsible for briefing high level US government officials on observations and recommendations for sensitive national security operations.
- Conducted risk management, developed and gained approvals for new concepts and capabilities, and evaluated the execution and effectiveness of sensitive and compartmented operations

FEDERAL ACCOUNT DIRECTOR, PFIZER INC, Aug 2018 to May 2019: (Retired)

- Responsible for Market Access, Pricing and Contracting initiatives in the Federal Business Channels: Dept. of Defense (DoD), Dept. of Veteran's Affairs (VA) and the Medicare Administrative Contractors (MACs)
- Work directly with senior leaders at VA PBM as well as the Defense Health Agency and Defense Logistics Agency to ensure formulary access for the BioSim Portfolio through value modeling and contracting.

- Served as a member of the Pfizer Colleague Council for the Veterans In Pfizer and the Veteran Recruiting Lead for Global Diversity and Inclusion Initiative

BIOSIMILAR ACCOUNT MANAGER, PFIZER INC, Nov 2016 to Jul 2018:
BUSINESS MANAGER, PFIZER INC. TEXAS, Sep 2000 to Nov 2016:
INSTITUTIONAL HEALTHCARE REPRESENTATIVE - POWERS RX, Dec 1996 to Sep 2000:

US Army Air Cavalry Officer, May 1986 to Apr 1997:**

- Served as a commissioned Army Officer in the 17th US Cavalry stationed at Ft. Bragg, NC, the 9th US Cavalry at Ft. Wainwright AK, and the 21st US Cavalry at Ft. Hood, TX
- Led Air Cavalry Troop in the conduct of Attack, Reconnaissance, and Combat Surveillance
- One of a handful of officers selected for a second company level command as Brigade Headquarters and Headquarters Troop Commander

** Awards and Decorations: Combat Action; Senior Army Aviator; Paratrooper; and Air Assault Badges. Defense Meritorious Service Medal, Army Meritorious Service Medal and Joint Meritorious Unit Award (Multiple) and many lesser awards and decorations. Detailed Military Biography, Evaluation Reports, Awards and Decorations Available

EDUCATION

- BS in Biomedical Science, Texas A&M University – Graduate 1986. Distinguished Military Graduate
- US Army Command and General Staff College, ILE, Graduate 2008
- US Army Information Operations Course, US Army Command and General Staff College, Honor Graduate 2008
- Masters of Business Administration, Jack Welch Management Institute, Strayer University – Graduate 2014
- Specific information on other DoD Training and Certifications available as required

EXHIBIT 8

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward, Plaintiffs, v. Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State, Defendants.	No. CV-20-02321-PHX-DJH **EXPERT REPORT OF PROFESSOR GARY KING**
MARICOPA COUNTY BOARD OF SUPERVISORS; and ADRIAN FONTES, in his official capacity as Maricopa County Recorder, Intervenors.	

Pursuant to 28 U.S.C. § 1746, I hereby verify that the following statements are true and correct to the best of my knowledge:

Report of Gary King

In this report, I evaluate evidence described and conclusions drawn in several Exhibits in this case offered by the Plaintiffs. I conclude that the evidence is insufficient to support conclusions about election fraud. Throughout, the authors break the chain of evidence repeatedly – from the 2020 election, to the data analyzed, to the quantitative results presented, to the conclusions drawn – and as such cannot be relied on. In addition, the Exhibits make many crucial

assumptions without justification, discussion, or even recognition – each of which can lead to substantial bias, which was unrecognized and uncorrected. The data analytic and statistical procedures used in the Exhibits for data providence, data analysis, replication information, and statistical analysis all violate professional standards and should be disregarded.

Exhibit 2: "An Analysis of Surveys Regarding Absentee Ballots Across Several States" by William M. Briggs

1. *Summary:* The conclusions of this Exhibit are not supported by the evidence provided. The lack of crucial information provided about the survey violates professional standards in this field and is insufficient to support the stated conclusions.
2. Proper survey research requires precise details about all of the following (among others), none of which appear in the Exhibit:
    a. A *probability sample*, which normally involves (a) an enumerated list of all members of the target population of interest and (b) a *known* random mechanism of selecting members of the population to be interviewed. (For example, we could have a list of all voters and sample selection conducted by random lottery, where each voter has an equal probability of selection.)
    b. Detailed information about the *entire chain of evidence* from the election we are studying to the quantitative information in the dataset to be analyzed to the numerical results.
    c. The *response rate*, including precisely how this rate was computed, and precise information about *how those who responded to the survey differed from those who refused* (which indicates how representative the survey respondents are and whether adjustments need to be made during statistical analysis).
    d. *Carefully worded and validated survey questions.* Surveys are well known to be highly sensitive to the specific questions asked (for example, using the word "baby" in a question about "attitudes toward abortion rights" can completely change respondent answers) and so best practices in the field requires pretesting, cognitive debriefing, and clear, measurable validation. Without these steps, we cannot know whether the answer a respondent gives reflects the specific views we seek to measure.
    e. *Detailed information about survey response biases.* Retrospective surveys, such as this, are well known to have substantial biases which must be studied, known, and corrected. This retrospective survey, in particular, was conducted while the President was claiming election fraud, and so we need to know whether supporters and opponents of the President responded to this survey ways that might bias the results toward their favored positions. Even in elections without this behavior, retrospective studies are well known to give incorrect answers to who each respondent voted for and whether they turned out to vote in the first place. (For one of many examples, more survey respondents typically report having voted than there were voters.) These and other types of biases can be

large, but correcting them is impossible if – as in the present Exhibit – they are not measured and reported, and proper statistical techniques are not used.

f. Statistical analysis methods must be developed to adjust for all the information in items a-e. Applying simple means or counts to the data without adapting them to all of the above – as was done in the Exhibit – can yield highly misleading results.

g. Complete information must be provided about how the data was analyzed. The standard of information reporting (now used widely in the academic literature) is that it must be sufficiently detailed so that a third party would be able to replicate the results in the Exhibit without talking to the original author. See Gary King. 1995. "Replication, Replication." *PS: Political Science and Politics*, 28, Pp. 444-452. Copy at https://j.mp/2oSOXJL.

3. The following two sentences is a summary of the information Exhibit 2 provides about its sampling procedures: "Survey data was collected from individuals in several states, sampling those who the states listed as not returning absentee ballots. The data was provided by Matt Braynard."

a. None of the terms in this sentence are defined. We do not know what "survey data was collected", who collected it, how it was collected, etc. The Exhibit does not say which "individuals" were surveyed or who was approached to answer a survey question. The terms "several states" is not defined. Where we can find "those who the states listed" is not reported.

b. Thus, this Exhibit excludes information *necessary* for making valid scientific inferences and drawing accurate conclusions. The Exhibit itself violates academic standards, and cannot be relied on for the purposes claimed.

4. Exhibit 2A reports several undocumented and unexplained numerical tables apparently from the survey. If this is correct, the first table indicates that the survey researcher attempted to interview 81,704 people of which 684 completed the survey ("1-Completed Survey"), for a response rate of 0.008 (8 tenths of one percent), far below any professional standard for a modern survey.

5. The Exhibit does not measure or discuss how representative these 684 people are of the target population and how the broader group was selected, and likely biases are not addressed, corrected, quantified, or even noted.

6. To provide more information about the inadequacy of this report, I also list a few more specific examples from the report indicating undefined procedures, unprofessional methods, and unjustified analyses:

a. The Exhibit indicates that "The survey asked respondents whether they (a) had ever requested an absentee ballot". Unfortunately, the precise survey question was withheld, which is sufficient to reject any conclusions based on this question, but if we take the phrase literally it means a respondent could answer yes if they requested an absentee ballot in any election, including those prior to the 2020 Presidential election, which is obviously irrelevant to the present case.

b. The Exhibit reads: "If so, (b) whether they had in fact returned the ballot". The Exhibit needs to provide evidence that the respondent is interpreting the word "returned" in the same way as the Exhibit, which itself is not precisely defined. Does it mean mailed, dropped off, received, counted, or something else? Apparently small issues like this can greatly bias statistical conclusions if not known and adjusted.
c. The Exhibit says "I produce predictions…" but does not indicate how these predictions were made. No information is provided and so the claimed "errors" have no relevance for drawing conclusions, since they could easily be errors in the authors' predictions, computed with secretive procedures.
d. Almost regardless of how the predictions were produced from survey data, it is inconceivable that the author could reliably estimate what the Exhibit calls "Error #1, those who were recorded as receiving absentee ballots *without* requesting them" or "Error #2, those who returned absentee ballots but whose votes went missing". Methods do not exist that can do this without knowing considerably more than the Exhibit provided.
e. "The size of the errors were large" – No metrics were provided for the errors and so "large" is undefined.
f. The report also apparently references data about official records, such as the number of absentee ballots and the number returned. The report does not give the origin for this information. The chain of evidence for this information (just as with the survey) must be made available. With any break in the chain – and the links in the Exhibit are mostly missing – no reliable conclusions can be drawn from the data.
g. The report fails to explain how the quantitative tables that appear in the body of the report were constructed. As such, they cannot be interpreted and no reliable conclusions can be drawn from them.
h. The report fails to provide information about how the figures in the Appendix were constructed. As such, no conclusions can be drawn from them.

Exhibit 4: Declaration of [redacted]

1. *Summary:* The statistical methods used in this Exhibit do not represent best practice in current scholarship and can easily induce bias. The methods themselves are used incorrectly. No data is provided. Crucial information about how the analysis was performed was withheld. The conclusions in this Exhibit are not supported by the evidence provided.
2. The two statistical methods in this Exhibit are well known to be suboptimal and to induce bias in conclusions. Neither should be used for the task at hand.
    - The Exhibit is correct in claiming that the statistical analysis method in Item 7 (known as "CHAID") does not make *modeling* assumptions, but CHAID does make a host of *other* assumptions that are not defended, discussed, or even

listed; each can bias conclusions. For this reason, statisticians and data scientists mostly do not use CHAID any longer and have turned to more modern approaches.

- The Exhibit provides no information about how this method was used, what assumptions were made, what the results look like, or how the results from the method generated its conclusions.

- Matching is a popular method of statistical analysis, but current scholarship has shown that "propensity score matching" should not be used. This point was first described in this peer reviewed scholarly article: Gary King and Richard Nielsen. 2019. "Why Propensity Scores Should Not Be Used for Matching." *Political Analysis*, 27, 4. Copy at https://j.mp/2oTKhnd.
  - The Exhibit clearly violates best practices even in the use of this suboptimal method. It includes no diagnosis of whether the chosen propensity score model accomplished its narrow goal of reducing covariate balance. Often propensity scores makes imbalance worse, hence increasing bias relative to not using it at all, and so this checking is an essential step, without which no conclusions can be trusted.
  - The Exhibit also violates best practices by not providing any sensitivity analyses with alternative variables or alternative matching methods.

3. The Exhibit misrepresents the statistical concept of "p-values". No analysis described here can produce results that are a "statistical impossibility". Even "improbable" results are not "impossible": In other words, in the US voters are allowed to vote however they wish. Voters are sometimes predictable, but sometimes not. And even when they are predictable by some methods on average, individuals go their own way and vote on whatever basis they choose.
4. Item 10: the colors described in this Exhibit – for example, delineating which areas are used by Dominion voting machines – do not appear, as the report was scanned in black and white. This means that the central evidence claimed in this Exhibit does not appear in the Exhibit and cannot be regarded as admissible evidence in this case.
5. Item 16: This Exhibit misleadingly cherry picks only the *upper* bound of a 95% confidence interval without also mentioning the *lower* bound, which even under the Exhibit's assumptions are equally likely. In addition, even if the Exhibit's logic were correct, we would *expect* to see results outside the upper and lower bounds in 5% of elections like this one, making claims about "impossibility" incorrect.
6. Item 12: if voters are predictable, as claimed here, then prior voting behavior should be used as a predictor. This is standard practice in decades of scholarly literature, but it was ignored here, hence biasing the conclusions.
   - The data to do this would have been easy to include. Typically, the lagged vote share is the single best predictor of current vote share at the county level.
   - The national correlation at the county level between Trump's proportion of the vote in 2016 and 2020 is very high. This is a strong and reliable pattern across centuries of electoral data in thousands of elections; see Jonathan N. Katz, Gary

King, and Elizabeth Rosenblatt. 2020. "Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies." *American Political Science Review*, 114, 1, Pp. 164-178. Copy at https://j.mp/2BkgYTP

7. Item 14: The Exhibit provides no information about how the particular model used was chosen. If it is indeed the "best estimate", as claimed in the Exhibit, there must have been other models run. Yet, none of which were reported, again violating standard practice in the field.
8. In 10 swing states, pivotal in the election and the subject of litigation, President Trump won in 81% of the 351 counties that used Dominion and 79% of the counties that didn't; any statistical analyses -- parametric or non-parametric -- that contradict this empirical finding must provide sufficient justification that rejects this simple observation. No discussion of basic results such as these appear in the Exhibit. See for example https://wapo.st/36EOeEU.

Exhibit 6: Statement of Joseph T. Oltmann

1. This Exhibit claims to base conclusions on a statistical technique called "ARIMA", which is used to analyze *time series* data. Yet, no time series data is discussed in this Exhibit. No references to the underlying data appear. How this method was used is not discussed. No statistical results from this method are presented. None of ARIMA's considerable and consequential assumptions are considered or justified. No reliable conclusions can be drawn from this analysis.

Exhibit 9: Declaration of Seth Keshel

1. *Summary:* The conclusions of this Exhibit do not follow from the evidence provided, even assuming arguendo that the evidence is accurate.
2. For example, in Item 7: Just because Republicans outpace Democrats in post-primary registration rates does not, in and of itself, indicate that Trump would win in 2020. Voters are of course allowed to cast their ballots however they choose, including for candidates of another party if they wish. In fact, "split ticket voting" – where a person votes for different parties for different offices in the same election – has increased in many areas of the country in this election, as it has at different times throughout American history.
3. Item 11: Increases in Democratic votes in one county does not in and of itself indicate anything nefarious; voters are permitted to vote however they choose. The Exhibit also creates predictions in dubious ways, such as by choosing counties to compare to Maricopa on the basis of an arbitrary margin of votes. These counties may differ from Maricopa in myriad other ways, none of which are addressed in the Exhibit. The Exhibit's conclusion that the result is a "virtually impossible number" because the author's predictions were wrong does not follow from the evidence.

Exhibit 19: Declaration of Matthew Bromberg

1. *Summary:* The assumptions of the model used in this Exhibit to draw conclusions do not apply to the 2020 election, or almost any other. Conclusions in this Exhibit are based on a set of theoretical and largely counterfactual assumptions, ones that have no bearing on the case at hand. As such, conclusions from this report are unsupported.
2. The key assumption in this Exhibit is that "each person chooses their candidate independently". Political scientists have shown in hundreds of articles and books that voters do not flip coins to determine who to vote for (as the Binomial distribution the Exhibit uses assumes). In fact, few vote without any influence from the opinions of others around them. Much of the essence of politics is the collective expression of a population, which would not happen with each voter in a silo, isolated from all others. In fact, voters are routinely influenced by the campaign, the candidates, advertising, the media, and other voters. Assuming that none of these processes are operating – as the independence assumption in this Exhibit implies – turns the Exhibit into hypothetical discussion about nonexistent elections.
    a. The fatal flaws in this line of reasoning, and the fact that these assumptions are "not warranted by the data", are well known in the statistical and political science literatures. For example, see: Andrew Gelman, Gary King, and John Boscardin. 1998. "Estimating the Probability of Events that Have Never Occurred: When Is Your Vote Decisive?" *Journal of the American Statistical Association*, 93, Pp. 1–9. Copy at https://j.mp/2ovXwOF
3. The Exhibit relies on data that has no known providence: the chain of evidence from the election we are studying to the Exhibit is broken in multiple places and so cannot be relied on.
    a. The website is a *wiki*, which means *anyone* can make edits without being identified: the site has no authentication, authorization, and even claimed identification by the data contributors, as email addresses and real names are not even required to deposit data. This is a wholly inadequate approach to providing supposedly empirical data. It cannot be relied on.
    b. The wiki site makes its problems explicit by writing in bold: "**Warning: There may be some vandalism from those who are denying the reality of the fraud - we've been expecting this. Most of the damage has been cleaned up.**" The operators of the site, thus, break the chain of evidence further by not explaining what "cleaned up" means, providing any information about data providers, or by giving evidence that they are acting as neutral arbiters and curators of data, wherever it originated.

Exhibits Plaintiffs Submitted Late

I understand that plaintiffs disclosed additional expert opinions on the evening of December 5, 2020, well after the deadline for disclosing expert materials. I have not yet had

an opportunity to consider these materials but, if asked to do so, may offer additional opinions on these new expert reports if the Court allows them to be considered.

Qualifications

Detailed information about my qualifications, including my bio and cv, can be found at GaryKing.org. My work on this report is pro bono.

I am the Albert J. Weatherhead III University Professor at Harvard University -- one of 25 with Harvard's most distinguished faculty title -- and Director of the Institute for Quantitative Social Science. I develop and apply empirical methods in many areas of social science, focusing on innovations that span the range from statistical theory to practical application. I have published widely in peer reviewed scholarly journals on elections, voting behavior, statistical analysis methods, political science, and social science.

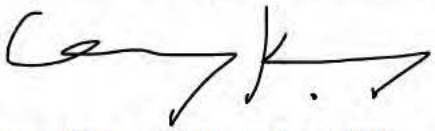
I am an Elected Fellow in 8 honorary societies (National Academy of Sciences, American Statistical Association, American Association for the Advancement of Science, American Academy of Arts and Sciences, Society for Political Methodology, National Academy of Social Insurance, American Academy of Political and Social Science, and the Guggenheim Foundation) and have won more than 55 prizes and awards for my work. I was elected President of the Society for Political Methodology and Vice President of the American Political Science Association; have been a member of the Senior Editorial Board at *Science*, Visiting Fellow at Oxford, and have written more than 175 scholarly journal articles, 20 open source software packages, 15 patents, and 8 books.

My publications are widely cited in academic publications across scholarly fields and beyond academia. I was listed as the most cited political scientist of my cohort; among the group of "political scientists who have made the most important theoretical contributions" to the discipline "from its beginnings in the late-19th century to the present"; and on lists of the most highly cited researchers across the social sciences.

I have served on more than 30 editorial, nonprofit, and corporate boards; as founding editor of *The Political Methodologist*, and on the governing councils of the American Political Science Association, Inter-university Consortium for Political and Social Research, Society for Political Methodology, Midwest Political Science Association, Center for the Advanced Study in the Behavioral Sciences at Stanford, and the Institute for Data, Science, and Society at MIT.

With my coauthors, I developed the methods used by courts and parties to detect partisan gerrymandering. My “ecological inference” methods for inferring individual behavior from aggregate data are used in most jurisdictions in applying the Voting Rights Act to detect racial gerrymandering. I have consulted widely about these and other issues for both major political parties, the courts, and others.

I received a Ph.D. from the University of Wisconsin-Madison (1984). I then taught at NYU for three years before moving to Harvard in 1987.



Gary King, 6 December 2020

Curriculum Vitae

Gary King

September 6, 2020

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Education

Ph.D., Political Science, University of Wisconsin, Madison, 1984.

M.A., Political Science, University of Wisconsin, Madison, 1981.

B.A., *Summa Cum Laude*; Highest Honors in Political Science;
State University of New York at New Paltz, 1980.

Positions

Albert J. Weatherhead III University Professor, Harvard University, 2009 to the present.

David Florence Professor of Government, Harvard University, 2002 to 2009.

Professor of Government, Department of Government, Harvard University, 1990 to 2002.

John L. Loeb Associate Professor of the Social Sciences, Department of Government, Harvard University, 1989.

Associate Professor, Department of Government, Harvard University, 1987 to 1989.

Visiting Assistant Professor, Department of Political Science, University of Wisconsin, Madison, Summer 1985.

Assistant Professor, Department of Politics, New York University, September, 1984 to 1987.

Honorary Societies

Elected Member, National Academy of Social Insurance, 2014.

Elected Member, National Academy of Sciences, 2010.

Elected Fellow, American Statistical Association, 2009.

Elected Fellow, Society for Political Methodology, 2008.

Elected Fellow, American Association for the Advancement of Science, 2004.

Elected Fellow, American Academy of Political and Social Science, 2004.

Elected Fellow, American Academy of Arts and Sciences, 1998.

Guggenheim Fellow, John Simon Guggenheim Memorial Foundation, 1994–1995.

Prizes, Honors, Awards

Gwilym Gibbon Research Fellow, Nuffield College, Oxford University, 10/1/2019–9/30/2022.

Excellence in Mentoring Award, Society for Political Methodology, 2019.

Robert H. Durr Award, for "the best paper applying quantitative methods to a substantive problem" at the previous year's MPSA Conference, for "How to Measure Legislative District Compactness If You Only Know it When You See it," with Aaron Kaufman and Mayya Komisarchik, 2019.

Miembro Vitalicio (Lifetime Member), Asociación Mexicana de Ciencias Políticas (Mexican Political Science Association), 2017.

Best Paper Award, Political Communication Division, International Communication Association, 2017, for "How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, not Engaged Argument" with Margaret Roberts and Jennifer Pan.

Dartmouth Ventures Entrepreneurship Competition, 2nd place, for Thresher, with Rebecca Fair, 2015.

Warren E. Miller Award for Meritorious Service to the Social Sciences, Inter-University Consortium for Political and Social Research, 2015.

Accelerator Award, Harvard University, Office of Technology Development, for "Let Machines Score so Teachers can Teach," which became Perusall.com, with Eric Mazur, 2015.

MPSA Kellogg/Notre Dame Award, from the Midwest Political Science Association, for the best paper in Comparative Politics, 2014, for "Reverse Engineering Chinese Censorship through Randomized Experimentation and Participant Observation," with Margaret Roberts and Jennifer Pan.

Statistical Software Award, Society for Political Methodology, 2014, for Amelia II, by James Honaker, Gary King, and Matthew Blackwell.

Highly Cited Researcher, and listed in *World's Most Influential Scientific Minds*, Thompson-Reuters, 2014.

Everett Mendelsohn Excellence in Mentoring Award, Harvard Graduate Student Council, 2011.

Elected Fellow, American Political Science Association, Information Technology & Politics Section, 2011.

Career Achievement Award, Society for Political Methodology, 2010.

Honorary Doctorate of Humane Letters, State University of New York at New Paltz, 2010.

New Hot Paper, for the most-cited paper in Economics and Business in the last two months among papers published in the last year, for "Misunderstandings among Experimentalists and Observationalists about Causal Inference" by Kosuke Imai, Gary King, and Elizabeth A. Stuart, named by Thomson Reuters' ScienceWatch, 2009.

Miller-Converse Lecturer, Center for Political Studies, Institute for Social Research, University of Michigan, 2009.

Warren Miller Prize for the best article published in *Political Analysis*, for "Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference" by Daniel E. Ho, Kosuke Imai, Gary King, and Elizabeth Stuart, awarded by the Society for Political Methodology and Oxford University Press in 2008.

Fast Breaking Paper, for the article with the largest percentage increase in citations among those in the top 1% of total citations across the social sciences in the last two years, for "Matching as Nonparametric Preprocessing for Reducing Model Dependence in Parametric Causal Inference" by Daniel E. Ho, Kosuke Imai, Gary King, and Elizabeth Stuart, named by Thomson Reuters' ScienceWatch, 2008.

APSA (ITP Section) Best Instructional Political Science Website Award, for Dataverse, by Gary King, Merce Crosas, and the Dataverse team, 2008.

Elected to the Nominating Committee for the American Association for the Advancement of Science, Section on Social, Economic, and Political Sciences, 2/20-2007–2/22/2010.

Named in 2006 to ISI's list of the "most highly cited researchers in the social sciences," Thomson Reuters.

The McGraw-Hill Award for the best journal article on law and courts written by a political scientist and published during the previous calendar year for "The Supreme Court During Crisis: How War Affects only Non-War Cases" by Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal, 2006.

Law and Society Association Prize, Runner up, to "recognize exceptional scholarship in the field of sociolegal studies for an article published in the previous two years," for "The Supreme Court During Crisis: How War Affects only Non-War Cases" by Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal, 2006.

Best Instructional Innovation in the Social Sciences or Social History, Honorable Mention, 2005 ICPSR Prize, for "Publication, Publication," by Gary King.

Pi Sigma Alpha Award, for the best paper delivered at the previous year's MWPSA Conference, for "The Supreme Court During Crisis: How War Affects only Non-War Cases" by Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal, 2005.

Robert H. Durr Award, for "the best paper applying quantitative methods to a substantive problem" at the previous year's MWPSA Conference, for "The Supreme Court During Crisis: How War Affects only Non-War Cases" by Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal, 2005.

APSA Research Software Award, for The Virtual Data Center, by Micah Altman, Gary King, and Sidney Verba, 2005.

American Judicature Society Award, Honorable Mention, for the best paper presented at the previous year's meetings of the American, Midwest, Northeastern, Southern, Southwest, or Western Political Science Associations, for "The Supreme Court During Crisis: How War Affects only Non-War Cases" by Lee Epstein, Daniel E. Ho, Gary King, and Jeffrey A. Segal, 2005.

Elected Vice President, American Political Science Association, for 2003–2004.

Listed in *American Political Scientists: A Dictionary* (2002), giving the "consensus group of 193 political scientists who have made the most important theoretical contributions" to the discipline "from its beginnings in the late-19th century to the present".

ISI Emerging Research Front Article, for authoring an article cited more often in the fields of Psychiatry and Psychology than any other, October, 2002 (for Gary King, James Honaker, Anne Joseph, and Kenneth Scheve's "Analyzing Incomplete Political Science Data: An Alternative Algorithm for Multiple Imputation," *American Political Science Review*), Thomson Reuters' ScienceWatch.

Clifford C. Clogg Memorial Lecturer in Sociology and Statistics, Pennsylvania State University, 2002.

Vision Distinguished Lecturer, Florida State University, 2001.

Outstanding Statistical Application Award, for the outstanding application of statistics in any substantive field, for "Not Asked and Not Answered: Multiple Imputation for Multiple Surveys," with Andrew Gelman and Chuanhai Liu, from the American Statistical Association, 2000.

The Gosnell Prize, for the best work in political methodology presented at any political science conference in the preceding year, for "Improving Quantitative Studies of International Conflict: A Conjecture," with Nathaniel Beck and Langche Zeng, 1999.

The Okidata Best Research Software Award, for "Clarify: Software for Interpreting and Presenting Statistical Results," with Michael Tomz and Jason Wittenberg, 1999, from the American Political Science Association.

The Okidata Best Research Web Site Award, for the Record of American Democracy project and the Harvard-MIT Data Center, 1999, from the American Political Science Association.

Pi Sigma Alpha Award for the best paper ("A Statistical Model for Multiparty Electoral Data" with Jonathan Katz) at the previous year's meetings of the Midwest Political Science Association, 1998.

The Donald Campbell Award for the "outstanding methodological innovator in public policy studies," from the Policy Studies Organization, 1997.

The Gosnell Prize, for the best work in political methodology presented at any political science conference in the preceding year, for the work published as *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data* (Princeton University Press, 1997).

Elected President, Society for Political Methodology, 1997–1999.

Alumnus of the Year, State University of New York at New Paltz Alumni Association, 1997.

The APSA Research Software Award for "EzI: A(n Easy) Program for Ecological Inference" (with Kenneth Benoit) from the American Political Science Association, Computer Section, 1997.

State University of New York Alumni Honor Roll (an award created to honor alumni who demonstrate outstanding professional achievement and significant contributions to higher education and/or public service), from the Chancellor of the State University of New York, 1997.

The Heinz Eulau Award, for the best article published in the *American Political Science Review*, from the American Political Science Association, for "Enhancing Democracy Through Legislative Redistricting," (with Andrew Gelman) Vol. 88, No. 3 (September, 1994): Pp. 541–559.

Elected Vice President, Society for Political Methodology, 1995–1997.

Visiting Fellow, Nuffield College, Oxford University, Summer, 1994.

The APSA Research Software Award for "COUNT: A Program for Estimating Event Count and Duration Regressions," from the American Political Science Association, Computer Section, 1994.

The Mills Award, for the "outstanding contributor in the field of public policy under age 35," from the Policy Studies Organization, 1993.

Pi Sigma Alpha Award for the best paper ("Why Do U.S. Presidential Election Polls Vary So Much When the Vote is So Predictable?" with Andrew Gelman) at the previous year's meetings of the Midwest Political Science Association, 1993.

The APSA Research Software Award for "JudgeIt: A Program for Evaluating Electoral Systems and Redistricting Plans," (with Andrew Gelman), from the American Political Science Association, Computer Section, 1992.

Curriculum Development Challenge Award, "Undergraduate Research Participation in Political Science," New York University, 1987.

Research Challenge Award, "Public Opinion and Executive Behavior: Toward a New Presidency Research Agenda," New York University, 1986.

University Fellowship, University of Wisconsin-Madison, 1983–84.

Research Grants

"OpenDP: An Open-Source Suite of Differential Privacy Tools," Alfred P. Sloan Foundation, Grant No. G-2019-12331, 07/01/2019–09/30/2020, with Salil Vadhan, Merce Crosas, and James Honaker, ($884,838).

"Citation++: Data Citation, Provenance, and Documentation," National Science Foundation, ACI-1448123, 1/01/2015–12/31/2017, With Margo Seltzer and Merce Crosas, ($300,000).

"Applying Theoretical Advances in Privacy to Computational Social Science Practice," Alfred P. Sloan Foundation, 5710003879, G-2014-13661 4/01/2015–9/30/2017 with Salil Vadham, Urs Gasser, Merce Crosas, and Micah Altman ($616,000).

"Preparing Social Science Research Infrastructure for the Potential Inversion of Its Largest Successes and Failures," Alfred P. Sloan Foundation, G-2015-14108, with Merce Crosas, 12/31/2015–5/31/2017, ($751,941).

"Alfred P. Sloan Fellowships: Toward the Creation of Interdisciplinary Fellowships in Data Science," Alfred P. Sloan Foundation, G-2015-20166009, with Richard McCullough, 1/01/2016–6/30/2018, ($124,994).

"RAPID: Measuring the Intent of Chinese Leaders through Censorship Behavior," National Science Foundation, SES-1500086, With Jennifer Pan and Margaret Roberts, 3/01/2015–2/29/2016 ($200,000).

"Causal Inference Methods for Estimating Long Term Health Effects of Air Quality Regulations," Health Effects Institute/Environmental Protection Agency, 4909-RFA11-1/12-3; CR-83467701, with Corwin Zigler et al., 5/01/2012–10/31/15, ($1,033,958).

"Statistically Defensible Comparison of Similar but Disparate Tests," Charles River Analytics Inc./Department of Defense SC1220801 EVIDENT; FA9550-13-C-0028, 2/15/2013–11/14/2013, with Wayne Thornton et al. ($75,000).

"A Bridge from Publishing Words to Publishing Data," Alfred P. Sloan Foundation, G-2014-13659, 1/1/2015–12/31/2017, with Merce Crosas, Tom Carsey, and Jonathan Crabtree ($845,000).

"Privacy for Social Science Research," National Science Foundation #CNS-1237235, 10/01/2012–9/30/2017, with Salil Vadhan, Edoardo Airoldi, Phillip Malone, Latanya Sweeney, ($5,992,707).

"BetterBirth: A Trial of the WHO Safe Childbirth Checklist Program," Gates Foundation #OPP1017378, 5/12/2011–4/28/2015, with Atul Gawande, Jonathan Spector, Stuart Lipsitz, Sue Goldie, and Stephen Resch, ($14,149,388).

"Center for Historical Information and Analysis (CHIA)," National Science Foundation #BCS-1244667, 1/1/13–12/31/2015, with Patrick Manning, ($91,600).

"DataBridge — A Sociometric System for Long-tail Science Data Collections," National Science Foundation #OCI-1247602, 11/1/2012–10/31/2016, with Arcot Rajasekar, Thomas Carsey, Hye-Chung Kum, Howard Lander, Sharlini Sankaran, Justin Zahn, ($463,263).

Disney Research Grant, 2012, ($35,000).

"Helping Journals to Upgrade Data Publication for Reusable Research," 2012-3-2, Alfred P. Sloan Foundation #219264, 6/1/2012–1/1/2015, with Micah Altman and John Willinsky ($1,058,994).

"Text Clustering," Amazon Web Services in Education Research Grant, 2011.

"Measuring, Understanding, and Responding to Covert Social Networks," Department of Defense, Multidisciplinary University Research Initiative (MURI) #W91INF-11-1-0036-DOD35CAP, 11/23/2010–11/22/2016 with Patrick Wolfe, Edo Airoldi, Mung Chiang, David Lazer, Devavrat Shah, and Burton Singer ($6,240,927).

Institute for Museum and Library Services, "Simple Verified Distributed Preservation: A Policy Based Archival Replication System for Libraries, Archives, and Museums using a Virtual Private LOCKSS," LG-05-09-0041-09, with Mark Abrahamson, Ken Bollen, and Nancy McGovern, 10/1/2009–9/30/2012 ($823,016).

National Science Foundation, CDI-Type II: Collaborative Research, "Bibliographic Knowledge Network," DMS-0835500, with James Pitman et al., 10/1/2008–9/30/2011 ($1,211,433).

Library of Congress, "Extension to the Digital Social Science Acquisitions and Preservation Partnership," with Myron Gutmann, Mark Abrahamson, and Ken Bollen, 2009-2010, ($274,832).

Library of Congress, "Extension to the Digital Social Science Acquisitions and Preservation Partnership," with Myron Gutmann, Mark Abrahamson, and Ken Bollen, 2007-2009, ($710,000).

Initiative for Innovative Computing, "GenePattern and the Dataverse Network," with Jill Mesirov, 9/1/2006–8/31/2008, ($250,000).

Time Sharing Experiments for the Social Sciences, "Priming to Increase the Information Content in Survey Responses," with Daniel Hopkins (survey time).

Library of Congress, "The Digital Social Science Acquisitions and Preservation Partnership," PA#NDP03-1, 9/1/2004-3/30/2010, with Myron Gutmann, Ken Bollen, David Weakliem, and Louise Richardson ($2,037,595).

Ministry of Health, Mexico, "Evaluation of the System for Social Protection in Health," 8/1/2004–12/31/2006, ($1,049,981).

National Institutes of Health, National Institute on Aging grant, "Software Development for Resolving Interpersonal Incomparability in Survey Research," Supp. to "Adapting Statistical Methods for Public Health Research," P01 AG17625-01 7/2003–8/2005 ($28,659).

Robert Wood Johnson Foundation, "Scholars in Health Policy Research Program," 9/2003–8/2007, with Nicholas Christakis and Joe Newhouse ($4,564,391).

World Health Organization, "Improved Methods of Demographic Forecasting," 9/2001–8/2003 ($90,000).

Swiss Peace Foundation grant, "International Relations Events Data and Methods Development," 9/2002-8/2003 (two research fellows).

Robert Wood Johnson Foundation planning grant, "Scholars in Health Policy Research Program," 9/2002–8/2003, with Nicholas Christakis, Jennifer Hochschild, and Joe Newhouse ($199,967).

National Science Foundation grant, "A Feasible Uniform Standard for Deep Citation of Social Science Data," grant SES-0112072, 9/1/2001–8/31/06, with Jim Alt and Micah Altman ($805,102).

Toyota Foundation, "Projecting International Conflict," 6/25/01–6/25/02 (a graduate research fellowship).

National Institutes of Health, National Institute on Aging grant, "The Global Burden of Disease in Aging Populations: Adapting Statistical Methods for Public Health Research," with Christopher J.L. Murray et al., grant 1 P01 AG17625-01, 9/30/2000–8/31/2005 ($8,656,009).

Weatherhead Initiative grant, "Military Conflict as a Public Health Perspective," Weatherhead Center for International Affairs, with Christopher J.L. Murray, 2000–2002 ($250,000).

World Health Organization and the National Institutes of Aging grant, "Forecasting Death by Age, Sex, Cause, and Country," 1998–2001 ($529,040).

Digital Library Initiative grant (sponsored by the National Science Foundation, Defense Advanced Research Projects Agency, National Library of Medicine, Library of Congress, National Endowment for the Humanities, and the National Aeronautics & Space Administration) for the "Virtual Data Center Project" with Micah Altman and Sidney Verba et al., grant IIS-9874747, 7/1/1999–6/31/2004 ($2,400,000).

National Science Foundation Grant, Co-PI, "Summer Meetings of the Society for Political Methodology," with Charles Franklin, SBR-9905798, ($68,976).

Intel Corporation, "Geospatial Liboratory Project," with Micah Altman, Susan Lee, Paul Bergen, David Cobb, Arlene Olivero, Thomas Parris, and William Wei, ($150,000).

ICPSR, Data Documentation Initiative Test, with Micah Altman, Michael McDonald, and Michael Ting, ($1,750).

National Partnership for Advanced Computational Infrastructure, supercomputer allocation grant for "Ecological Inference and Voting for the Nazis," with Ori Rosen and Martin Tanner, June 1998 to May 1999.

Centers for Disease Control and Prevention (Division of Diabetes Translation), 15 July 1998–14 July 1999, ($90,311).

Global Forum for Health Research grant, 1998–1999, ($10,000).

National Science Foundation Grant SBR-9729884, "Missing Information in Survey Research," 1 March 1998–28 February 2000 ($175,000).

National Science Foundation Grant SBR-9321212, "The Record of American Democracy, 1984-1990," 1 March 1994–31 August 1997, ($140,996).

Fairness for the 90s Foundation Grant, "The Record of American Democracy, 1984-1990." (≈$3,500,000).

National Science Foundation Grant SBR-9223637, "Generalizing Multiple Imputation to Time Series Data, with Application to Survey Research and Evaluating Electoral Systems and Redistricting Plans," 1 August 1993–31 January 1996, (with Andrew Gelman), $70,000.

National Science Foundation Grant SES-89-09201, "Modeling Representation in District-Based Electoral Systems," 1 July 1989–31 December 1991 ($78,429).

National Science Foundation Grant, Co-PI, "Political Methodology Summer Workshops," 1 June 1990–1 January 1992 ($37,601, with John Jackson, Larry Bartels, Henry Brady, Stanley Feldman, and Gary King).

Smith Richardson Foundation Grant, "Representation and Gerrymandering in American Electoral Systems," 1 August 1989–1 September 1990 ($45,227).

National Science Foundation Grant, "Democratic Representation in District-Based Electoral Systems: A Stochastic Model of Legislative Redistricting," 1 February 1988–31 July 1989 ($37,000).

National Science Foundation, URP grant, Summer, 1979.

Citizen Participation in Government Foundation, 9/1979–5/1980.

Writings (Books|Articles|Software|Patents|Court Briefs)

Books

King, Gary; Kay Schlozman; and Norman Nie, eds., *The Future of Political Science: 100 Perspectives*, New York: Routledge Press, 2009.

Girosi, Federico and Gary King. *Demographic Forecasting*, Princeton: Princeton University Press, 2008.

King, Gary; Ori Rosen; and Martin A. Tanner, eds., *Ecological Inference: New Methodological Strategies*, New York: Cambridge University Press, 2004.

King, Gary. *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data*, Princeton: Princeton University Press, 1997, (replication dataset: ICPSR s1132).

King, Gary; Robert O. Keohane; and Sidney Verba. *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton: Princeton University Press, 1994.

King, Gary. *Unifying Political Methodology: The Likelihood Theory of Statistical Inference*. Cambridge, England and New York: Cambridge University Press, 1989. Reprinted, Ann Arbor: University of Michigan Press, 1998.

King, Gary and Lyn Ragsdale. *The Elusive Executive: Discovering Statistical Patterns in the Presidency*. Washington, D.C.: Congressional Quarterly Press, 1988.

Brace, Paul; Christine Harrington; and Gary King. *The Presidency in American Politics*. New York and London: New York University Press, 1989. Paperback published in 1990.

Articles

Allen, William E.; Han Altae-Tran; James Briggs; Xin Jin; Glen McGee; Andy Shi; Rumya Raghavan; Mireille Kamariza; Nicole Nova; Albert Pereta; Chris Danford; Amine Kamel; Patrik Gothe; Evrhet Milam; Jean Aurambault; Thorben Primke; Weijie Li; Josh Inkenbrandt; Tuan Huynh; Evan Chen; Christina Lee; Michael Croatto; Helen Bentley; Wendy Lu; Robert Murray; Mark Travassos; Brent A. Coull; John Openshaw; Casey S. Greene; Ophir Shalem; Gary King; Ryan Probasco; David R. Cheng; Ben Silbermann; Feng Zhang; and Xihong Lin. 8/26/2020, "Population-scale Longitudinal Mapping of COVID-19 Symptoms, Behaviour and Testing," *Nature Human Behavior*. Copy at https://j.mp/3h58z8j.

Wojcik, Stefan; Avleen Bijral; Richard Johnston; Juan Miguel Lavista; Gary King; Ryan Kennedy; Alessandro Vespignani; and David Lazer. Forthcoming. "Survey Data and Human Computation for Improved Flu Tracking," *Nature Communications*. Copy at https://j.mp/2X10j2U.

Segal, Eran; Feng Zhang; Xihong Lin; Gary King; Ophir Shalem; Smadar Shilo; William E. Allen; Yonatan H. Grad; Casey S. Greene; Faisal Alquaddoomi; Simon Anders; Ran Balicer; Tal Bauman; Ximena Bonilla; Gisel Booman; Andrew T. Chan; Ori Cohen; Silvano Coletti; Natalie Davidson; Yuval Dor; David A. Drew; Olivier Elemento; Georgina Evans; Phil Ewels; Joshua Gale; Amir Gavrieli; Benjamin Geiger; Iman Hajirasouliha; Roman Jerala; Andre Kahles; Olli Kallioniemi; Ayya Keshet; Gregory Landua; Tomer Meir; Aline Muller; Long H. Nguyen; Matej Oresic; Svetlana Ovchinnikova; Hedi Peterson; Jay Rajagopal; Gunnar Rätsch; Hagai Rossman; Johan Rung; Andrea Sboner; Alexandros Sigaras; Tim Spector; Ron Steinherz; Irene Stevens; Jaak Vilo; Paul Wilmes, and CCC (Coronavirus Census Collective). 8/2020. "Building an International Consortium for Tracking Coronavirus Health Status," *Nature Medicine*, Vol. 26, Pp. 1161–1165. Copy at https://j.mp/39ZbDPR.

Lazer, David M.J.; Alex Pentland; Duncan J. Watts; Sinan Aral; Susan Athey; Noshir Contractor; Deen Freelon; Sandra Gonzalez-Bailon; Gary King; Helen Margetts; Alondra Nelson; Matthew J. Salganik; Markus Strohmaier; Alessandro Vespignani; and Claudia Wagner. 8/28/2020. "Computational Social Science: Obstacles and Opportunities," *Science*, Vol. 369, Issue 6507, Pp. 1060–1062. Copy at https://j.mp/2YIuWdh.

Coker, Beau; Cynthia Rudin; and Gary King. Forthcoming. "A Theory of Statistical Inference for Ensuring the Robustness of Scientific Results," *Management Science*. Copy at https://j.mp/2HsaZAY.

Jerzak, Connor T.; Gary King; and Anton Strezhnev, Forthcoming, "An Improved Method of Automated Nonparametric Content Analysis for Social Science," *Political Analysis*, Copy at http://j.mp/2DyLYxL.

King, Gary; Shiro Kuriwaki; and Yon Soo Park, Forthcoming. "The 'Math Prefresher' and The Collective Future of Political Science Graduate Training," *PS: Political Science and Politics*, Copy at http://j.mp/30UEjFy.

Katz, Jonathan N.; Gary King; and Elizabeth Rosenblatt, 2020. "Theoretical Foundations and Empirical Evaluations of Partisan Fairness in District-Based Democracies" *American Political Science Review*, Vol. 114, No. 1 (February): Pp. 164–178, Copy at http://j.mp/2BkgYTP.

King, Gary and Nathaniel Persily. Forthcoming. "A New Model for Industry-Academic Partnerships," *PS: Political Science and Politics*. Copy at http://j.mp/2q1IQpH.

King, Gary. Forthcoming. "So You're a Grad Student Now? Maybe You Should Do This," In *Sage Handbook of Research Methods in Political Science*, edited by Jr. Robert J. Franzese and Luigi Curini. London: Sage Publications. Copy at http://j.mp/2LcFgoY.

Jiang, Wenxin; Gary King; Allen Schmaltz; and Martin A. Tanner. Forthcoming. "Ecological Regression with Partial Identification," *Political Analysis*. Copy at http://j.mp/2vh3O93.

King, Gary and Richard Nielsen. Forthcoming. "Why Propensity Scores Should Not Be Used for Matching," *Political Analysis*, Copy at http://j.mp/2ovYGsW.

Imai, Kosuke; Gary King; and Carlos Velasco Rivera. Forthcoming, 2020. "Do Nonpartisan Programmatic Policies Have Partisan Electoral Effects? Evidence from Two Large Scale Experiments," *Journal of Politics*, Vol. 81, No. 2, April. Copy at http://j.mp/2o3NZgO.

Kaufman, Aaron; Gary King; and Mayya Komisarchik. Forthcoming. "How to Measure Legislative District Compactness If You Only Know it When You See It," *American Journal of Political Science*. Copy at http://j.mp/2u9OWrG.

Iacus, Stefano M.; Gary King; and Giuseppe Porro. 2019. "A Theory of Statistical Inference for Matching Methods in Causal Research," *Political Analysis*, Vol. 27, No. 1, Pp. 46-68. Copy at http://j.mp/2GFVqkx.

King, Gary. Forthcoming. "Edited transcript of a talk on Partisan Symmetry at the 'Redistricting and Representation Forum'," *Bulletin of the American Academy of Arts and Sciences*, Winter, Pp. 55-58. Copy at http://j.mp/2hSaZyC.

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Software

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Patents

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King, Gary; Eric Mazur; Kelly Miller; and Brian Lukoff. "Instructional Support Platform for Interactive Learning Platforms," U.S Patent and Trademark Office, Patent No. US 10,438,498 B2, Issued 10/8/2019. Copy at http://j.mp/32vmgWB.

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King, Gary; and Patrick Lam; and Margaret Roberts. 2019. "Systems and Methods for Keyword Determination and Document Classification from Unstructured Text," U.S.

Patent and Trademark Office, Patent No. US 10,275,516 B2, Issued 4/30/2019. Copy at http://j.mp/2Jz53pp.

King, Gary; Eric Mazur; and Brian Lukoff. 2019. "Participant Grouping for Enhanced Interactive Experience," U.S. Patent and Trademark Office, Patent No. US 10,216,827 B2, Issued 2/26/2019. Copy at http://j.mp/2tFYhVX

King, Gary; Eric Mazur; Kelly Miller; and Brian Lukoff. 2019. "Stimulating Online Discussion in Interactive Learning Environments," U.S. Patent and Trademark Office, Patent No. US 10,192,456 B2, Issued 1/29/2019. Copy at http://j.mp/2CQrIIT.

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King, Gary; Daniel Hopkins; and Ying Lu. 11/17/2015. "System for Estimating a Distribution of Message Content Categories in Source Data (2nd)," United States of America US 9,189,538 B2 (U.S Patent and Trademark Office). Copy at http://j.mp/2CeNXs5.

King, Gary; Brian Lukoff; and Eric Mazur. 2014. "Participant Grouping For Enhanced Interactive Experience," U.S. Patent and Trademark Office, Patent No. US 8,914,373 B2, Issued 12/16/2014. Copy at http://j.mp/1EkBPSZ.

King, Gary and Justin Grimmer. 2013. "Method and Apparatus for Selecting Clusterings to Classify A Predetermined Data Set," U.S. Patent and Trademark Office, Patent No. US 8,438,162 B2, Issued 5/7/2013, Copy at http://j.mp/12cmMDZ.

Hopkins, Daniel; Gary King; and Ying Lu. 2012. "System for Estimating a Distribution of Message Content Categories in Source Data," U.S. Patent and Trademark Office, Patent No. US 8,180,717 B2, Issued 5/15/2012, Copy at http://j.mp/14SQsbp.

US Supreme Court Amici Briefs

Gerken, Heather K.; Jonathan N. Katz; Gary King; Larry J. Sabato; and Samuel S.-H. Wang. 2017. "Brief of Heather K. Gerken, Jonathan N. Katz, Gary King, Larry J. Sabato, and Samuel S.-H. Wang as Amici Curiae in Support of Appellees," Filed with the Supreme

Court of the United States in *Beverly R. Gill et al. v. William Whitford et al.* No. 16-1161. Copy at http://j.mp/2iJAMZl.

Imbens, Guido; Donald B Rubin; Gary King; Richard A Berk; Daniel E Ho; Kevin M Quinn; James D Greiner; Ian Ayres; Richard Brooks; Paul Oyer; and Richard Lempert. 2012. "Brief of Empirical Scholars as Amici Curiae," Filed with the Supreme Court of the United States in *Abigail Noel Fisher v. University of Texas at Austin, et al.* No. 11-345, Copy at http://j.mp/2ox5M0U.

Gary King, Bernard Grofman, Andrew Gelman, and Jonathan Katz. 2005. "Brief of Amici Curiae Professors Gary King, Bernard Grofman, Andrew Gelman, and Jonathan Katz in Support of Neither Party," Filed with the U.S. Supreme Court in *Jackson v. Perry.* Copy at http://j.mp/2gw1W1R.

Companies Founded

OpenScholar (TheOpenScholar.com), founded by Jessica Drislane and Gary King, 2017–.

Perusall (Perusall.com), founded by Gary King, Brian Lukoff, Eric Mazur, and Kelly Miller, 2015–.

Thresher (Thresher.io), founded by Rebecca Fair and Gary King, 2015–.

Learning Catalytics (LearningCatalytics.com), founded by Gary King, Brian Lukoff, and Eric Mazur, 2011–2013, (acquired by Pearson).

Crimson Hexagon (CrimsonHexagon.com), founded by Candace Fleming and Gary King, 2007–2018, (merged with Brandwatch).

Corporate and Nonprofit Boards

Co-founder and Co-chair, *Social Science One*, 2018–.

Board of Directors, *InMoment*, Inc., 2018–2019 (InMoment acquired; board disbanded).

Editorial Board Member, *Swiss Political Science Review*, 2017–.

Senior Editorial Board, *Science Magazine*, 2015–2016.

Editorial Board Member, *World Politics*, 2013–2019.

Board of Directors, *Center for Advanced Study in the Behavioral Sciences*, 9/1/2011–2020.

Board of Directors, *Crimson Hexagon*, Inc., Member 2007–2018. Chair, 2012–2018.

Board Observer, *Brandwatch*. 2018–.

Board of Directors, *Thresher*, LLC, Chair, 2015–.

Editorial Board Member, *Journal of Experimental Political Science*, 2013–.

Editorial Board Member, *GigaScience*, 2011–.

Editorial Board Member, *American Sociological Review*, 2010–2013.

Academic Review Board Member, *International Public Policy Review*, 2010–2011.

Member, Quantified Self Advisory Board, 2009–2013.

Editorial Board Member, *Environmental Economics*, March 2009–2012.

Editorial Board Member, *Statistics, Politics, and Policy*, 2009–.

Advisory Board Member, American Human Development Report, 2009.

Chair, Durr Award Committee, Midwest Political Science Association, 2008.

Scientific Oversight Group, Institute for Health Metrics and Evaluation, University of Washington, 2008–.

Advisory Board Member, *Political Methods: Quantitative Methods*, Social Science Research Network, 2007–.

Editorial Board Member, *American Political Science Review*, July 2007–.

Editorial Advisory Board, *The Annals*, American Academy of Political and Social Science, 2006–.

Editorial Board Member, *Journal of Information Technology and Politics*, 2006–.

Editorial Board Member, *Political Research Quarterly*, 2006–2011.

Editorial Board Member, *Concepts and Methods Working Paper Series* of the International Political Science Association, 2005–2007.

Steering Committee, ESRC Oxford University Spring School in Quantitative Methods of Social Research, 2002.

Editorial Board Member, *Population Health Metrics*, 2002–.

Editorial Board Member, *Evidence for Health Policy*, 2002–2005.

Editorial board member, *American Journal of Political Science*, 1988–1991, 2002–2009.

Member, U.S. National Committee on Data for Science and Technology (USNC/CODATA), National Research Council, 12/2001–6/2004.

Member, Privacy in the Information Age Committee, National Research Council (Computer Science and Telecommunications Board), 2/2002–.

Senior Science Advisor, World Health Organization, 1998–2003.

Editorial Board member, *New England Journal of Political Science*, 2005–.

Editorial Advisory Board member, *Encyclopedia of Social Measurement*, Academic Press.

Governing Council member, American Political Science Association, 1999–2001.

Governing Council member, Inter-university Consortium for Political and Social Research, 1998–2000. Chair, Director Search Comittee.

Executive Council member, Midwest Political Science Association, 1997–1999. Chair, Publications Committee.

Editorial Board member, *Encyclopedia of Public Health*, Academic Press.

Editorial Committee member, *Bulletin of the World Health Organization*, 1999–.

American Political Science Association liaison to the American Association for the Advancement of Science, Section K, 2002.

Editorial Board Member, *American Political Science Review*, 1995–2001.

Editorial Board member, *Sage Publications, Quantitative Applications in the Social Sciences, monograph series*, 1994–.

Chair, National Science Foundation, Committee of Visitors review panel for the political science program, 1994.

Editorial board member, *International Studies Quarterly*, 1994–2001.

Editorial board member, *Legislative Studies Quarterly*, 1993–1996.

National Science Foundation, political science panel member, 1991–1993.

Editorial board member, *American Politics Research* (formerly *American Politics Quarterly*), 1992–2010.

Editorial board member, *Journal of Politics*, 1991–1997.

Editorial board member, *Public Opinion Quarterly*, 1991–1995.

Editorial board member, *Journal of Conflict Resolution*, 1990–.

Editorial board member, *Sociological Methods and Research*, 1989–.

Editorial board member, *Political Analysis*, 1988–.

Founding Editor, *The Political Methodologist*, Newsletter of The Society for Political Methodology and the Methodology Section of The American Political Science Association, 1988–1990.

Program Committee Co-chair, Political Methodology Section and Organized Section Head of the Political Methodology Group, American Political Science Association annual meeting, 1990.

Member, Steering Committee, Presidency Research Group, American Political Science Association, 1989–1993.

Member, Richard F. Fenno, Jr. Prize Committee, Legislative Studies Section, American Political Science Association, 1990.

Selected Conference Activities

[Needs updating!]

Invited Address, "The Dataverse Network," UseR! The R User Conference, Technische Universität Dortmund, Germany, 12-14 August 2008.

Keynote Address, "What to do about Biases in Survey Research," Association Française de Science Politique (French Political Science Association), Toulouse, France, September, 2007.

Invited Address, American Association for Public Opinion Research, Nashville, May, 2003.

Keynote address in methods, American Sociological Association, San Francisco, August, 1998.

Keynote Address in Political Geography, Association of American Geographers, Cambridge, Massachusetts, March 1998.

Short Courses (3-6 hours) offered on *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data* at the American Political Science Association (August, 1997), the Boston Chapter of the American Statistical Association (November, 1997), the Inter-university Consortium for Political and Social Research (July 1998), and the Social Science History Association (November 1998).

"Not Asked and Not Answered: Multiple Imputation for Multiple Surveys," the *Journal of the American Statistical Association* (by Andrew Gelman, Gary King, and Chuanhai Liu), Applications Invited Discussion Paper at the American Statistical Association annual meetings in Dallas, Texas, August, 1998.

"Meet the Author: Gary King's *A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data*," panels at the annual meetings of the Midwest Political Science Association, 10–12 April 1997, and the American Political Science Association, 28–31 August 1997.

"Meet the Authors: King, Keohane, and Verba's *Designing Social Inquiry: Scientific Inference in Qualitative Research*," annual meetings of the American Political Science Association, 2–4 September 1994.

"The State of Political Methodology: Looking Back at Achen (1983), King (1990), and Bartels and Brady (1993)," at the annual meetings of the American Political Science Association, 2–5 September, 1993.

"Scientific Inference in Qualitative Research," (a roundtable on a draft version of Gary King, Robert Keohane, and Sidney Verba's *Designing Social Inquiry: Scientific Inference in Qualitative Research*) annual meetings of the American Political Science Association, Washington, D.C., 29 August–1 September, 1991.

"On Political Methodology," presented to a panel about this paper at the annual meetings of the American Political Science Association, Atlanta, 31 August to 3 September 1989.

"Maximum Likelihood: Costs and Benefits," (on *Unifying Political Methodology: The Likelihood Theory of Statistical Inference*) at the annual meetings of the Southern Political Science Association, Memphis, Tennessee, 2–4 November 1989.

Selected University Service Activities

[Needs updating!]

University-Wide Social Sciences Advisory Committee (and Chair of the Infrastructure Committee), 2009–2011.

Social Sciences Priority Committee, 2008–2016.

FAS Priorities Committee, 2008–2009.

Director, Institute for Quantitative Social Science, 2005–.

Director, Center for Basic Research in the Social Sciences, 2004–2005.

Director, Harvard-MIT Data Ce nter, 1987–.

Visiting Committee Member, Harvard School of Public Health, 2003–2009.

Standing Committee on Higher Degrees in Health Policy, 1998–.

FAS Resources Committee, 1997–.

Knafel Center Planning Committee, 1997–2005.

Standing Committee on Information Technology, FAS, 1992–.

Chair, Joint Junior Faculty Recruitment Committee, Department of Government, 1997–98, 2003–04, 2004–05, 2005–06, 2006-07.

Chair, Information Technology Subcommittee on Libraries and Databases, 1996–97.

Faculty Council, Harvard University, Faculty of Arts and Sciences, 1992–94.

Placement Director, Department of Government, 1993–94, 1996–97.

Standing Committee on the College Library, FAS, 1993–94.

Steering Committee, Political Economy and Government Ph.D. program, FAS and JFK School of Government, Harvard, 1991–94.

Standing Committee on Research Policy, FAS, 1992–93.

Standing Committee for Undergraduate Education, FAS, 1992–93.

Chair, Political Methodology Recruitment Committee, 1993.

Chair (1991—93) and member (1989–91, 2001–02), Admissions Committee, Department of Government, Harvard.

Junior Faculty Recruitment Committee, Department of Government, Harvard, 1987–89, 1990–92.

Chair, James Phelps Stokes Lecture Committee, Department of Politics, NYU, 1986–87.

Fellowship, Evaluation, and Progress Committee, Department of Politics, NYU, 1986–87.

Undergraduate Curriculum Committee, Department of Politics, NYU, 1986–87; completed review and revision of the entire undergraduate curriculum.

Methodology Field Head, Department of Politics, NYU, Fall, 1986.

Graduate Curriculum Committee, Department of Politics, NYU, 1985–86; completed review and revision of the entire graduate curriculum.

Admissions Committee, Department of Politics, NYU, 1985–86.

Faculty Adviser, Political Science Graduate Student Association, Department of Politics, NYU, 1985–86.

Computer Planning Committee, Faculty of Arts and Sciences, NYU, 1984–1987.

Lecture Committee, Department of Politics, NYU, 1984–85.

Politics Computing Advisory Committee, Department of Politics, NYU, 1984–85.

Social Science Computing Advisory Committee, NYU, 1985–1987.

EXHIBIT 9

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Exhibit 1

Response to Report of Dr. William Briggs

Stephen Ansolabehere

December 4, 2020

Statement of Inquiry

1. I have been asked to evaluate the report of Dr. William Briggs. I am compensated at the rate of $550 an hour.

2. A brief summary of my high-level opinions and conclusions is below; however, overall, based on my review, I find the estimates and analyses in Dr. Briggs' report to be unreliable and the analysis not up to scientific standards of survey research, data science, or election analysis. There are substantial errors in the design of the survey and errors and inconsistencies in the data used in the analysis that are of sufficient magnitude to invalidate any calculations or estimates based on these data. The extremely low response rate, the high break off rate, and the inconsistencies in data spreadsheets lead me to conclude that the survey should not be assumed to be representative of the population studied, and the data should not be assumed to be accurate. The interpretation of the data does not account for obvious and important features of absentee voting, including permanent absentee voters who do not need to request ballots to receive them, as well as late, rejected, invalid, and spoiled absentee ballots. The errors in design, analysis, and interpretation of the data are so massive that there is no foundation for drawing any conclusions or inferences from Dr. Briggs' report.

Summary Assessment

3. In his report, Dr. Briggs evaluates survey data that was provided to him by a third party and assumes that "the respondents [to the survey] are representative and the data are accurate."[1] There is no indication in his report that he conducted any analysis of the data or that those who provided the data to him did anything to verify its correctness and integrity. Nor is

[1] William M. Briggs, "An Analysis of Surveys Regarding Absentee Ballots Across Several States," November 23, 2020, page 1.

there any showing that he or anyone else analyzed the quality of the survey or the representativeness of the sample on which he based his analysis. It is standard scientific practice in the field of survey research to give careful scrutiny to data before conducting any statistical analyses, including understanding the structure and wording of the survey questions, the sampling method and response rate, and the characteristics of the sample, such as demographic and behavioral indicators.

4. In his report, Dr. Briggs defines two types of purported errors. The first is that people received an absentee ballot even though, according to the survey, they did not request one (Alleged Error #1). The second is that people allegedly returned absentee ballots that election offices did not record (Alleged Error #2). These two alleged errors, Dr. Briggs asserts, combine to create a category of "troublesome ballots." The estimates of Alleged Error #1 and Alleged Error #2 that he presents are deeply flawed because of defects in the design of the survey, fatal data errors evident in the survey toplines, calculation errors, and errors in the interpretation of the data. It is my professional judgment that none of the estimates and projections in his report are valid.

5. The design of the survey contaminates the data and any estimates, rendering them invalid. Specifically, in Question 1 of the survey the surveyor asks to speak to a specific person. Some of the respondents are flagged as "Reached Target," while others are flagged as "Uncertain" or "What is this about?" Both groups of people (Reached Target and Uncertain) are then asked Question 2, "Did you request an absentee ballot?" This is a serious survey design error, because some or perhaps all of the people flagged as "Uncertain" are not the target of the interview. As a result, the structure of the very beginning of the survey allows people who were

not the target to be treated as if they were in the remaining questions. This leads to the contamination of all estimates.

6. The survey also suffers from ambiguously worded questions, which introduces measurement errors in any estimates. Question 2 asks respondents whether they requested an absentee ballot. The question does not follow up and clarify different ways that people obtain absentee ballots, especially, whether the voter did not need to request a ballot in order to receive one because they are permanent absentee voters. According to data reported by county election offices in the State of Arizona to the U.S. Election Assistance Commission, there were 2,545,198 million permanent absentee or early voters (PEVs) in the state out of 2,672,384 absentee voters in the 2018 election. The data are from 2018 because the 2020 data have not yet been reported. **In other words, 95 percent of all absentee voters in the state were automatically sent an absentee ballot without needing to request one for a specific election.** Dr. Briggs is apparently unaware of this critical fact, which completely undermines his analysis.

7. The wording of Question 3 also is very problematic. First, the survey does not ascertain whether a ballot was in fact received. According to figures from the U.S. Election Assistance Commission, there were 102,896 undeliverable absentee ballots. Neither Question 2 nor Question 3 screens out people who did not receive a ballot. Second, Question 3 does not ascertain whether the ballot was mailed back in a timely manner so as to be included in the record of ballots cast. Third, Question 3 asks whether someone voted. As is well known among political scientists and survey researchers, survey questions asking whether someone voted are subject to substantial social desirability biases that lead to inflation in the estimated number of voters.

8. There are also errors and inconsistencies in the survey data. Appended to Dr. Briggs' report is a series of tables, called Topline Tables ("toplines"), for the State of Arizona. Toplines for other states are not disclosed. The toplines provide the basic statistics about the survey reported for each question, as well as the questions themselves and the response categories for each question. There are errors in the spreadsheet of toplines indicating data inconsistencies. For example, in Arizona, there are more respondents to Question 2 than the survey instructions indicate should have been asked Question 2. Generally, such errors indicate fundamental problems with the management of the survey and the databases generated by the survey. It is standard practice in survey research and analysis of survey data to conduct integrity checks to ensure that there are not mistakes in the data. The presence of substantial discrepancies in these topline tables, such as shown here, indicates flaws in the data. Dr. Briggs' report makes no mention of these inconsistencies and errors and assumes that the underlying data are accurate. These errors and inconsistencies reveal that the data are not accurate.

9. In addition, the survey has extremely low response rates. Of the 518,560 absentee voters who were the target of the study, 2,489 were asked and 2,129 people (one-half of one percent) ultimately provided answers to Question 2. High non-response rates generally create biases in survey because the samples are rarely representative of the population under study. Surveys with such a low response rate are not accepted in scientific publications, except on rare occasions and with proper analyses that ensure that the respondents are in fact representative. When researchers have low response rates, they must offer affirmative proof of representativeness or attempt to correct for biases. Neither is done here.

11. The interpretation of the data as evidence of "errors" and "troublesome ballots" fails to account for the rules and realities of absentee voting. First, Dr. Briggs calls Alleged Error #1

absentee ballots that were received by voters but were not "requested." This interpretation fails to consider that 95 percent of absentee ballots sent by election offices are sent to permanent absentee voters, who receive ballots without requesting them. All five states in his report allow for permanent absentee voting for some or all registrants. Second, Dr. Briggs calls Alleged Error #2 ballots that were sent by voters but not recorded at the county election offices. This interpretation fails to account for late, undeliverable, rejected, and spoiled ballots. Most jurisdictions, for example, do not record late ballots in the tally of returned absentee ballots. The results in his analysis, if they are real, are likely the consequence of the normal practice of absentee voting.

II. Qualifications

12. I am the Frank G. Thompson Professor of Government in the Department of Government at Harvard University in Cambridge, MA. Formerly, I was an Assistant Professor at the University of California, Los Angeles, and I was Professor of Political Science at the Massachusetts Institute of Technology, where I held the Elting Morison Chair and served as Associate Head of the Department of Political Science. I am the Principal Investigator of the Cooperative Congressional Election Study (CCES), a survey research consortium of over 250 faculty and student researchers at more than 50 universities, directed the Caltech/MIT Voting Technology Project from its inception in 2000 through 2004, and served on the Board of Overseers of the American National Election Study from 1999 to 2013. I am an election analyst for and consultant to CBS News' Election Night Decision Desk. I am a member of the American Academy of Arts and Sciences (inducted in 2007). My curriculum vitae is attached to this report as Appendix B.

13. I have worked as a consultant to the Brennan Center in the case of *McConnell v. FEC*, 540 U.S. 93 (2003). I have testified before the U.S. Senate Committee on Rules, the U.S. Senate Committee on Commerce, the U.S. House Committee on Science, Space, and Technology, the U.S. House Committee on House Administration, and the Congressional Black Caucus on matters of election administration in the United States. I filed an amicus brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009) and an amicus brief with Professor Nathaniel Persily and others in the case of *Evenwel v. Abbott*, 138 S. Ct. 1120 (2015). I have served as a testifying expert for the Gonzales intervenors in *State of Texas v. United States* before the U.S. District Court in the District of Columbia (No. 1:11-cv-01303); the Rodriguez plaintiffs in *Perez v. Perry*, before the U.S. District Court in the Western District of Texas (No. 5:11-cv-00360); for the San Antonio Water District intervenor in *LULAC v. Edwards Aquifer Authority* in the U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG); for the Department of Justice in *State of Texas v. Holder*, before the U.S. District Court in the District of Columbia (No. 1:12-cv-00128); for the Guy plaintiffs in *Guy v. Miller* in the U.S. District Court for Nevada (No. 11-OC-00042-1B); for the Florida Democratic Party in *In re Senate Joint Resolution of Legislative Apportionment* in the Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490); for the Romo plaintiffs in *Romo v. Detzner* in the Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412); for the Department of Justice in *Veasey v. Perry*, before the U.S. District Court for the Southern District of Texas, Corpus Christi Division (No. 2:13cv00193); for the Harris plaintiffs in *Harris v. McCrory* in the U.S. District Court for the Middle District of North Carolina (No. 1:2013cv00949); for the Bethune-Hill plaintiffs in *Bethune-Hill v. Virginia*

State Board of Elections in the U.S. District Court for the Eastern District of Virginia (No. 3: 2014cv00852); for the Fish plaintiffs in *Fish v. Kobach* in the U.S. District Court for the District of Kansas (No. 2:16-cv-02105-JAR); and for intervenors in *Voto Latino, et al. v. Hobbs*, in the U.S. District Court for the District of Arizona (No. 2:19-cv-05685-DWL). I served as an expert witness and filed an affidavit in the North Carolina State Board of Elections hearings regarding absentee ballot fraud in the 2018 election for Congressional District 9 in North Carolina.

14. My areas of expertise include American government, with particular expertise in electoral politics, representation, and public opinion, as well as statistical methods in social sciences and survey research methods. I have authored numerous scholarly works on voting behavior and elections, the application of statistical methods in social sciences, legislative politics and representation, and distributive politics. This scholarship includes articles in such academic journals as the Journal of the Royal Statistical Society, American Political Science Review, American Economic Review, the American Journal of Political Science, Legislative Studies Quarterly, Quarterly Journal of Political Science, Electoral Studies, and Political Analysis. I have published articles on issues of election law in the Harvard Law Review, Texas Law Review, Columbia Law Review, New York University Annual Survey of Law, and Election Law Journal, for which I am a member of the editorial board. I am associate editor of the Harvard Data Science Review, and have served as associate editor of the Public Opinion Quarterly. I have coauthored three scholarly books on electoral politics in the United States, The End of Inequality: Baker v. Carr and the Transformation of American Politics, Going Negative: How Political Advertising Shrinks and Polarizes the Electorate, and The Media Game: American Politics in the Media Age. I am coauthor with Benjamin Ginsberg and Ken Shepsle of American Government: Power and Purpose.

III. Sources

15. I have relied on the report of Dr. William Briggs in this case.

16. I have relied on the Election Assistance Commission, "Election Administration and Voting Survey (EAVS)" for 2018: https://www.eac.gov/research-and-data/studies-and-reports. I present data from 2018 because it is the most recent federal election for which data on absentee and permanent absentee voting is available. The 2018 data are instructive about the magnitude of permanent absentee voters and the magnitude of unreturned, late, rejected, and spoiled absentee ballots. The 2020 data are not yet reported.

17. I have relied on the report of Mr. Matthew Braynard in a pending lawsuit in Fulton County, Georgia, Superior Court, *Wood v. Raffensperger*, 2020CV342959.

18. I have relied on the report of Dr. William Briggs in *King v. Whitmer* in the District Court in the Eastern District of Michigan (No. 2:20-cv-13134).

IV. Findings

19. In my professional judgment, there are fundamental flaws in the design of the survey design and the survey data on which Dr. Briggs relied. These flaws created biases in the estimates and analyses that are sufficiently large to completely explain the results that Dr. Briggs presents as nothing more than errors in the data collection process. Perhaps most troubling, the survey is likely highly unrepresentative because it has a response rate less than 1 percent; the survey data are contaminated by respondents who should not have been included in the survey, and the basic data in the Topline summaries of the data do not add up, indicating fatal flaws in the implementation of the survey.

20. The interpretations of the estimates in the survey as errors and troublesome ballots fail to take into account the realities of absentee voting in the State of Arizona. Almost all absentee voters in the State receive absentee ballots for each election without having to request ballots for that election because they are Permanent Absentee and Early Voters (PEVs). In addition, there are large numbers of undeliverable and late absentee ballots, which are typically not recorded as received by the election offices.

A. Critique of Interpretation

i. The survey data and its interpretation do not account for PEVs.

21. The analysis of Question 2 is used to estimate the number of people who received but did not request an absentee ballot. Dr. Briggs calls this Alleged Error #1.

22. The interpretation of these data as an error in balloting does not account for the presence of a large number of Permanent Absentee and Early Voters (PEVs) in Arizona, Michigan, Pennsylvania, and Wisconsin. Georgia automatically mails ballots for voters who qualify for "rollover" ballots – people over 65, disabled, or in the military who sign up annually to have ballots automatically sent to them. I consider rollover ballots to be a form of PEV, but the voter does need to sign up each year.

23. PEVs are automatically sent their absentee ballots. They do not need to request that a ballot be sent for a particular election.

24. In the State of Arizona, nearly all absentee ballots sent are sent to PEVs. In 2018, PEVs were 95 percent of absentee ballots sent by election offices to registered voters. In other words, nearly all voters who received absentee ballots in the State did so without having to request that one be sent to them.

25. In the other states covered in Dr. Briggs' report, there are substantial numbers of PEVs. Table 1 presents data from the number of absentee ballots sent in 2018 and the number of permanent absentee ballots sent to voters in Arizona, Georgia (rollover absentee voters), Michigan, Pennsylvania, and Wisconsin. The number of permanent absentee ballots sent in Arizona, Michigan, and Wisconsin far exceeds the estimated Alleged Error #1 in the first table in Dr. Briggs' report. The EAC reports no data on permanent absentee ballots for Georgia in 2018. Those data cover 2018 and are presented to indicate the likely magnitude of PEVs in the states in 2020. Preliminary reports from some of these states show very high numbers of PEVs and rollover absentee voters. There were at least 582,000 "rollover" ballots in Georgia in 2020.[2]

26. Based on the toplines, Mr. Braynard's survey does not identify PEVS or distinguish them from other absentee voters.

Table 1. Permanent Absentee Voters in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018

	Total Absentee Ballots Sent	Permanent Absentee Ballots Sent (i.e., ballots sent automatically without a specific ballot request)	Permanent Absentee Ballots as a Percent of Total
Arizona	2,672,384	2,545,198	95.2%
Georgia	281,490	*	*
Michigan	1,123,415	549,894	48.9%
Pennsylvania	216,575	6,340	2.9%
Wisconsin	168,788	54,113	32.1%

Source: U.S. Election Assistance Commission, Election Administration and Voting Survey, 2018.
Note: * no data reported.

[2] Stephen Fowler, "Nearly 800,000 Georgians Have Already Requested Absentee Ballots for November" GA Today gpb.org, September 2, 2020. https://www.gpb.org/news/2020/09/02/nearly-800000-georgians-have-already-requested-absentee-ballots-for-november

ii. The interpretation of Question 3 fails to account for the proper handling of late, invalid, and spoiled absentee ballots by Local Election Offices.

27. The analysis of Question 3 of Mr. Braynard's survey is used to estimate the number of people who stated that they returned an absentee ballot but for whom no vote was recorded. Dr. Briggs calls this Alleged Error #2.

28. The interpretation of such cases as errors does not account for absentee ballots that are in fact not received or counted by election officers because the ballots are not returned by the postal system, are returned late by the voter, are spoiled by the voter, or are rejected. Such ballots are the obvious explanation for the data observed. No effort in the survey or the analysis is made to ascertain the likelihood that a voter cast a late or invalid absentee ballot.

29. The number of absentee ballots that are not received or valid is substantial. Table 2 presents counts of rejected, late, undelivered, and voided absentee ballots in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin for 2018, the most recent federal election for which systematic data on absentee voting are available. An undeliverable absentee ballot is one that was returned to the election office as not being deliverable to the address on the voter registration lists. The final column presents the number of sent absentee ballots for which the status of a ballot sent by the election office to a voter was not received and its status is not known. These are likely ballots that simply were not returned by voters or were lost or delayed in the US Postal System. Delays in the postal system were a particular concern in 2020, as there were widespread reports of staffing problems during COVID for USPS, delays in mail delivery, and declines in the rate of on-time delivery.[3] Late, undelivered, rejected, and spoiled ballots are not counted

[3] Hailey Fuchs, "Some Regions Still Experience Slow Delivery of Mail Ballots," New York Times, November 3, 2020, Section A, Page 23. https://www nytimes.com/2020/11/02/us/politics/mail-ballot-usps.html.

under law, and they are comparable in magnitude to the estimates of the Alleged Error #2 reported by Dr. Briggs for each state.

30. Arizona election officials reported to EAC a total of 2,515 late absentee ballots, 27,804 void or spoiled ballots, 8,567 rejected ballots, and 102,896 ballots that were undeliverable in the 2018 election. These figures are not definitive of the numbers for the 2020 election, which have not yet been reported. Rather, they are demonstrative of the fact that there are sound, documented administrative reasons that returned absentee ballots are not recorded as having been voted, especially tardiness, spoilage, and rejection for lack of signatures, valid envelopes, and the like.

Table 2. Rejected, Undelivered, Voided, and Late Absentees in Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin in 2018

	Rejected Absentee Ballots	Undeliverable Absentee Ballots	Spoiled/Voided Absentee Ballots	Late Absentee Ballots	Status Unknown
Arizona	8,567	102,896	27,804	2,515	642,210
Georgia	7,512	2,322	252	3,525	36,255
Michigan	6,013	791	19,679	2,207	41,120
Pennsylvania	8,714	*	*	8,162	20,622
Wisconsin	2,517	1,718	2,794	1,445	12,407

Source: EAC, EAVS 2018.
Note: * no data reported.

B. Critique of Survey Design

31. Dr. Briggs offers no assessment of the design of the survey that generated the data that he presents. Rather, he assumes that the data are accurate.

32. It is my understanding that Matthew Braynard designed and conducted these surveys. There is no report of the survey design, questionnaire, or response rates, beyond the information embedded in the topline table appended to Dr. Briggs' report.

i. The survey has an unacceptably high non-response rate.

33. The response rate to the survey is measured as the number of people who answered the first substantive question (Q2) in the survey divided by the number of people who the surveyor sought to contact. The response rate to the survey conducted by Mr. Braynard in the State of Arizona is one-half of one percent. That is, of the 518,560 people who the survey research project set out to interview, 99.5 percent of them could not be contacted or refused to participate. That is an extremely low response rate, and it creates substantial doubt about drawing any reliable inferences from the data.

34. Dr. Briggs offered no calculation of a response rate to the surveys in his report.

35. My calculation of the response rate is offered in Table 1. For each phase of the survey, I calculate the percent of people originally sought to be studied who remain in the survey or are asked a given question. The initial phase of the survey consists of matching phone numbers to the registration list and contacting those numbers. The number of cases for which an interview could commence was 5,604, of the original 518,560 registration records (or 1 percent). These 5,604 cases consist of all records for which a message was left, there was an early hang up or refusal at some point during the survey (2,975), and cases that made it to the end of the survey (684).

36. Once the survey commences, there is first a screener question to determine whether the person interviewed should continue with the interview. That is Question 1. Question 2 is the first question of interest in Dr. Briggs' analysis. It asks, "Did you request an Absentee Ballot in the State of <state name>?" People could answer "Yes", "No", some other answer, Refuse to answer, or Hang up.

37. The response rate to the survey items of interest is the percent of people who were asked Question 2. 2,489 of the original 518,560 were asked Question 2, and 2,129 provided an answer to the question. That is a response rate of 0.4 percent.

38. This is an extremely low response rate. In most disciplines of study that I am familiar with, these would not be scientifically acceptable or reliable samples. For example, I am associate editor of the *Harvard Data Sciences Review*, which broadly covers fields of statistics and data sciences, and specialty fields such as political science, public opinion, survey methodology, and economics. Papers with such high non-responses are rejected on their face for this publication as not plausibly valid studies.

39. In my work as an expert witness for the Department of Justice, courts in which I have testified exclude as evidence phone surveys based on registration lists because they have response rates of 2 percent. Specifically, in *Texas v. Holder*, Professor Daron Shaw offered evidence based on phone surveys of registration lists. These surveys had response rates of 2 percent, and the court rejected the data because of serious questions about the representativeness of samples in which 98 percent of respondents could not be contacted or would not respond, and the effects of very low response rates on accuracy and reliability of estimates using surveys with very low response rates. See *Texas v. Holder* in the United States District Court for the District of Columbia No. 12-cv-128 (see pages 30 and 31). In evaluating the surveys conducted by Mr. Maynard and reported by Dr. Briggs, I use the 2 percent threshold as a standard for an unacceptably low response rate.

40. Dr. Briggs' assumption that those who responded to the question are representative of the relevant population under study (i.e., the other 99 percent of people who could not or would not participate in the survey) is highly unlikely to be correct. When surveys have high non-

response rates, it is standard practice to analyze information about the sample and the target population, such as demographic characteristics or behavioral and attitudinal statistics, to confirm that the assumption of representativeness of a sample can be maintained. When the response rates are very low, such an analysis is a necessity in order to determine whether there is any scientific value to the survey. No such analysis is offered here.

Table 3. Phone Survey Targets, Attempts and Completes in Mr. Braynard's survey of Arizona registered voters for whom records show no returned ballots

	Number of Cases	Percent of Targets for Survey Remaining in the Survey Process
People the Survey Sought to Reach (all Unreturned Ballots) [Targets for Survey]	518,560	100%
Data Loads (Phone Numbers Loaded into the Survey System)	81,780	15.77%
"Completes"		
No Answer	74,437	
Numbers/Language	1,663	
VM Message Left	1,945	
Early Hang Up/Refused	2,975	
Q4 = 01*	684	
Subtotal: "Completes"	5,604	1.08%
Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,695	0.71%
Asked Q1	4,525	0.87%
Asked Q2	2,489	0.41%
Asked Q3	2,129	0.41%
Completed Entire Survey (Q5)	684	0.13%

Source: William Briggs' report

*Note: This number is as reported. In table for Q4, 678 cases are Q4 = 01, and 684 is the Sum of All Responses for Q5.

ii. The screening question improperly allows people to take the survey who should not.

41. A second substantial flaw in the survey is that the design of the questionnaire allows people who are not affirmatively determined to be the correct person to take the survey.

42. Past research has documented that phone surveys using registered voter lists are often answered by someone other than the person who was listed on the registered voter file. The two most common problems are that the wrong number was matched to the voter list and that someone other than the person the research sought to speak with answered the phone. The latter occurs most often with landlines.[4]

43. Question 1 (Q1) of the survey asks, "May I please speak to <lead on screen>?" "Lead on screen" is the name from the voter registration list that is linked to the phone number that the survey has dialed. Responses to Q1 are listed as reached target, other/uncertain, refused, and hang up. In the survey toplines for Arizona, the response categories for Question 1 do not specifically describe the branching. I examined the toplines for other states as reported in the appendix to Dr. Briggs' report in *King v. Whitmer*. The other states show that the second response category for Question 1 is assigned to Question 2. For example, in the first table (Georgia), the responses are "Reached Target [Go to Q2]" and "[Go to Q2]," without further explanation. Importantly, both those respondents classified as "Reached Target" and as "Uncertain" in Question 1 are instructed to "Go to Q2."

44. This is an error in the branching design of the survey. People who are not affirmatively identified as the correct person for the interview are allowed to answer the remaining questions in the survey. For example, Reponses to Questions 2 and 3 show evidence

[4] Pew Research Center, "Comparing Survey Sampling Strategies: Random-Digit Dialing vs. Voter Files," 2018. https://www.pewresearch.org/methods/2018/10/09/comparing-survey-sampling-strategies-random-digit-dial-vs-voter-files/, see pages 25-26.

that spouses and other family members are asked Questions 2 and 3, even though they were not the person whose absentee voting records are in question.

45. A significant percent and number of respondents who are listed as not giving an affirmative answer to Question 1 are in fact kept in the survey and asked Question 2. In the Arizona survey, 335 respondents answered Uncertain, but were then asked Question 2. These 335 cases are 15.6 percent of cases who answered Question 1 and were then assigned to Question 2 (i.e., 335/(335+1,812)). These respondents enter the pool for Questions 2 and 3 and contaminate all estimates using these data.

46. Questions 2 and 3 exhibit evidence of these cases. The response categories labeled "Member" correspond to family members. Again, there is no codebook for deciphering the response categories. I relied on the toplines for other states in Dr. Briggs' report in *King v. Whitmer* to clarify these categories. Family members answering on behalf of someone indicates that the survey interviewers did not always speak with the specific person listed on the registration list. The number of family members listed is a small percentage of all of the cases with "Uncertainty" in the sample.

47. I inspected the toplines for other states and discovered similar errors in the branching in all of the states. People whose identity was not clearly identified in Question 1 are asked Question 2. At this point in the branching protocol, my conclusion is that the data are not an accurate reflection of the Target group (i.e., those people who are affirmatively identified as the person whose name appears on the registration list).

iii. Question 3 is subject to memory errors and social desirability bias.

48. Question 3 asks people whether they voted. Specifically, it asks people who said that they requested an absentee ballot whether they returned an absentee ballot; that is, whether they voted that ballot.

49. It has long been understood in political science that respondents to surveys over-report voting in elections. Typically, the overstatement is approximately 10 to 20 percentage points. That is, if 65 percent of people in a sample actually voted, the reported vote rates in surveys are usually around 75 to 85 percent. The most commonly identified sorts of biases are memory errors and social desirability bias in questions asking people whether they voted.[5] When asked whether they voted or cast a ballot, people say "yes" either because they feel that is the socially acceptable answer or because they forgot whether they actually voted in a given election. Questions that ask people whether they voted or cast a ballot will overstate voting and should not be taken on face value as ground truth. The particular form of Question 3 is likely to lead to people saying that they voted a ballot when in fact they had not.

50. There are alternative ways to ask about voting in order to reduce social desirability bias.[6] Those other ways of asking the question are in line with social science practice in research in order to avoid social desirability biases. Question 3 should have been asked a different way so as to avoid over-reporting of voting. As it is, it is of the form of survey question regarding voting that is well known to lead to over-reporting.

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[5] See for example, Allyson L. Holbrook and Jon A. Krosnick, "Social Desirability Bias in Voter Turnout Reports: Test Using the Item Count Technique," *Public Opinion Quarterly* 74 (2010): 37-67. See also Stephen Ansolabehere and Eitan Hersh, "Validation: What Big Data Reveal About Survey Misreporting and the Real Electorate," *Political Analysis* 20 (2012): 437-459

[6] See, for example, Holbrook and Krosnick, op cit., and Michael J. Hanmer, Antoine J. Banks, and Ismail K. White, "Experiments to Reduce the Over-Reporting of Voting: A Pipeline to the Truth," *Political Analysis* 22 (2014): 130-141.

C. Critique of the Survey Databases and Data Analyses

51. There are obvious data errors and inconsistencies revealed in the toplines that are appended to Dr. Briggs' report. Dr. Briggs states that he assumes that "the data is accurate." A routine analysis to check the consistency and integrity of data reported in the toplines is standard practice in the survey research field. Such checks allow researchers to determine whether the survey data and spreadsheet program are producing sensible numbers and, thus, working correctly. Failures in even a small number of integrity checks indicate problems with the survey systems and software, and raise deep concerns about data accuracy generally. I routinely perform such checks on surveys that I conduct and supervise. I have performed such a check, and it reveals that the data lack integrity. They should not be assumed to be accurate.

52. The data integrity checks that I implemented were of two sorts. First, I added up the number of cases in each response category to verify that they sum to the number of cases reported for each question in the row labeled "Sum of Responses." Second, I added up the number of cases at each phase of the survey that are indicated as cases to be asked the next question. For example, I add up the cases in Question 1 that have the flag [Go to Q2] and then check whether that number equals the number of cases for Question 2 in "Sum of Responses." I performed these integrity checks for the Arizona survey toplines appended to Dr. Briggs' report in this case and to the toplines for the surveys that Mr. Braynard conducted in other states and that are appended to Dr. Briggs' report in *King v. Whitmer*.

53. The toplines for one of the surveys (Wisconsin) failed the first integrity check. The response categories for Question 1 in that survey had 2,261 people listed as "A-Reached Target + B-What Is This About?/Uncertain" and 1,677 cases listed as "X=Refused." These numbers sum to 3,938. However, the number of cases that the survey system reported under "Sum of All

Responses" to Question 1 is 3,495. There is a discrepancy of 443 cases that are unaccounted for at the outset of that survey. This indicates to me an error in the program that generated the survey data. This finding means none of the Wisconsin data should be assumed to be reliable and accurate.

54. The integrity checks failed for the Arizona data when I performed the second sort of integrity check. The accounting for the second sort of integrity check is presented in Table 4. The first panel of Table 4 (marked with lower case numerals) reproduces the accounting for "Completes" shown in the toplines appended to Dr. Briggs' report. The second panel reports the number of cases in the Completes, including people who hung up or refused, that should have been asked Question 1 (denoted "A") and the number of cases who were asked Question 1 (denoted "B"). The third set of rows is the number of cases in Question 1 who were assigned to Question 2 (denoted "C") and the number of cases who were asked Question 2 (denoted "D"). The fourth set of rows is the number of cases in Question 2 who were assigned to Question 3 (denoted "E") and the number of cases who were asked Question 3 (denoted "F").

55. The first integrity check in this table is whether the subtotal of Completes equals the number of cases in which calls reached a response (even if an answering machine or refusal). That is, do rows (i), (ii), and (iii) sum to row (iv)? They do. The difference between rows (i)+(ii)+(iii) and row (iv) is zero.

56. The second integrity check in this table is whether the subtotal of Completes eligible for Question 1 equals the number of people asked Question 1. That is, does Row A equal Row B? They are not equal. Row A minus Row B is -866, meaning there are 866 more respondents who were asked Question 2 than were indicated to be calls commenced in the survey. I attempted to resolve this discrepancy by removing various categories, such as Refusals to

Question or Hang ups at the Complete stage. I found no way to account for the excess number of cases who were asked Question 1 but were not accounted for in the Completes portion of the toplines. These respondents mysteriously show up in the interviews and are not accounted for.

57. The third integrity check in this table is whether the number of people who were assigned in Question 1 to [Go to Q2] equals the number of people who answered Question 2. That is, does Row C equal Row D? They are not equal. Row C minus Row D is -342, meaning there are 342 more respondents in Question 2 than were assigned to Question 2 at the Question 1 stage. This is a second failure of the integrity checks.

58. The fourth integrity check in this table is whether the number of people who were assigned in Question 2 to [Go to Q3] equals the number of people who answered Question 3. That is, does Row E equal Row F? They are equal. Row E and Row F equal 2,129 each.

59. Inspection of the toplines for Arizona exposes failures of the integrity checks. The number of cases affected by these failures is substantial: 1,208 (866+342). To put these spreadsheet failures into perspective, the total number of cases in the survey that are listed as either Error #1 or Error #2 is 1,229 (i.e., 885 Question 2 = No and 344 Question 3 = Yes). The presence of integrity check failures leads me to conclude that there are errors in either the program that generated the survey data or the spreadsheets and analysis used to analyze the data. The number of errors is of a sufficiently large magnitude that there can be no confidence in any estimates made using these data.

60. I performed integrity checks for the other states using the toplines appended to Dr. Briggs' report in *King v. Whitmer*. I found similar sorts of spreadsheet inconsistencies and failures in integrity checks in other states.

61. In my experience running, designing, and analyzing large scale surveys through the Cooperative Congressional Election Study and serving on the board of the American National Election Study, errors such as these usually have two sources. They are indicative of either: (i) errors in the program that that assigns questions to people, or (ii) errors in the program that generates the spreadsheet. Either sort of error is catastrophic for this analysis, and they render the estimates, projections, and inferences in Dr. Briggs' report entirely unreliable.

Table 4. Data Integrity Checks for Mr. Braynard's survey of Arizona registered voters

	Number of Cases	Integrity Checks
"Completes"		
(i) VM Message Left	1,945	
(ii) Early Hang Up/Refused	2,975	
(iii) Q4 = 01*	684	
(iv) Subtotal: "Completes"	5,604	(iv) – ((i) + (ii) + (iii)) = 0
A: Completes Eligible for Survey (Q5 or Early Hang Up/Refused)	3,659	
B: Asked Q1 (Sum of All Responses)	4,525	A – B = -866
C: Completed Q1 [Go to Q2]*	2,147	
D: Asked Q2 (Sum of All Responses)	2,489	C – D = -342
E: Offered a Response to Q2 (without hanging up or refusing) [Go to Q3]	2,129	
F: Asked Q3 (Sum of All Resonses)	2,129	E – F = 0

Source: William Briggs' report

* Based on Dr. Briggs' report in *Wood v. Raffensperger*, the survey branching in other states asks Question 2 of respondents who are identified as "Reached Target" or "Uncertain" in Question 1. I assume that the branching is the same in the Arizona survey.

D. Conclusion

62. The estimates and projections presented by Dr. Briggs are based on survey data collected in Arizona and four other states (Georgia, Michigan, Pennsylvania, and Wisconsin). My overall assessment of these surveys is that they were not properly designed. Specifically, they have unacceptably low response rates, poorly designed questions that are known to over-report voting, and errors in assigning cases to questions that allow people who should not have been included in the survey to nonetheless answer the questions. These survey design and implementation failures mean that, in hundreds of cases, the wrong people are allowed to answer the surveys, and that the statistician must make implausible assumptions about the representativeness of a sample with a .4 percent response rate in order to extrapolate to a half million people. These survey design and implementation flaws are of sufficient magnitude and severity as to make the estimates completely unreliable and uninformative.

63. The data are not accurate. The Topline summaries of the survey data appended to Dr. Briggs' report reveal fatal accounting errors in the data. No sound estimates or inferences can be drawn based on these data. Dr. Briggs assumed at the outset that the respondents to the surveys are representative and the data are accurate. Neither assumption is correct.

64. The interpretation of the survey responses ignores the realities of absentee voting in the State of Arizona. In Arizona, 95 percent of people are permanent absentee and early voters and are sent a ballot automatically without requesting one for a given election. Dr. Briggs considers as errors all instances in which a voter who was sent an absentee ballot did not request one. These occurrences are not errors, but instead are the normal workings of Arizona's absentee voting system. Also, ballots that voters say they returned but are not recorded are not definitive evidence of "errors." Arizona also has a substantial number of absentee ballots that

are late, undeliverable, spoiled, or invalid. The evidence presented is not evidence of errors in the election but of errors in the survey data presented by Dr. Briggs.

Signed at Boston, Massachusetts, on the date below.
Date: December 3, 2020



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EDUCATION

Harvard University	Ph.D., Political Science	1989
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PROFESSIONAL EXPERIENCE

ACADEMIC POSITIONS

2016-present	Frank G. Thompson Professor of Government, Harvard University
2008-present	Professor, Department of Government, Harvard University
2015-present	Director, Center for American Politics, Harvard University
1998-2009	Elting Morison Professor, Department of Political Science, MIT (Associate Head, 2001-2005)
1995-1998	Associate Professor, Department of Political Science, MIT
1993-1994	National Fellow, The Hoover Institution
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FELLOWSHIPS AND HONORS

American Academy of Arts and Sciences	2007
Carnegie Scholar	2000-02
National Fellow, The Hoover Institution	1993-94
Harry S. Truman Fellowship	1982-86

PUBLICATIONS

Books

2019 *American Government*, 15th edition. With Ted Lowi, Benjamin Ginsberg and Kenneth Shepsle. W.W. Norton.

2014 *Cheap and Clean: How Americans Think About Energy in the Age of Global Warming*. With David Konisky. MIT Press. Recipient of the Donald K. Price book award.

2008 *The End of Inequality: One Person, One Vote and the Transformation of American Politics*. With James M. Snyder, Jr., W. W. Norton.

1996 *Going Negative: How Political Advertising Divides and Shrinks the American Electorate*. With Shanto Iyengar. The Free Press. Recipient of the Goldsmith book award.

1993 *Media Game: American Politics in the Television Age*. With Roy Behr and Shanto Iyengar. Macmillan.

Journal Articles

2021 "The CPS Voting and Registration Supplement Overstates Turnout" *Journal of Politics* Forthcoming (with Bernard Fraga and Brian Schaffner)

2021 "Congressional Representation: Accountability from the Constituent's Perspective," *American Journal of Political Science* forthcoming (with Shiro Kuriwaki)

2020 "Proximity, NIMBYism, and Public Support for Energy Infrastructure" *Public Opinion Quarterly* (with David Konisky and Sanya Carley) https://doi.org/10.1093/poq/nfaa025

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2010 *The Future of Nuclear Power*, Revised.

2006 *The Future of Coal*. MIT Press. Continued reliance on coal as a primary power source will lead to very high concentrations of carbon dioxide in the atmosphere, resulting in global warming. This cross-disciplinary study – drawing on faculty from Physics, Economics, Chemistry, Nuclear Engineering, and Political Science – develop a road map for technology research and development policy in order to address the challenges of carbon emissions from expanding use of coal for electricity and heating throughout the world.

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1995 "Evolving Perspectives on the Effects of Campaign Communication," in Philo Warburn, ed., *Research in Political Sociology*, vol. 7, JAI.

1995 "The Effectiveness of Campaign Advertising: It's All in the Context," (with Shanto Iyengar) in *Campaigns and Elections American Style*, Candice Nelson and James A. Thurber, eds. Westview Press.

1993 "Information and Electoral Attitudes: A Case of Judgment Under Uncertainty," (with Shanto Iyengar), in *Explorations in Political Psychology*, Shanto Iyengar and William McGuire, eds. Durham: Duke University Press.

Working Papers

2009 "Sociotropic Voting and the Media" (with Marc Meredith and Erik Snowberg), American National Election Study Pilot Study Reports, John Aldrich editor.

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2006 "Constituents' Policy Perceptions and Approval of Members' of Congress" CCES Working Paper 06-01 (with Phil Jones).

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1999 "Why did a majority of Californians vote to lower their own power?" (with James Snyder and Jonathan Woon). Paper presented at the annual meeting of the American Political Science Association, Atlanta, GA, September, 1999.
Paper received the award for the best paper on Representation at the 1999 Annual Meeting of the APSA.

1999 "Has Television Increased the Cost of Campaigns?" (with Alan Gerber and James Snyder).

1996 "Money, Elections, and Candidate Quality," (with James Snyder).

1996 "Party Platform Choice - Single- Member District and Party-List Systems,"(with James Snyder).

1995 "Messages Forgotten" (with Shanto Iyengar).

1994 "Consumer Contributors and the Returns to Fundraising: A Microeconomic Analysis," (with Alan Gerber), presented at the Annual Meeting of the American Political Science Association, September.

1992 "Biases in Ecological Regression," (with R. Douglas Rivers) August, (revised February 1994). Presented at the Midwest Political Science Association Meetings, April 1994, Chicago, IL.

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1991 "The Electoral Effects of Issues and Attacks in Campaign Advertising" (with Shanto Iyengar). Presented at the Annual Meeting of the American Political Science Association, Washington, DC.

1991 "Television Advertising as Campaign Strategy: Some Experimental Evidence" (with Shanto Iyengar). Presented at the Annual Meeting of the American Association for Public Opinion Research, Phoenix.

1991 "Why Candidates Attack: Effects of Televised Advertising in the 1990 California Gubernatorial Campaign," (with Shanto Iyengar). Presented at the Annual Meeting of the Western Political Science Association, Seattle, March.

1990 "Winning is Easy, But It Sure Ain't Cheap." Working Paper #90-4, Center for the American Politics and Public Policy, UCLA. Presented at the Political Science Departments at Rochester University and the University of Chicago.

Research Grants

1989-1990 Markle Foundation. "A Study of the Effects of Advertising in the 1990 California Gubernatorial Campaign." Amount: $50,000

1991-1993 Markle Foundation. "An Experimental Study of the Effects of Campaign Advertising." Amount: $150,000

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1994-1995 MIT Provost Fund. "Money in Elections: A Study of the Effects of Money on Electoral Competition." Amount: $40,000

1996-1997 National Science Foundation. "Campaign Finance and Political Representation." Amount: $50,000

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1997-1998	National Science Foundation. "The Legislative Connection in Congressional Campaign Finance. Amount: $150,000
1999-2000	MIT Provost Fund. "Districting and Representation." Amount: $20,000.
1999-2002	Sloan Foundation. "Congressional Staff Seminar." Amount: $156,000.
2000-2001	Carnegie Corporation. "The Caltech/MIT Voting Technology Project." Amount: $253,000.
2001-2002	Carnegie Corporation. "Dissemination of Voting Technology Information." Amount: $200,000.
2003-2005	National Science Foundation. "State Elections Data Project." Amount: $256,000.
2003-2004	Carnegie Corporation. "Internet Voting." Amount: $279,000.
2003-2005	Knight Foundation. "Accessibility and Security of Voting Systems." Amount: $450,000.
2006-2008	National Science Foundation, "Primary Election Data Project," $186,000
2008-2009	Pew/JEHT. "Measuring Voting Problems in Primary Elections, A National Survey." Amount: $300,000
2008-2009	Pew/JEHT. "Comprehensive Assessment of the Quality of Voter Registration Lists in the United States: A pilot study proposal" (with Alan Gerber). Amount: $100,000.
2010-2011	National Science Foundation, "Cooperative Congressional Election Study," $360,000
2010-2012	Sloan Foundation, "Precinct-Level U. S. Election Data," $240,000.
2012-2014	National Science Foundation, "Cooperative Congressional Election Study, 2010-2012 Panel Study" $425,000
2012-2014	National Science Foundation, "2012 Cooperative Congressional Election Study," $475,000
2014-2016	National Science Foundation, "Cooperative Congressional Election Study,

2010-2014 Panel Study" $510,000

2014-2016 National Science Foundation, "2014 Cooperative Congressional Election Study," $400,000

2016-2018 National Science Foundation, "2016 Cooperative Congressional Election Study," $485,000

2018-2020 National Science Foundation, "2018 Cooperative Congressional Election Study," $844,784.

2019-2022 National Science Foundation, RIDIR: "Collaborative Research: Analytic Tool for Poststratification and small-area estimation for survey data." $942,607

Professional Boards

Editor, Cambridge University Press Book Series, Political Economy of Institutions and Decisions, 2006-2016

Member, Board of the Reuters International School of Journalism, Oxford University, 2007 to present.

Member, Academic Advisory Board, Electoral Integrity Project, 2012 to present.

Contributing Editor, *Boston Review*, The State of the Nation.

Member, Board of Overseers, American National Election Studies, 1999 - 2013.

Associate Editor, Public Opinion Quarterly, 2012 to 2013.

Editorial Board of Harvard Data Science Review, 2018 to present.
Editorial Board of American Journal of Political Science, 2005 to 2009.
Editorial Board of Legislative Studies Quarterly, 2005 to 2010.
Editorial Board of Public Opinion Quarterly, 2006 to present.
Editorial Board of the Election Law Journal, 2002 to present.
Editorial Board of the Harvard International Journal of Press/Politics, 1996 to 2008.
Editorial Board of Business and Politics, 2002 to 2008.
Scientific Advisory Board, Polimetrix, 2004 to 2006.

Special Projects and Task Forces

Principal Investigator, Cooperative Congressional Election Study, 2005 – present.

CBS News Election Decision Desk, 2006-present

Co-Director, Caltech/MIT Voting Technology Project, 2000-2004.

Co-Organizer, MIT Seminar for Senior Congressional and Executive Staff, 1996-2007.

MIT Energy Innovation Study, 2009-2010.
MIT Energy Initiative, Steering Council, 2007-2008
MIT Coal Study, 2004-2006.
MIT Energy Research Council, 2005-2006.
MIT Nuclear Study, 2002-2004.
Harvard University Center on the Environment, Council, 2009-present

Expert Witness, Consultation, and Testimony

2001	Testimony on Election Administration, U. S. Senate Committee on Commerce.
2001	Testimony on Voting Equipment, U.S. House Committee on Science, Space, and Technology
2001	Testimony on Voting Equipment, U.S. House Committee on House Administration
2001	Testimony on Voting Equipment, Congressional Black Caucus
2002-2003	*McConnell v. FEC*, 540 U.S. 93 (2003), consultant to the Brennan Center.
2009	Amicus curiae brief with Professors Nathaniel Persily and Charles Stewart on behalf of neither party to the U.S. Supreme Court in the case of *Northwest Austin Municipal Utility District Number One v. Holder*, 557 U.S. 193 (2009).
2009	Testimony on Voter Registration, U. S. Senate Committee on Rules.
2011-2015	*Perez v. Perry*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2011-2013	*State of Texas v. United States,* the U.S. District Court in the District of Columbia (No. 1:11-cv-01303), expert witness on behalf of the Gonzales intervenors.
2012-2013	*State of Texas v. Holder*, U.S. District Court in the District of Columbia (No. 1:12-cv-00128), expert witness on behalf of the United States.
2011-2012	*Guy v. Miller* in U.S. District Court for Nevada (No. 11-OC-00042-1B), expert witness on behalf of the Guy plaintiffs.
2012	*In re Senate Joint Resolution of Legislative Apportionment*, Florida Supreme Court (Nos. 2012-CA-412, 2012-CA-490), consultant for the Florida Democratic Party.
2012-2014	*Romo v. Detzner*, Circuit Court of the Second Judicial Circuit in Florida (No. 2012 CA 412), expert witness on behalf of Romo plaintiffs.
2013-2014	*LULAC v. Edwards Aquifer Authority*, U.S. District Court for the Western District of Texas, San Antonio Division (No. 5:12cv620-OLG,), consultant and expert witness on behalf of the City of San Antonio and San Antonio Water District
2013-2014	*Veasey v. Perry*, U. S. District Court for the Southern District of Texas, Corpus

	Christi Division (No. 2:13-cv-00193), consultant and expert witness on behalf of the United States Department of Justice.
2013-2015	*Harris v. McCrory,* U. S. District Court for the Middle District of North Carolina (No. 1:2013cv00949), consultant and expert witness on behalf of the Harris plaintiffs. (later named *Cooper v. Harris*)
2014	Amicus curiae brief, on behalf of neither party, Supreme Court of the United States, *Alabama Democratic Conference v. State of Alabama*.
2014- 2016	*Bethune-Hill v. Virginia State Board of Elections*, U. S. District Court for the Eastern District of Virginia (No. 3:2014cv00852), consultant and expert on behalf of the Bethune-Hill plaintiffs.
2015	Amicus curiae brief in support of Appellees, Supreme Court of the United States, *Evenwell v. Abbott*
2016-2017	*Perez v. Abbott*, U. S. District Court in the Western District of Texas (No. 5:11-cv-00360). Exert witness on behalf of Rodriguez intervenors.
2017-2018	Fish v. Kobach, U. S. District Court in the District of Kansas (No. 2:16-cv-02105-JAR). Expert witness of behalf of the Fish plaintiffs.

EXHIBIT 10

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Exhibit 2

December 4, 2020

***Bowyer v. Ducey,* Case No. 2:20-cv-02321-DJH**

United States District Court for the District of Arizona

Expert Report of Jonathan Rodden, PhD

737 Mayfield Avenue
Stanford, CA 94305



Jonathan Rodden, PhD

I. INTRODUCTION AND SUMMARY

Yesterday evening, December 3, 2020, I received three declarations, each of which makes rather strong claims to have demonstrated "anomalies" or "irregularities" in the results of the presidential election in Arizona on November 3, 2020. I have been asked by Counsel to assess the validity of their claims. Unfortunately, these reports do not meet basic standards for scientific inquiry. For the most part, they are not based on discernable logical arguments, and they are completely divorced from any existing social science literature. Without any citations to relevant scientific literature about statistics or elections, the authors identify common and easily explained patterns in the 2020 election results, and without explanation, assert that they are somehow "anomalous." Each of these reports lacks even a basic level of clarity or transparency about research methods that would be expected in a scientific communication. As detailed below, each of these reports is based on puzzling but serious mistakes and misunderstandings about how to analyze election data.

II. QUALIFICATIONS

I am currently a tenured Professor of Political Science at Stanford University and the founder and director of the Stanford Spatial Social Science Lab ("the Lab")—a center for research and teaching with a focus on the analysis of geo-spatial

data in the social sciences. In my affiliation with the Lab, I am engaged in a variety of research projects involving large, fine-grained geo-spatial data sets including ballots and election results at the level of polling places, individual records of registered voters, census data, and survey responses. I am also a senior fellow at the Stanford Institute for Economic Policy Research and the Hoover Institution. Prior to my employment at Stanford, I was the Ford Professor of Political Science at the Massachusetts Institute of Technology. I received my Ph.D. from Yale University and my B.A. from the University of Michigan, Ann Arbor, both in political science. A copy of my current C.V. is included as an Appendix to this report.

In my current academic work, I conduct research on the relationship between the patterns of political representation, geographic location of demographic and partisan groups, and the drawing of electoral districts. I have published papers using statistical methods to assess political geography, balloting, and representation in a variety of academic journals including *Statistics and Public Policy*, *Proceedings of the National Academy of Science*, *American Economic Review Papers and Proceedings*, the *Journal of Economic Perspectives*, the *Virginia Law Review*, the *American Journal of Political Science*, the *British Journal of Political Science*, the *Annual Review of Political Science*, and the *Journal of Politics.* One of these papers was recently selected by the American Political Science Association as the winner of the Michael Wallerstein Award for the best paper on political economy published

in the last year, and another received an award from the American Political Science Association section on social networks.

I have recently written a series of papers, along with my co-authors, using automated redistricting algorithms to assess partisan gerrymandering. This work has been published in the *Quarterly Journal of Political Science*, *Election Law Journal*, and *Political Analysis*, and it has been featured in more popular publications like the *Wall Street Journal*, the *New York Times*, and *Boston Review*. I have recently completed a book, published by *Basic Books* in June of 2019, on the relationship between political districts, the residential geography of social groups, and their political representation in the United States and other countries that use winner-take-all electoral districts. The book was reviewed in *The New York Times*, *The New York Review of Books*, *Wall Street Journal*, *The Economist*, and *The Atlantic*, among others.

I have expertise in the use of large data sets and geographic information systems (GIS), and conduct research and teaching in the area of applied statistics related to elections. My PhD students frequently take academic and private sector jobs as statisticians and data scientists. I frequently work with geo-coded voter files and other large administrative data sets, including in recent papers published in the *Annals of Internal Medicine* and *The New England Journal of Medicine.* I have developed a national data set of geo-coded precinct-level election results that has

been used extensively in policy-oriented research related to redistricting and representation.[1]

I have been accepted and testified as an expert witness in six recent election law cases: *Romo v. Detzner*, No. 2012-CA-000412 (Fla. Cir. Ct. 2012); *Mo. State Conference of the NAACP v. Ferguson-Florissant Sch. Dist.*, No. 4:2014-CV-02077 (E.D. Mo. 2014); *Lee v. Va. State Bd. of Elections*, No. 3:15-CV-00357 (E.D. Va. 2015); *Democratic Nat'l Committee et al. v. Hobbs et al.*, No. 16-1065-PHX-DLR (D. Ariz. 2016); *Bethune-Hill v. Virginia State Board of Elections*, No. 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2014); and *Jacobson et al. v. Lee*, No. 4:18-cv-00262 (N.D. Fla. 2018). I also worked with a coalition of academics to file Amicus Briefs in the Supreme Court in *Gill v. Whitford*, No. 16-1161, and *Rucho v. Common Cause*, No. 18-422. Much of the testimony in these cases had to do with geography, voting, ballots, and election administration. I am being compensated at the rate of $500/hour for my work in this case. My compensation is not dependent upon my conclusions in any way.

III. DATA SOURCES

I have collected county-level data on presidential elections for each year from 1974 to 2020 from the Arizona Secretary of State, along with yearly county-level data on registration by party in Arizona. I also consulted precinct-level election

[1] The dataset can be downloaded at http://projects.iq.harvard.edu/eda/home.

results from Maricopa and Pima counties. I created a national county-level dataset on election results using information assembled from county election administrators by the New York Times and Associated Press, along with demographic data from the 2014-2018 American Community Survey (ACS), as well as the September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and as described in detail below, data on voting technologies used in each U.S. jurisdiction collected by Verified Voting. I have also collected yearly county-level population estimates for Arizona from the U.S. Census Department.

IV. DO "DOMINION" COUNTIES PRODUCE ANOMALOUS ELECTION RESULTS?

I received a report without a named author that purports to provide empirical analysis suggesting that Joseph Biden received higher vote shares in counties that use voting machines made by the manufacturer Dominion. The language of the report indicates that the author posits a *causal* relationship, whereby certain types of machines are responsible for boosting the Democratic vote share. The data, research design, and analysis are not adequately explained. To the extent the research is explained at all, the design and analyses are flawed in several crucial respects. First, the author relies on idiosyncratic, non-standard statistical techniques that are not suited for the analysis the author wishes to accomplish, and more importantly, the

author appears to rely on a correlation that is driven primarily by cross-state variation, and makes no effort to address a serious causal inference problem.

To demonstrate these problems and conduct a more appropriate analysis, I have created my own dataset of county-level votes from 2008 to 2020, merged with county demographic data from the 2014-2018 American Community Survey (ACS),[2] September 2020 county-level unemployment rate from the Bureau of Labor Statistics, and data on voting technologies used in each jurisdiction collected by Verified Voting.[3] Verified Voting is a "non-partisan organization focused exclusively on the critical role technology plays in election administration" that has developed "the most comprehensive publicly-accessible database of voting systems used around the country."[4] I accessed a dataset showing the various voting systems that were in place for each jurisdiction in 2012, 2016, and 2020.

The report mentions a Chi-Squared Automatic Interaction Detection approach, but provides no details about the analysis or the dataset, and provides no output. This is not a standard technique used in the analysis of election data, and the author provides no explanation of why this unusual approach was selected. The

[2] Demographic variables from the ACS include: the age distribution, sex distribution, percent Black, percent Latino, the percent of renters, median household income, percent of the county with a college degree, and percent under the poverty line.
[3] In preparing this this data set and conducting the analysis set forth in this section of the report, I received assitance from William Marble—a advanced PhD candidate in political science at Stanford University. Mr. Marble has worked with me in a similar capacity in the past and it is standard to utilize such assistants in my field of expertise.
[4] https://verifiedvoting.org/about/

author presents a scatterplot that seems to be based on a prediction from some kind of statistical model, but the author does not explain anything about the model. The author goes on to mention, in a single sentence, some type of matching analysis. The author provides no details about how the matching analysis was set up, which variables were used, whether the analysis relied on within-state or cross-state variation, and crucially, whether or not it was possible to achieve adequate balance on all of the selected matching variables.

For each of these approaches, the author breezily mentions having conducted some analysis without providing even the slightest details. The normal approach in a scientific communication would be to provide readers with details on what type of empirical model had been chosen and why, which variables were included, how the model performed, and so on. The author also typically provides output for readers to assess, and discusses a variety of robustness checks and sensitivity analyses, so that readers can form judgments about whether the results are sensible, credible, and meaningful.

Since the author provides very few hints about research design, analysis, or data, it is not possible to reconstruct the analysis. Nevertheless, since the relevant data are available, it is worthwhile to assess the author's claim that the introduction of certain types of voting technology, via some unspecified form of fraud, actually has a causal impact on vote shares. We would like to answer the following question:

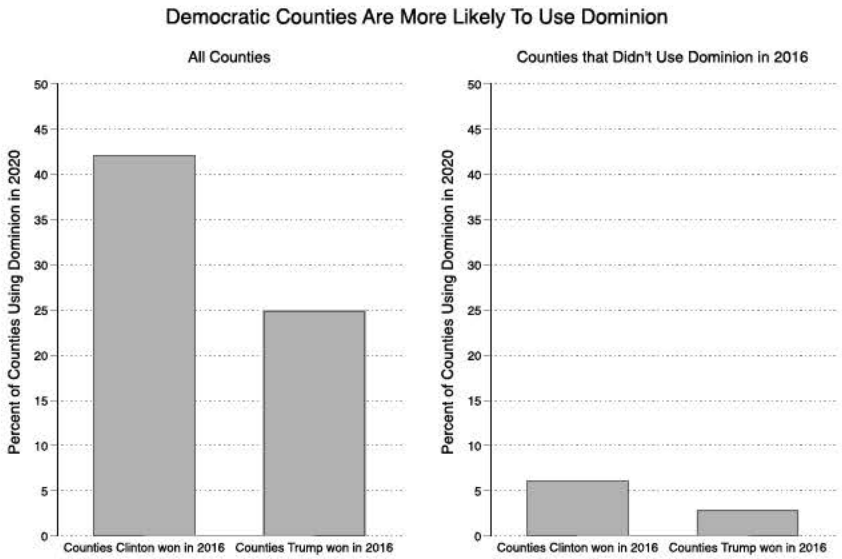
if there are two counties that are otherwise identical in every respect, including their initial type of voting technology, and one switches from some other voting technology to Dominion and the other stays the same, does the switching county exhibit a change in voting behavior relative to the "control" county that stayed the same? In the ideal world, we would conduct an experiment, much like a drug trial, randomly assigning some counties but not others to either the "treatment condition"—the use of Dominion software—or the control condition—the maintenance of the existing system. By randomizing a sufficiently large number of counties to the treatment and control condition, a researcher would be able to anticipate that there are no systematic differences between the treatment and control counties. Above all, we would hope that this randomization would achieve a balance between the two groups, such that prior Democratic or Republican voting would be similar in the two groups, as would other correlates of voting behavior, such as income, race, and education. We would then be able to isolate any possible impact of voting equipment.

Unfortunately, this type of experiment is unavailable to us. Counties and states have adopted voting technology in a way that is far from random. Counties that adopted Dominion systems between 2016 and 2020 are quite different from those that did not. Counties that switched to Dominion systems between 2016 and 2020 have larger shares of female residents, Latino residents, and college-educated

residents, and have lower median incomes. All of these variables are correlated with political attitudes. Moreover, they are likely correlated with *unobservable* variables that also correlate with political attitudes and partisanship.

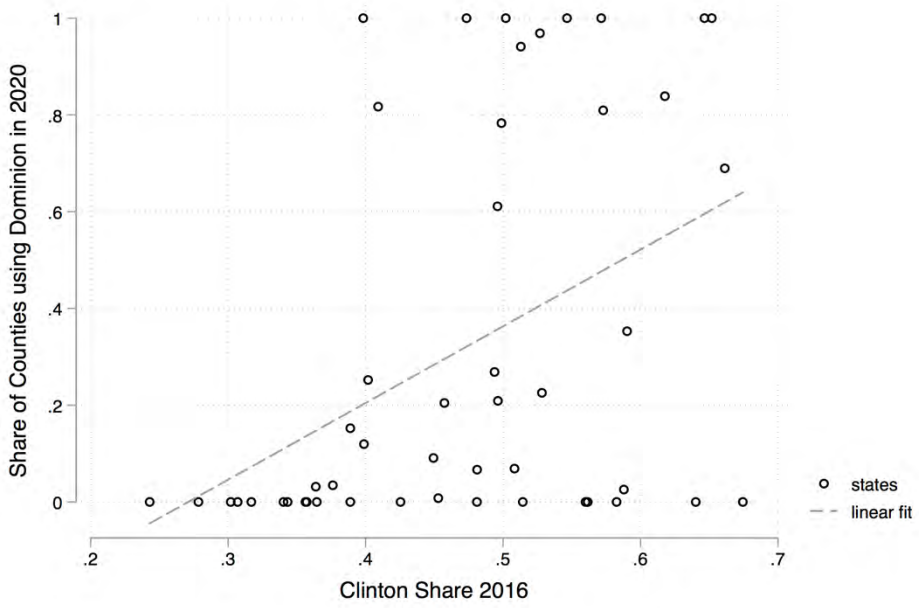
Even worse, it is clearly the case that Democratic counties have been more likely to adopt Dominion machines than Republican counties. This is demonstrated in Figure 1. The left-hand panel considers all counties in the country, and shows that counties won by Clinton in 2016 were far more likely than counties won by Trump to make use of Dominion technology in 2020. The right-hand panel focuses on counties that were not yet using Dominion technology in 2016, and shows that counties won by Clinton were significantly more likely than counties won by Trump to adopt Dominion technology.

Figure 1: Voting Technology Use in 2020 by County Partisanship



Seven states have adopted Dominion technology across all of their counties, and 20 states have not adopted Dominion technology in any of their counties. The former counties are predominately Democratic, and the latter lean Republican. This can be seen in Figure 2, which plots Hillary Clinton's 2016 statewide vote share on the horizontal axis, and the share of counties using Dominion software in 2020 on the vertical axis. It shows that Dominion software was mostly prominently in use in 2020 in states that were already relatively Democratic in 2016.

Figure 2: Clinton 2016 Vote Share and 2020 Voting Technology



By now it should be clear why the author of the report on Dominion software faces a vexing causal inference problem. If extremely Democratic counties in states like those in New England adopted a certain software in the past, and one examined

a contemporary correlation between voting behavior and the use of that technology, that correlation could not plausibly be interpreted as evidence that the technology *caused* the voting outcomes, even if one attempted to control for potential observable confounders like race and income. It is simply not plausible that Connecticut is more Democratic than Wyoming because of its voting technology.

State Fixed Effects Model

The author ignores these complexities altogether, but unfortunately, there is no easy solution to this causal inference problem. At a minimum, we can try to draw inferences from *within* the states where there is variation across counties in voting technology, attempting to control for observable county-level confounders. This can be achieved by estimating a model with "fixed effects" for states. Inclusion of state-level fixed effects allows us to control for a variety of common factors within states that cause there to be a correlation in counties' outcomes within the same state. This does not "solve" the causal inference problem, but at least it allows for more valid comparisons. For this reason, inclusion of fixed effects is standard practice in social science research for this type of study.[5]

[5] For example, see Angrist, J., and Pischke, S., *Mostly Harmless Econometrics*. 2009. Princeton, NJ: Princeton University Press.

I estimate a county-level model in which the dependent variable is the 2020 Democratic vote share, and the main independent variable of interest is a binary variable indicating whether the state used Dominion technology in 2020. The model includes a set of demographic control variables, past election results, and state-level fixed effects. The full results are presented in Appendix Table A1. The coefficient capturing the impact of the use of Dominion technology is statistically indistinguishable from zero.

Placebo Test Using Bordering Counties

In sum, when we rely on comparisons of counties within states, there is no evidence that election technology has an impact on vote shares. As mentioned, the author provides no regression output or details about the analysis, but he or she seems to have estimated some sort of regression model. The author makes no mention of having included fixed effects. As one can see in Figure 2 above, it is clear that a naïve empirical model without fixed effects for states would generate the illusion of a relationship between voting technology and election outcomes, simply because Democratic states have been somewhat more likely to purchase Dominion equipment.

A good way to see this is to conduct a "placebo" test in which we examine Biden's vote share in counties that *did not* use Dominion systems, but border a

county that *did* use Dominion. If there is an impact of voting software on election outcomes via fraud, it should most certainly not be detected in counties that border the Dominion counties but use some other election technology system. If we see that those counties have elevated Democratic vote shares mimicking the supposed "effect" of Dominion software—what is known as a "placebo" effect—we should be very skeptical about claims that use of the software is associated with increased Democratic voting. Rather, we would understand that the correlation reported by the report's author is driven by some features of the types of regions where Dominion software has been adopted—not the software itself.

The result of this analysis is shown in Appendix Table A2. It shows results of a linear regression of Biden vote share on an indicator variable for whether a county borders a Dominion county. This regression is estimated among counties that did not use Dominion systems, and includes a set of demographic control variables. It shows that Biden received a higher vote share, of about .86 of a percentage point, in counties that border a Dominion county than in those that do not. It would be implausible to claim that voting technology in bordering counties has a causal impact on Biden's vote share. A more plausible interpretation is that there are some common features of politics in the regions that have adopted the software, and the type of research design that appears to have been used in the report is likely to turn up spurious results.

Placebo Test Using Prior Election Results

A research strategy designed to estimate the effect of one variable on another variable can be evaluated by its tendency to detect an effect when an effect *does* exist, and its tendency *not* to detect an effect when an effect *does not* exist. When a research design detects an effect when none exists, we say it returned a *false positive*. Designs with a high false positive rate are not very informative: an effect could be detected by the research design due to the existence of a real effect, or it could be a false positive.

We can make a further evaluation of the propensity of the research design the author appears to have used in his or her report to return false positives by seeing whether it detects that *future* events have an "effect" on *past* outcomes. Of course, this is logically impossible — we know that events happening in the future cannot affect past outcomes. Thus, any effect detected on past outcomes is necessarily a false positive.

In Appendix Table A3, I replicate the basic research design that I believe lies behind the claims in the report. It uses linear regression models, without state fixed effects, to predict Democratic vote share as a function of whether a county used Dominion voting technology in 2020, along with county-level demographic and economic control variables. Except, instead of predicting *2020* vote share, I predict

2012 and *2016* vote share. I exclude counties that used Dominion systems at the time of the election being analyzed.

The results indicate that in 2012, in counties that did not use Dominion in 2012 but did use them in 2020, Obama received about 5 to 6 percentage points higher vote share, compared to counties that did not use Dominion machines in either 2012 or 2020. The next column shows a similar pattern for 2016. Future use of Dominion predicts higher Clinton vote share in 2016, even in counties that did not use Dominion in 2016.

These results are false positives: there is no logical way that future use of Dominion voting machines could have affected past outcomes. Instead, these results are due to the fact that counties that used Dominion voting systems in 2020 are politically different than counties that did not, even after controlling for demographic and economic variables. This test shows that the simple type of research design that was breezily described in the report is ill-equipped to detect differences in vote shares that are *caused* by use of particular voting systems. As such, the statistical analysis mentioned in the report provides no evidence of fraud due to use of Dominion voting machines.

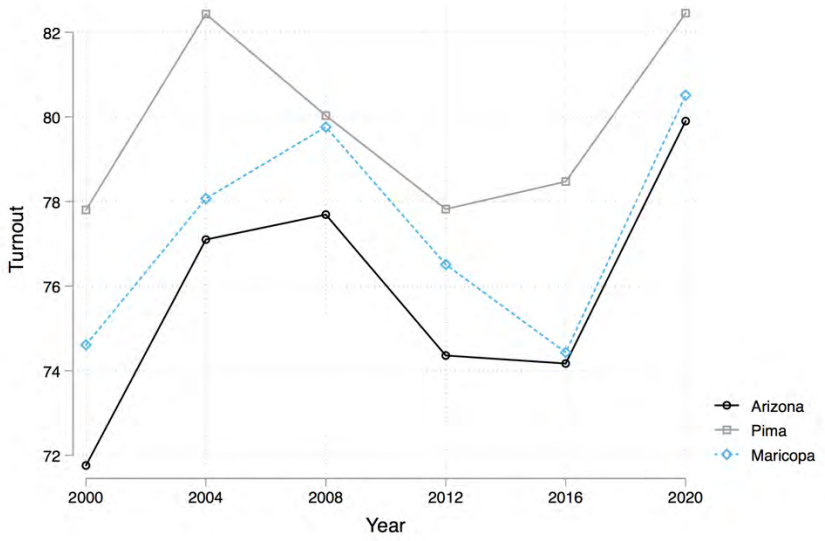
V. RAMSLAND REPORT

This report begins with some unsubstantiated claims about Antrim County, Michigan and Dallas County, Texas. These claims are difficult to understand, and

they do not seem to include any type of evidence. Next, Mr. Ramsland contends that turnout figures in Pima County and Maricopa County, Arizona are a "red flag," evidently because Mr. Ramsland believes they are too high. Without explanation or citations from the academic literature, he contends that any turnout number above 80 percent is suspicious.

Quite simply, high turnout is not a "red flag" indicating fraud. Turnout was high around the United States in the 2020 election. It was especially high in suburbs and rural areas. The numbers in Arizona are not atypical. In Figure 3 below, I present data on turnout in each presidential election over the last decade in Arizona as a whole, as well as in Maricopa and Pima counties.

Figure 3: Turnout in Arizona as a Whole, and in Maricopa and Pima Counties



Turnout was indeed higher in Arizona as a whole in 2020, reaching 79.9 percent. This was driven, of course, by Maricopa County, which accounts for the lion's share of the Arizona electorate. As can be seen in Figure 3, Pima County typically has higher turnout than Maricopa, or Arizona as a whole. Turnout in Pima County in 2020 was comparable to that in 2004. In short, there is nothing anomalous or suspicious about turnout in Arizona in 2020, or in the two counties mentioned by Mr. Ramsland.

He goes on to list a series of high-turnout suburban and rural precincts. Many of the rural precincts listed by Mr. Ramsland provided strong support to President Trump, while the suburban precincts were, for the most part, hotly contested but leaned toward Joseph Biden. A similar group of rural and suburban precincts with very high turnout can be found in every state around the United States. It is not clear what this might possibly have to do with election fraud.

Mr. Ramsland then goes on to claim that instead of counting votes in the traditional way, code was activated to use ranked choice voting to tally votes in Arizona's 2020 presidential election. From this discussion, it seems likely that Mr. Ramsland is not familiar with ranked choice voting. It involves a different type of ballot, in which voters rank their preferences among candidates. This type of ballot was not used in Arizona. Even if all of the ballots in Arizona were somehow counted or processed using ranked choice voting, but using ballots that only allowed voters

to select one candidate, the result would be the same. Ranked choice voting is a system where in the first round of counting, if one candidate has a majority, the process is over, and no votes are redistributed. If there were multiple candidates and voters' choices were ranked, there would then be a second round, where the lowest-ranked candidate would be dropped, and those voters who ranked that candidate first would then have their second-choice votes tallied. But clearly, nothing of the sort happened in Arizona. Jo Jorgensen, the Libertarian candidate, received a significant number of votes, as did candidates from other parties and write-in candidates.

Finally, Mr. Ramsland concludes with some ideas about votes being "injected" at various times during the counting process. It appears that while watching election returns as they were released by a polling firm called Edison Research, Mr. Ramsland became concerned that votes were reported in bunches throughout the evening. It is not clear how the timing of data releases by Edison Research might be related to election fraud.

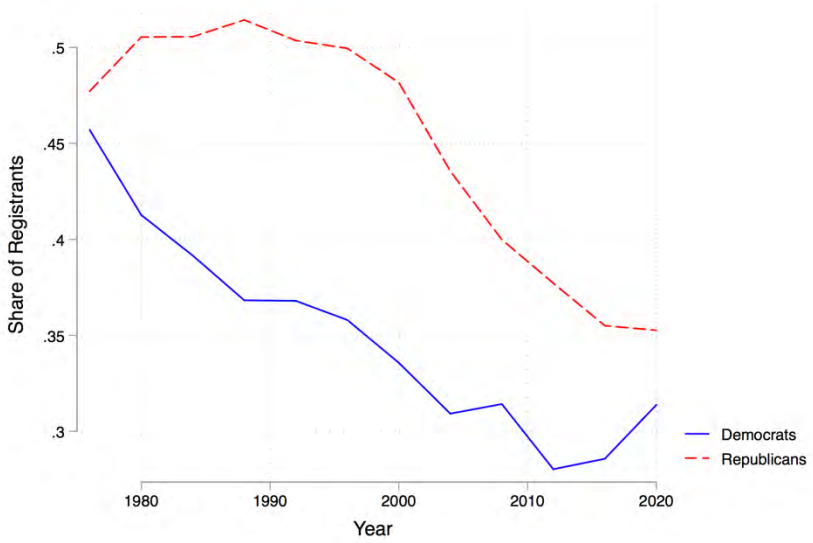
VI. KESHEL REPORT

Like Mr. Ramsland, Mr. Keshel also takes issue with Arizona's election result. He characterizes the result as a "substantial deviance from statistical norms and results regarding voting patterns in Arizona" (paragraph 4). He does not explain what "statistical norms" he considers, and cites no literature about how one might

go about identifying such a thing. Mr. Keshel's concern, evidently, is that Mr. Biden's gains were too high. To the extent that he identifies a method of analysis, he appears to claim that if a party has won frequently in a geographic place in the past, as the Republican Party has in Maricopa County, it is suspicious if that party loses support. Evidently Mr. Keshel would be suspicious about a number of outcomes in U.S. election, including the increase in support for the Republican Party in the industrial Midwest in 2016, or the rather striking increase in votes for President Trump in several Hispanic counties in Florida and Texas in 2020. Especially in the presence of a controversial incumbent, changing political fortunes for a party in a particular geographic area are quite normal, and are not viewed by election analysts as evidence of fraud.

Another claim made by Mr. Keshel is that a party should show "proper progression in keeping with historic party registration trends" (paragraph 15). He does not explain his method for empirically measuring this "proper progression," but in Arizona, party registration numbers are not remotely useful for this purpose. Figure 4 helps explain why. It plots Democrats as a share of total registrants (in blue), as well as Republicans as a share of total registrants (in red).

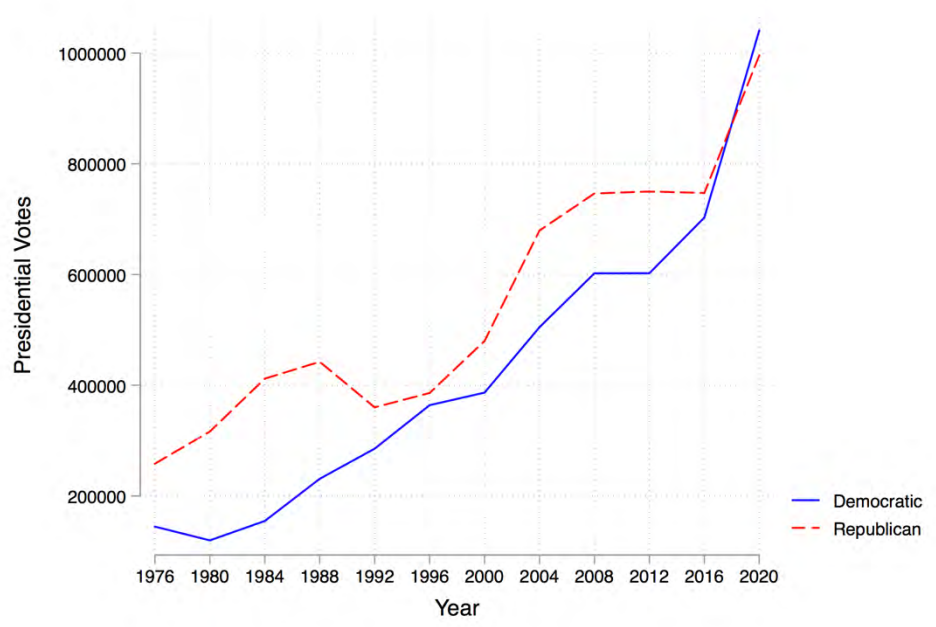
Figure 4: Party Registration Over Time in Maricopa County, AZ



Democrats and Republicans are both falling dramatically as a share of total registrants, as increasing numbers of voters decline to register with one of the two major parties. But the two major parties continue to virtually monopolize votes for president and other offices. In other words, neither party is "in keeping with historic party registration trends." Much of the battle in Maricopa County is over the large number of voters who are not registered with either party.

In any case, as with turnout, it is difficult to characterize Arizona's 2020 election result, or that of Maricopa County in particular, as anomalous. Figure 5 simply plots Democratic and Republican votes over time in Maricopa County.

Figure 5: Votes for Democratic and Republican Presidential Candidates Over Time, Maricopa County, AZ



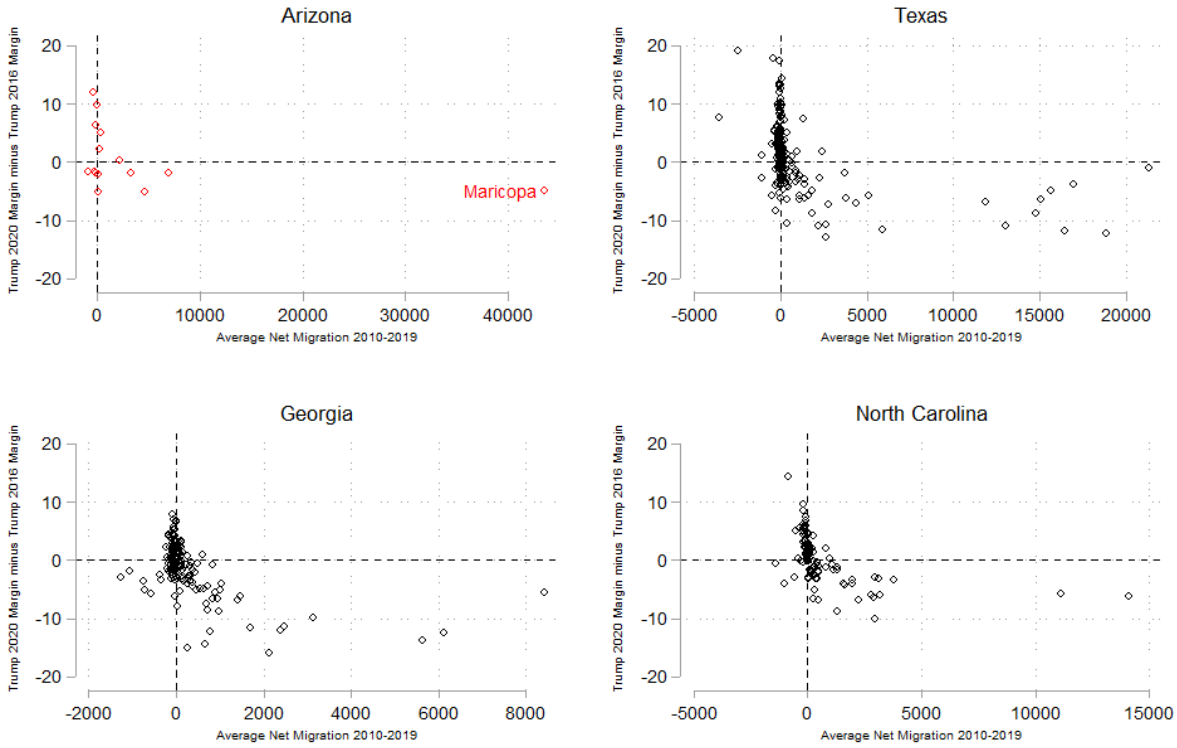
The rapid growth in votes cast for both parties is a function of Maricopa County's rapid growth, fueled by in-migration from other states. Cross-state migrants to places like Maricopa County are typically college-educated young people—a group that has in recent years become a core constituency of the Democratic Party. As a result, the most rapidly growing counties in the United States are also quickly becoming more Democratic.[6] As Maricopa County has become more educated and diverse, the growth in the blue line has caught up with the growth of the red line in Figure 5. Much of the gap had already been closed by 2016, and it is not surprising that, through the continuation of the trend of in-migration and strong turnout, the blue line finally surpassed the red line in 2020.

[6] Jonathan Rodden, 2019, *Why Cities Lose: The Deep Roots of the Urban-Rural Divide*. New York: Basic Books.

Finally, Mr. Keshel believes that Maricopa County is an outlier in the extent to which it has experienced the above-mentioned combination of increased population and increased Democratic voting. This is not the case. Let us examine other states where in-migration of educated young people to sprawling suburbs is changing the political complexion of the state: Texas, Georgia, and North Carolina.

In Figure 6, I plot the change in Trump vote margin from 2016 to 2020 on the vertical axis, so that a positive number indicates that Trump's performance *improved*, and a negative number indicates that it *declined.* On the horizontal axis is average yearly net in-migration, calculated by the census department, from the years 2010 to 2019. The observations are counties. I include identical graphs for Arizona, Texas, Georgia, and North Carolina—all states that have thriving, growing metro areas with strong labor markets and affordable suburbs that are attracting migrants from around the United States. Note that the only thing different about the graphs for each state is the horizontal axis. It goes all the way beyond 40,000 for Arizona. For Texas, the scale stops at 20,0000, and the other states at even lower values. If I did not allow the horizontal axis to vary for Arizona, it would be literally off the charts. This graph clarifies that the population growth of Maricopa County, driven by in-migration, is very unique. According to census estimates, Maricopa County gained 63,000 residents in 2019 alone.

Figure 6: Net Migration and Change in Presidential Voting Behavior, 2016 to 2020, Counties of Arizona, Texas, Georgia, and North Carolina



As we can see on the graph, in every one of these states, rapidly growing counties like Maricopa moved toward the Democratic presidential candidate from 2016 to 2020. Every single county that experienced substantial growth can be found in the lower right-hand corner of the graph for its state, where Biden out-performed Clinton—often by a wide margin. In fact, given its extreme level of growth, Maricopa is something of an outlier in that it did not swing *further* toward the Democratic presidential candidate. Note that most of the high-growth counties in Texas and Georgia moved further in a Democratic direction than did Maricopa.

It is also useful to note that Trump experienced large increases in vote share in many of the counties where population growth is either stagnant or where out-migration is occurring (on the left side of the graph). In some cases, these vote shifts are substantial. In fact, in order to make the data fit on the graphs, some of the declining, majority-Latino counties in Texas where Trump made extremely large gains had to be left off. If one adopts Mr. Keshel's faulty logic—whereby large vote gains are indicative of fraud—one would need to look at some of these declining rural counties, where in several states, the shift in voting was more dramatic than in the growing suburban counties. But to be clear, this argument is flawed: voting can and does shift among social groups in response to policies and behavior or incumbents as well as platforms of candidates.

In sum, Mr. Keshel has provided no evidence whatsoever that would be indicative, or even suggestive, of fraud in Arizona.

VII. CONCLUSION

In conclusion, these reports do not take a scientific approach to the questions they address. They are completely disconnected from the wealth of knowledge about elections and statistics that has been accumulated in the scholarly literature. They feature vague and illogical stories about "anomalies" that, upon basic confrontation with context, logic, and data, turn out not to be anomalies at all, but mere descriptions

of patterns of historical and contemporary election results that are already well known to scholars and pundits alike. They contain no evidence of fraud or irregularities in the election results of 2020 in Arizona or anywhere else.

Appendix

Table A1: Fixed Effects Model, County-Level Democratic Vote Share in 2020

	Dem vote share, 2020
Dominion 2020	0.031
	(0.25)
Hart 2020	-0.014
	(0.08)
female	-0.003
	(0.18)
Black	0.022
	(2.57)*
Latino	-0.078
	(9.43)**
College	0.086
	(7.31)**
Age 25-34	0.014
	(0.52)
Age 35-44	0.074
	(2.56)*
Age 45-54	-0.028
	(0.85)
Age 55-64	0.123
	(4.16)**
Age 65 and over	-0.030
	(1.63)
Median income	-0.016
	(1.79)
Poverty rate	-0.003
	(0.16)
Unemployment rate	-0.140
	(3.73)**
Renter share	-0.011
	(0.88)
Share urban	0.019
	(7.81)**
Log population density	0.240
	(3.54)**
Dem. vote share 2016	1.047
	(51.38)**
Dem. vote share 2012	-0.093
	(3.76)**
Dem. vote share 2008	-0.026
	(1.43)
Constant	0.465
	(0.26)
R^2	0.99

N	3,110

* $p<0.05$; ** $p<0.01$

Table A2: Border Placebo Analysis

	Dem vote share, 2020
Dominion 2020	0.855*
	(1.96)
Hart 2020	-3.860
	(6.97)**
female	0.067
	(0.60)
Black	0.389
	(16.44)**
Latino	0.148
	(5.00)**
College	0.746
	(13.81)**
Age 25-34	-0.238
	(1.53)
Age 35-44	-0.504
	(3.03)**
Age 45-54	0.060
	(0.33)
Age 55-64	0.738
	(3.70)**
Age 65 and over	-0.231
	(2.43)*
Median income	0.156
	(3.05)**
Poverty rate	0.564
	(5.58)**
Unemployment rate	0.901
	(6.10)**
Renter share	0.274
	(4.56)**
Share urban	0.014
	(1.04)
Log population density	1.812
	(7.04)**
Constant	-25.082
	(2.43)*
R^2	0.68
N	1,846

* $p<0.05$; ** $p<0.01$

Table A3: Previous Election Placebo Analysis

	2012 Dem vote share	2016 Dem vote share
2020 Dominion	5.605	3.310
	(1.241)**	(1.358)*
female	0.400	0.198
	(0.131)**	(0.113)
Black	0.352	0.466
	(0.024)**	(0.021)**
Latino	0.143	0.258
	(0.034)**	(0.031)**
College	0.331	0.660
	(0.061)**	(0.054)**
Age 25-34	-0.411	-0.254
	(0.177)*	(0.153)
Age 35-44	-0.799	-0.576
	(0.194)**	(0.168)**
Age 45-54	0.272	0.269
	(0.225)	(0.198)
Age 55-64	0.842	0.850
	(0.235)**	(0.206)**
Age 65 and over	-0.117	-0.033
	(0.120)	(0.100)
Median income	0.152	0.150
	(0.061)*	(0.050)**
Poverty rate	0.656	0.671
	(0.108)**	(0.098)**
Renter share	0.325	0.337
	(0.077)**	(0.068)**
Share urban	0.008	0.006
	(0.016)	(0.013)
Log population density	2.444	2.387
	(0.276)**	(0.246)**
Constant	-29.495	-41.937
	(12.358)*	(10.381)**
R^2	0.39	0.61
N	1,946	2,097

* $p<0.05$; ** $p<0.01$

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Personal

Born on August 18. 1971, St. Louis, MO.

United States Citizen.

Education

Ph.D. Political Science, Yale University, 2000.

Fulbright Scholar, University of Leipzig, Germany, 1993–1994.

B.A., Political Science, University of Michigan, 1993.

Academic Positions

Professor, Department of Political Science, Stanford University, 2012–present.

Senior Fellow, Hoover Institution, Stanford University, 2012–present.

Senior Fellow, Stanford Institute for Economic Policy Research, 2020–present.

Director, Spatial Social Science Lab, Stanford University, 2012–present.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, 2010–2012.

Associate Professor, Department of Political Science, Stanford University, 2007–2012.

Fellow, Center for Advanced Study in the Behavioral Sciences, Palo Alto, CA, 2006–2007.

Ford Career Development Associate Professor of Political Science, MIT, 2003–2006.

Visiting Scholar, Center for Basic Research in the Social Sciences, Harvard University, 2004.

Assistant Professor of Political Science, MIT, 1999–2003.

Instructor, Department of Political Science and School of Management, Yale University, 1997–1999.

Publications

Books

Why Cities Lose: The Deep Roots of the Urban-Rural Divide. Basic Books, 2019.

Decentralized Governance and Accountability: Academic Research and the Future of Donor Programming. Co-edited with Erik Wibbels, Cambridge University Press, 2019.

Hamilton's Paradox: The Promise and Peril of Fiscal Federalism, Cambridge University Press, 2006. Winner, Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fiscal Decentralization and the Challenge of Hard Budget Constraints, MIT Press, 2003. Co-edited with Gunnar Eskeland and Jennie Litvack.

Peer Reviewed Journal Articles

Partisan Dislocation: A Precinct-Level Measure of Representation and Gerrymandering, 2020, *Political Analysis* forthcoming (with Daryl DeFord Nick Eubank).

Who is my Neighbor? The Spatial Efficiency of Partisanship, 2020, *Statistics and Public Policy* (with Nick Eubank).

Handgun Ownership and Suicide in California, 2020, *New England Journal of Medicine* 382:2220-2229 (with David M. Studdert, Yifan Zhang, Sonja A. Swanson, Lea Prince, Erin E. Holsinger, Matthew J. Spittal, Garen J. Wintemute, and Matthew Miller).

Viral Voting: Social Networks and Political Participation, 2020, *Quarterly Journal of Political Science* (with Nick Eubank, Guy Grossman, and Melina Platas).

It Takes a Village: Peer Effects and Externalities in Technology Adoption, 2020, *American Journal of Political Science* (with Romain Ferrali, Guy Grossman, and Melina Platas). Winner, 2020 Best Conference Paper Award, American Political Science Association Network Section.

Assembly of the LongSHOT Cohort: Public Record Linkage on a Grand Scale, 2019, *Injury Prevention* (with Yifan Zhang, Erin Holsinger, Lea Prince, Sonja Swanson, Matthew Miller, Garen Wintemute, and David Studdert).

Crowdsourcing Accountability: ICT for Service Delivery, 2018, *World Development* 112: 74-87 (with Guy Grossman and Melina Platas).

Geography, Uncertainty, and Polarization, 2018, *Political Science Research and Methods* doi:10.1017/psrm.2018.12 (with Nolan McCarty, Boris Shor, Chris Tausanovitch, and Chris Warshaw).

Handgun Acquisitions in California after Two Mass Shootings, 2017, *Annals of Internal Medicine* 166(10):698-706. (with David Studdert, Yifan Zhang, Rob Hyndman, and Garen Wintemute).

Cutting Through the Thicket: Redistricting Simulations and the Detection of Partisan Gerrymanders, 2015, *Election Law Journal* 14,4:1-15 (with Jowei Chen).

The Achilles Heel of Plurality Systems: Geography and Representation in Multi-Party Democracies, 2015, *American Journal of Political Science* 59,4: 789-805 (with Ernesto Calvo). Winner, Michael Wallerstein Award for best paper in political economy, American Political Science Association.

Why has U.S. Policy Uncertainty Risen Since 1960?, 2014, *American Economic Review: Papers and Proceedings* May 2014 (with Nicholas Bloom, Brandice Canes-Wrone, Scott Baker, and Steven Davis).

Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures, 2013, *Quarterly Journal of Political Science* 8: 239-269 (with Jowei Chen).

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Representation and Redistribution in Federations, 2011, *Proceedings of the National Academy of Sciences* 108, 21:8601-8604 (with Tiberiu Dragu).

Dual Accountability and the Nationalization of Party Competition: Evidence from Four Federatons, 2011, *Party Politics* 17, 5: 629-653 (with Erik Wibbels).

The Geographic Distribution of Political Preferences, 2010, *Annual Review of Political Science* 13: 297–340.

Fiscal Decentralization and the Business Cycle: An Empirical Study of Seven Federations, 2009, *Economics and Politics* 22,1: 37–67 (with Erik Wibbels).

Getting into the Game: Legislative Bargaining, Distributive Politics, and EU Enlargement, 2009, *Public Finance and Management* 9, 4 (with Deniz Aksoy).

The Strength of Issues: Using Multiple Measures to Gauge Preference Stability, Ideological Constraint, and Issue Voting, 2008. *American Political Science Review* 102, 2: 215–232 (with Stephen Ansolabehere and James Snyder).

Does Religion Distract the Poor? Income and Issue Voting Around the World, 2008, *Comparative Political Studies* 41, 4: 437–476 (with Ana Lorena De La O).

Purple America, 2006, *Journal of Economic Perspectives* 20,2 (Spring): 97–118 (with Stephen Ansolabehere and James Snyder).

Economic Geography and Economic Voting: Evidence from the U.S. States, 2006, *British Journal of Political Science* 36, 3: 527–47 (with Michael Ebeid).

Distributive Politics in a Federation: Electoral Strategies, Legislative Bargaining, and Government Coalitions, 2004, *Dados* 47, 3 (with Marta Arretche, in Portuguese).

Comparative Federalism and Decentralization: On Meaning and Measurement, 2004, *Comparative Politics* 36, 4: 481-500. (Portuguese version, 2005, in *Revista de Sociologia e Politica* 25).

Reviving Leviathan: Fiscal Federalism and the Growth of Government, 2003, *International Organization* 57 (Fall), 695–729.

Beyond the Fiction of Federalism: Macroeconomic Management in Multi-tiered Systems, 2003, *World Politics* 54, 4 (July): 494–531 (with Erik Wibbels).

The Dilemma of Fiscal Federalism: Grants and Fiscal Performance around the World, 2002, *American Journal of Political Science* 46(3): 670–687.

Strength in Numbers: Representation and Redistribution in the European Union, 2002, *European Union Politics* 3, 2: 151–175.

Does Federalism Preserve Markets? *Virginia Law Review* 83, 7 (with Susan Rose-Ackerman). Spanish version, 1999, in *Quorum* 68.

Working Papers

Federalism and Inter-regional Redistribution, Working Paper 2009/3, Institut d'Economia de Barcelona.

Representation and Regional Redistribution in Federations, Working Paper 2010/16, Institut d'Economia de Barcelona (with Tiberiu Dragu).

Chapters in Books

Political Geography and Representation: A Case Study of Districting in Pennsylvania (with Thomas Weighill), forthcoming 2021.

Decentralized Rule and Revenue, 2019, in Jonathan Rodden and Erik Wibbels, eds., *Decentralized Governance and Accountability*, Cambridge University Press.

Geography and Gridlock in the United States, 2014, in Nathaniel Persily, ed. *Solutions to Political Polarization in America*, Cambridge University Press.

Can Market Discipline Survive in the U.S. Federation?, 2013, in Daniel Nadler and Paul Peterson, eds, *The Global Debt Crisis: Haunting U.S. and European Federalism*, Brookings Press.

Market Discipline and U.S. Federalism, 2012, in Peter Conti-Brown and David A. Skeel, Jr., eds, *When States Go Broke: The Origins, Context, and Solutions for the American States in Fiscal Crisis*, Cambridge University Press.

Federalism and Inter-Regional Redistribution, 2010, in Nuria Bosch, Marta Espasa, and Albert Sole Olle, eds., *The Political Economy of Inter-Regional Fiscal Flows*, Edward Elgar.

Back to the Future: Endogenous Institutions and Comparative Politics, 2009, in Mark Lichbach and Alan Zuckerman, eds., *Comparative Politics: Rationality, Culture, and Structure* (Second Edition), Cambridge University Press.

The Political Economy of Federalism, 2006, in Barry Weingast and Donald Wittman, eds., *Oxford Handbook of Political Economy*, Oxford University Press.

Fiscal Discipline in Federations: Germany and the EMU, 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

The Political Economy of Pro-cyclical Decentralised Finance (with Erik Wibbels), 2006, in Peter Wierts, Servaas Deroose, Elena Flores and Alessandro Turrini, eds., *Fiscal Policy Surveillance in Europe*, Palgrave MacMillan.

Globalization and Fiscal Decentralization, (with Geoffrey Garrett), 2003, in Miles Kahler and David Lake, eds., *Governance in a Global Economy: Political Authority in Transition*, Princeton University Press: 87-109. (Updated version, 2007, in David Cameron, Gustav Ranis, and Annalisa Zinn, eds., *Globalization and Self-Determination: Is the Nation-State under Siege?* Routledge.)

Introduction and Overview (Chapter 1), 2003, in Rodden et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Soft Budget Constraints and German Federalism (Chapter 5), 2003, in Rodden, et al, *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Federalism and Bailouts in Brazil (Chapter 7), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Lessons and Conclusions (Chapter 13), 2003, in Rodden, et al., *Fiscal Decentralization and the Challenge of Hard Budget Constraints* (see above).

Online Interactive Visualization

Stanford Election Atlas, 2012 (collaboration with Stephen Ansolabehere at Harvard and Jim Herries at ESRI)

Other Publications

How America's Urban-Rural Divide has Shaped the Pandemic, 2020, *Foreign Affairs*, April 20, 2020.

An Evolutionary Path for the European Monetary Fund? A Comparative Perspective, 2017, Briefing paper for the Economic and Financial Affairs Committee of the European Parliament.

Representation and Regional Redistribution in Federations: A Research Report, 2009, in *World Report on Fiscal Federalism*, Institut d'Economia de Barcelona.

On the Migration of Fiscal Sovereignty, 2004, *PS: Political Science and Politics* July, 2004: 427–431.

Decentralization and the Challenge of Hard Budget Constraints, *PREM Note* 41, Poverty Reduction and Economic Management Unit, World Bank, Washington, D.C. (July).

Decentralization and Hard Budget Constraints, *APSA-CP* (Newsletter of the Organized Section in Comparative Politics, American Political Science Association) 11:1 (with Jennie Litvack).

Book Review of *The Government of Money* by Peter Johnson, *Comparative Political Studies 32,7: 897-900.*

Fellowships and Honors

Fund for a Safer Future, Longitudinal Study of Handgun Ownership and Transfer (LongSHOT), GA004696, 2017-2018.

Stanford Institute for Innovation in Developing Economies, Innovation and Entrepreneurship research grant, 2015.

Michael Wallerstein Award for best paper in political economy, American Political Science Association, 2016.

Common Cause Gerrymandering Standard Writing Competition, 2015.

General support grant from the Hewlett Foundation for Spatial Social Science Lab, 2014.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2012.

Sloan Foundation, grant for assembly of geo-referenced precinct-level electoral data set (with Stephen Ansolabehere and James Snyder), 2009-2011.

Hoagland Award Fund for Innovations in Undergraduate Teaching, Stanford University, 2009.

W. Glenn Campbell and Rita Ricardo-Campbell National Fellow, Hoover Institution, Stanford University, beginning Fall 2010.

Research Grant on Fiscal Federalism, Institut d'Economia de Barcelona, 2009.

Fellow, Institute for Research in the Social Sciences, Stanford University, 2008.

United Postal Service Foundation grant for study of the spatial distribution of income in cities, 2008.

Gregory Luebbert Award for Best Book in Comparative Politics, 2007.

Fellow, Center for Advanced Study in the Behavioral Sciences, 2006-2007.

National Science Foundation grant for assembly of cross-national provincial-level dataset on elections, public finance, and government composition, 2003-2004 (with Erik Wibbels).

MIT Dean's Fund and School of Humanities, Arts, and Social Sciences Research Funds.

Funding from DAAD (German Academic Exchange Service), MIT, and Harvard EU Center to organize the conference, "European Fiscal Federalism in Comparative Perspective," held at Harvard University, November 4, 2000.

Canadian Studies Fellowship (Canadian Federal Government), 1996-1997.

Prize Teaching Fellowship, Yale University, 1998-1999.

Fulbright Grant, University of Leipzig, Germany, 1993-1994.

Michigan Association of Governing Boards Award, one of two top graduating students at the University of Michigan, 1993.

W. J. Bryan Prize, top graduating senior in political science department at the University of Michigan, 1993.

Other Professional Activities

International Advisory Committee, Center for Metropolitan Studies, Sao Paulo, Brazil, 2006–2010.

Selection committee, Mancur Olson Prize awarded by the American Political Science Association Political Economy Section for the best dissertation in the field of political economy.

Selection committee, Gregory Luebbert Best Book Award.

Selection committee, William Anderson Prize, awarded by the American Political Science Association for the best dissertation in the field of federalism and intergovernmental relations.

Courses

Undergraduate

Politics, Economics, and Democracy

Introduction to Comparative Politics

Introduction to Political Science

Political Science Scope and Methods

Institutional Economics

Spatial Approaches to Social Science

Graduate

Political Economy of Institutions

Federalism and Fiscal Decentralization

Politics and Geography

Consulting

2017. Economic and Financial Affairs Committee of the European Parliament.

2016. Briefing paper for the World Bank on fiscal federalism in Brazil.

2013-2018: Principal Investigator, SMS for Better Governance (a collaborative project involving USAID, Social Impact, and UNICEF in Arua, Uganda).

2019: Written expert testimony in *McLemore, Holmes, Robinson, and Woullard v. Hosemann*, United States District Court, Mississippi.

2019: Expert witness in *Nancy Corola Jacobson v. Detzner*, United States District Court, Florida.

2018: Written expert testimony in *League of Women Voters of Florida v. Detzner* No. 4:18-cv-002510, United States District Court, Florida.

2018: Written expert testimony in *College Democrats of the University of Michigan, et al. v. Johnson, et al.*, United States District Court for the Eastern District of Michigan.

2017: Expert witness in *Bethune-Hill v. Virginia Board of Elections*, No. 3:14-CV-00852, United States District Court for the Eastern District of Virginia.

2017: Expert witness in *Arizona Democratic Party, et al. v. Reagan, et al.*, No. 2:16-CV-01065, United States District Court for Arizona.

2016: Expert witness in *Lee v. Virginia Board of Elections*, 3:15-cv-357, United States District Court for the Eastern District of Virginia, Richmond Division.

2016: Expert witness in *Missouri NAACP v. Ferguson-Florissant School District*, United States District Court for the Eastern District of Missouri, Eastern Division.

2014-2015: Written expert testimony in *League of Women Voters of Florida et al. v. Detzner, et al.*, 2012-CA-002842 in Florida Circuit Court, Leon County (Florida Senate redistricting case).

2013-2014: Expert witness in *Romo v Detzner*, 2012-CA-000412 in Florida Curcuit Court, Leon County (Florida Congressional redistricting case).

2011-2014: Consultation with investment groups and hedge funds on European debt crisis.

2011-2014: Lead Outcome Expert, Democracy and Governance, USAID and Social Impact.

2010: USAID, Review of USAID analysis of decentralization in Africa.

2006–2009: World Bank, Independent Evaluations Group. Undertook evaluations of World Bank decentralization and safety net programs.

2008–2011: International Monetary Fund Institute. Designed and taught course on fiscal federalism.

1998–2003: World Bank, Poverty Reduction and Economic Management Unit. Consultant for *World Development Report*, lecturer for training courses, participant in working group for assembly of decentralization data, director of multi-country study of fiscal discipline in decentralized countries, collaborator on review of subnational adjustment lending.

Last updated: October 19, 2020

EXHIBIT 11

Defendant's Motion to Exclude Plaintiffs' Expert Witnesses

Exhibit 3

A Overview

1 I have been engaged by Defendant-Intervenors' Counsel *Perkins Coie LLP* to write an expert report in the matter of *Bowyer et al. v. Ducey et al.* Counsel requested that I evaluate the contention in "Declaration of Matthew Bromberg Ph.D" (hereinafter, the Bromberg Declaration, dated December 1, 2020 and filed on December 2, 2020) that there was "vote switching" in Maricopa County, Arizona, in the 2020 presidential election that favored Democratic candidate for president Joe Biden at the expense of Republican candidate Donald Trump. Counsel requested as well that I offer a brief evaluation of the claims in the Bromberg Declaration about fraudulent votes cast in the 2020 presidential election beyond Arizona, namely, in Georgia, Pennsylvania, and Milwaukee, Wisconsin.

2 The 2020 General Election took place on November 3, 2020. In the race in Arizona for the office of President of the United States, the Arizona Secretary of State has certified that Democratic candidate Joe Biden received 1,672,143 votes and Republican candidate Donald Trump, 1,661,686 votes. This constitutes a margin of 10,457 votes.[1]

3 As of the writing of this expert report, Matthew Bromberg, the author of the Bromberg Declaration, has to the best of my knowledge disclosed neither the data not the computer code he used in the process of producing his declaration. I accordingly reserve the right to supplement this report in light of any disclosures that he puts forward in the future.

B Summary of conclusions

I. The Bromberg Declaration offers no evidence of voter fraud—and in particular vote switching from Donald Trump to Joe Biden—in Maricopa County, Arizona during the 2020 presidential election.

[1] See "President of the United States," *Arizona Secretary of State*, available at `https://results.arizona.vote/#/featured/18/0` (last accessed December 4, 2020).

II. There is no basis for the key theory in the Bromberg Declaration that voting precincts in Maricopa County with relatively few voters were more susceptible to voter fraud than precincts with greater numbers of voters. This theory does not appear in the literature on voter fraud and there is no evidence presented in the Bromberg Declaration in support of it. Lacking this theory, the Bromberg Declaration cannot say anything about voter fraud in Maricopa County in the 2020 election.

III. The Bromberg Declaration misunderstands how in-person voters in Maricopa County cast their ballots in the 2020 election. In this election, the county used voting centers on Election Day. Each eligible voter in Maricopa County could use any of the county's 175 centers to cast an in-person ballot. Maricopa County's in-person voters in this election, that is, were *not* restricted to voting in the polling places associated with their precincts, of which there were 744. The total number of presidential votes cast by the voters who belong to any given precinct in Maricopa County thus has no implication for how many ballots were physically cast in it on November 3, 2020. Therefore, the theory putatively offered in the Bromberg Declaration about the susceptibility to voter fraud of Maricopa County precincts with relatively few voters is of absolutely no relevance to the 2020 presidential race in the county and in fact to any races contested in the 2020 election.

IV. When voters in Maricopa County are aggregated at the precinct level (which ignores the matter of *where* these individuals cast their ballots in the 2020 election), the results of the presidential race bear strong similarity to the results of the race for a seat in the United States Senate. The precincts in which Joe Biden did well are also precincts in which Mark Kelly, Democratic candidate for Senate, did well, and vice versa. This implies that the pattern in Maricopa County precincts that was noted in the Bromberg Declaration—whereby precincts with smaller numbers of voters tended to have more Biden votes than Trump votes—reflects established political preferences in Maricopa County, not illegal vote switching.

V. Voter fraud is rare in the United States. Nonetheless, the Bromberg Declaration presents

a model that purports to discover significant voter in Georgia, Pennsylvania, and Milwaukee, Wisconsin. The model assumes that when a ballot is counted is uncorrelated with the presidential vote on it. This is known not to be the case. Thus, the claims in the Bromberg Declaration about voter fraud beyond Arizona do not follow from the arguments made in it.

C Organization of this report

4 In the next section of this report, I present my qualifications.

5 I then summarize literature on voter fraud in American elections.

6 Next, I evaluate the analysis of Maricopa County presented in the Bromberg Declaration.

7 Finally, I briefly discuss claims about voter fraud made in the Bromberg Declaration that extend beyond Arizona.

D Qualifications

8 I am the William Clinton Story Remsen 1943 Professor of Government at Dartmouth College in Hanover, New Hampshire and from 2015 to 2020 was Chair of the Program in Quantitative Social Science. I have taught at Dartmouth since 2003 and previously was on the faculty of Northwestern University. I have served as a visiting professor at Harvard University (July 2008–January 2009), the University of Rochester (September 2006–December 2006), and the Hertie School of Governance in Berlin (August 2011–August 2012). I have also served as a visiting scholar at the Hertie School of Governance (August 2016–July 2017).

9 In January 1998, I received a doctorate in the field of Political Economy from the Graduate School of Business at Stanford University. I also have a master's degree in statistics from

Stanford University (June 1995), a master's degree in political science from the University of Dayton (August 1992), and a bachelor's degree in mathematics and economics from Carnegie-Mellon University (May 1989).

10 I have published many scholarly articles on election administration and American elections, three such articles in 2019 and two in 2018. Among other subjects, I have written on the effects of ballot formats, patterns in invalid votes, the availability of early voting, and polling place congestion. My articles rely on statistical analyses, and my ongoing research agenda focuses heavily on issues in election administration.

11 I have published over 20 articles in peer-reviewed political science journals, including in the field's top general journals (*American Political Science Review*, *American Journal of Political Science*, and *Journal of Politics*). I have published in specialty journals as well (*Election Law Journal*, *American Politics Research*, and *Legislative Studies Quarterly*).

12 I have published two articles on voter fraud in American elections. Cottrell, Herron and Westwood (2018) is a statistical study of the allegations made by Donald Trump about voter fraud in the period surrounding the 2016 General Election. It concludes that there is no evidence in support of these allegations. Herron (2019) is an analysis of allegations made after a 2018 election in North Carolina's 9th Congressional District. It concludes that patterns in absentee votes cast in this district were consistent with allegations of absentee ballot fraud.

13 I was a testifying expert for defendants in *Law et al. v. Whitmer et al.* (Case No.: 20 OC 00163 1B) and in *Jennings v. Elections Canvassing Commission of the state of Florida* (2006 WL 4404531 (Fla.Cir.Ct.)) and a testifying expert for plaintiffs in *Alliance for Retired American et al. v. Matthew Dunlap et al.* (DKT NO. CV-20-95), *Michigan Alliance for Retired Americans et al. v. Jocelyn Benson et al.* (Civil Action No. 2020-000108-MM), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.* (226-2017-CV-433), and *Veasey et al. v. Abbott et al.*

(265 F. Supp. 3d 684 (S.D. Tex. 2017)). In addition, I have written expert reports in approximately 12 other cases relating to aspects of election law and election administration.

14 My written and oral testimony was credited by courts in their written opinions in *Law et al. v. Whitmer et al.*, *Donald J. Trump for President, Inc. v. Stephen Bullock et al.* (Case No.: 6:20-cv-00066-DLC), *League of Women Voters of New Hampshire et al. v. William M. Gardner et al.*, and in *Veasey et al. v. Abbott et al.*. My opinions and testimony have never been found by a court to be unreliable.

15 At the request of counsel working on the litigation "Investigation of Election Irregularities Affecting Counties Within the 9th Congressional District," I submitted a draft of a working paper on North Carolina's 9th Congressional District to the North Carolina State Board of Elections. As to the paper's comparison of absentee ballot candidate support rates in Bladen County, North Carolina, in 2018 to absentee ballot candidate support rates in other counties in North Carolina, in three other states, and in elections that dated back to 2012, the Board wrote, "We find this information credible."[2] My paper on North Carolina's 9th Congressional District appears in *Election Law Journal*, a peer-reviewed publication (Herron, 2019).

16 My *curriculum vitae* is attached as Appendix A.

17 I am being paid at a rate of $550/hour for work in this litigation. My compensation is contingent neither on the results of the analyses described herein nor on the contents of this report.

E Voter fraud in the United States

18 To provide context for the breadth of the Bromberg Declaration's claims about fraud, I offer a definition of voter fraud and then review the extensive academic literature on this subject, which

[2]The Board's decision, which invalidated the 2018 election in the 9th Congressional District, can be found at `https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Congressional_District_9_Portal/Order_03132019.pdf` (last accessed November 13, 2020).

the Contest ignores.

E.1 Defining voter fraud

19 The study of voter fraud in the United States is part of the field of election administration.

20 For the purposes of this report, I define an instance of voter fraud as *an intentional act of deception aimed at subverting electoral processes*.[3] Instances of voter fraud can include, but are not necessarily limited to, the following behaviors:

Absentee or mail ballot fraud: improperly acquiring and then submitting an absentee or mail ballot or ballots.

Double voting: voting more than once in an election in which this is not permitted.

Election official fraud: improper actions taken by election officials, actions intended to change validly cast votes, or actions taken to affect voter registration records.

Non-citizen voting: participating in a federal election when one is not a citizen of the United States.

Voter impersonation: voting in-person (as opposed to via mail) on an election day in someone else's name, either in the name of a properly registered voter or using the registration records of a fictional individual.

[3]The North Carolina State Board of Elections (NCSBE) is responsible for managing elections in North Carolina. Since 2015, it has published a breakdown of voting irregularities that raise questions about election integrity. Referring to instances of potential voter fraud in the 2016 General Election, the NCSBE wrote that, "[Voter] [f]raud, in most cases, is an intent crime that requires prosecutors to show that the voter knowingly committed a crime." See p. 7 of "Post-Election Audit Report," *North Carolina State Board of Elections*, April 21, 2017, available at `https://s3.amazonaws.com/dl.ncsbe.gov/sboe/Post-Election%20Audit%20Report_2016%20General%20Election/Post-Election_Audit_Report.pdf` (last accessed November 15, 2020).

21 The above types of voter fraud can in principle be combined. A non-citizen of the United States could during the course of participating in a federal election impersonate a properly registered voter. Or, an individual could vote twice in an election, once using the individual's own (and proper) registration and the second time using a fictional registration.

22 Moreover, each entry in the above list of behaviors should be understood as encompassing a broad range of behaviors. An individual could, hypothetically, execute a double voting fraud by voting twice in one state. Or, such an individual could, hypothetically, vote in more than one state.

23 This list above is neither exclusive nor exhaustive.

24 I list the above types of behaviors because they describe the sorts of actions that, based on my experience with academic literature on the subject, could in principle be characterized as voter fraud. What a court in any state determines is illegal depends, however, on that state's particular laws.

25 It is my general understanding that, for an action to be denoted fraud, it must involve an intent to deceive. In this report, I treat allegations of voter fraud as actual fraud even where I cannot determine if there was an intent to deceive. To that extent that I do this, my report is over-inclusive with respect to instances of voter fraud and thus conservative.[4]

26 Elections are regulated affairs subject to state laws and potentially local laws as well. A voter can behave in a way that is illegal in his or her state but not intentionally deceptive and thus not fraudulent.

[4]Fraudulent actions of voters or intended voters are similar to what the United States Election Assistance Commission (EAC) might call "acts of deception." The EAC, a federal body established in the aftermath of the contested 2000 presidential election, published a report, "Election Crimes: An Initial Review and Recommendations for Future Study," in December 2006, that categorizes in detail a variety of election-related crimes. The report is available at `https://www.eac.gov/sites/default/files/eac_assets/1/6/Initial_Review_and_Recommendations_for_Further_Study.pdf` (last accessed November 22, 2020).

27 The examples of voter fraud I have offered above are hypothetical. Later in this report I describe research that seeks to estimate the rates at which various forms of voter fraud have occurred in recent American elections.

28 In my experience, most scholars of American election administration broadly consider voter fraud to consist of fraudulent actions taken by voters themselves and not by the individuals who supervise elections. Henceforth, when I refer to voter fraud, I mean actions involving voters or intended voters themselves. In contrast, when in this report a particular example of fraud is associated with an election official or a poll worker, I am explicit about this so that there is no confusion over the type of person, official or voter, who perpetrated an alleged fraud.

E.2 Evidence of voter fraud in the United States

29 The literature on the prevalence of voter fraud in American elections incorporates a variety of research methodologies. This exemplifies triangulation, wherein multiple research approaches are brought to bear on a single problem. If voter fraud in the United States is widespread, one would expect at least one of the methodologies in the literature to have detected evidence of it.

30 One methodology used in the study of voter fraud systematically tracks cases of alleged voter fraud in media reports and in official government documents. Examples of this methodology are Minnite and Callahan (2003), Minnite (2007), Levitt (2007), Minnite (2010), and Levitt (2014).

31 These studies conclude that rates of voter fraud in American elections are very low.

32 An illustrative example from Levitt (2014) is as follows. Between the years 2000 and 2014, during which Levitt estimates that over one billion ballots were cast across general and primary elections in the United States, there were approximately 31 documented "incidents" involving voter fraud.[5] The ratio of 31 to one billion is minuscule.

[5]Levitt defines "incident" very broadly, and thus conservatively. A voter fraud incident is not necessarily a conviction for voter fraud. Levitt writes: "Some of these 31 incidents have been thoroughly investigated (including some

33 Minnite (2010) is likewise instructive in its coverage of voter fraud cases at the federal level (Chapter 3) and its analyses (Chapter 4) of fraud in four states (California, Minnesota, New Hampshire, and Oregon), among other things. As noted above, Oregon's elections are effectively all-mail operations.

34 Using data from the United States Department of Justice (DOJ), Minnite finds very little evidence of voter fraud. A September 2014 report published by the United States Government Accountability Office similarly concluded that, "[T]here were no apparent cases of in-person voter impersonation charged by DOJ's Criminal Division or by U.S. Attorney's offices anywhere in the United States, from 2004 through July 3, 2014" (p. 70).[6]

35 With respect to California, which is the most populous state in the country, Minnite draws a variety of conclusions. One is that state officials investigate claims of voter fraud when they present themselves. While perhaps not surprising, this conclusion implies that findings of a lack of fraud across California elections are meaningful and do not simply reflect state elections officials' lack of interest in voter fraud.

36 Minnite concludes as well that approximately one-third of fraud allegations in California in her period of study did not lead to charges because they lacked evidence or suspects could not be identified; a second third of these allegations were dropped because no legal violation was found or a suspect was determined to lack criminal intent; and, of allegations that produced legal violations, the majority did not lead to criminal penalties, and only one-third of individuals determined to have committed a violation were actually found guilty of a crime. The modal voter fraud Minnite identified in California was fraudulent registration—as opposed to fraudulent voting of any type, either in-person voting or absentee voting.

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prosecutions). But many have not. Based on how other claims have turned out, I'd bet that some of the 31 will end up debunked: a problem with matching people from one big computer list to another, or a data entry error, or confusion between two different people with the same name, or someone signing in on the wrong line of a pollbook."

[6] See "Issues Related to State Voter Identification Laws," *United States Government Accountability Office*, September 2014, available at `https://www.gao.gov/assets/670/665966.pdf` (last accessed November 15, 2020).

37 Minnite studied Oregon as well, which is notable insofar as this state relies heavily on mail-in ballots. Based on her analysis, Minnite concludes that, "The evidence of voter fraud since Oregon adopted vote-by-mail, however, is practically non existent."

38 Another methodology in the study of fraud involves surveying election officials. In the aftermath of the 2016 General Election, Famighetti, Keith and Pérez (2017) "interviewed a total of 44 administrators representing 42 jurisdictions in 12 states" (p. 1), inquiring about the prevalence of non-citizen voting. Famighetti, Keith and Pérez write that 40 jurisdictions reported "no known incidents of noncitizen voting in 2016" (p. 1). Moreover, they state that,

> "In the jurisdictions we studied, very few noncitizens voted in the 2016 election. Across 42 jurisdictions, election officials who oversaw the tabulation of 23.5 million votes in the 2016 general election referred only an estimated 30 incidents of suspected noncitizen voting for further investigation or prosecution. In other words, improper noncitizen votes accounted for 0.0001 percent of the 2016 votes in those jurisdictions" (p. 1).

39 The "30 incidents" noted above represent an upper bound on the number of times that noncitizen voter fraud was committed in the jurisdictions studied by Famighetti, Keith and Pérez. These incidents, according to the researchers, do not represent voter fraud convictions. They represent only referrals.

40 Famighetti, Keith and Pérez write as well that, "In California, Virginia and New Hampshire – the states where [United States President Donald] Trump claimed the problem of noncitizen voting was especially acute – no official we spoke with identified an incident of noncitizen voting in 2016" (p. 2).

41 The study of voter fraud by Famighetti, Keith and Pérez is notable because it focused solely on the 2016 General Election. Compared to preceding elections, it is well known that

the 2016 election and its aftermath were awash in fraud allegations. By focusing on such an election, Famighetti, Keith and Pérez's study biases itself toward finding evidence of voter fraud. Scientifically speaking, this is not what one would call a conservative bias; rather, the bias in Famighetti, Keith and Pérez's work pushes the study in the direction of finding evidence of a phenomenon of interest, here, voter fraud. Despite this bias, the rate of potential voter fraud described by Famighetti, Keith and Pérez is very small.

42 Huefner et al. (2007) constitutes another example of a study that involved efforts to reach out to election officials. This wide-ranging study details the electoral environments of five states (Illinois, Michigan, Minnesota, Ohio, and Wisconsin), and the authors write as follows:

> "On the whole, voting fraud is exceedingly rare. Although allegations of voting fraud have been widely publicized in the media, most all of these have evaporated upon closer investigation" (p. 120).

43 Still another approach in the voter fraud literature uses statistical tools in efforts to determine if patterns in election returns and voting records are consistent with public claims about the prevalence of voter fraud (Christensen and Schultz, 2014; Goel et al., 2020). Goel et al. is a study of double voting, and their analysis relies on an extensive database that contains approximately 104 million vote records. The particular question of interest to Goel et al. is whether the records show evidence of duplicates, i.e., of people who voted more than once in the 2012 General Election. This question is complicated because, when one has a database of millions of individuals, there will with virtual certainty be many cases of people with the same names and birthdates.[7]

44 Goel et al. conclude that, "[D]ouble voting is not currently carried out in such a systematic way that it presents a threat to the integrity of American elections" (p. 467). Goel et al. conclude

[7] Such a duplicate name problem arose in the 2016 General Election in North Carolina. Four individuals in the state were accused of having voted illegally, only to be exonerated when it was discovered that they had the same names as incarcerated felons. This example illustrates how innocuous coincidences can present themselves as voter fraud. See "Republicans claim 43 voters are ineligible felons. Many of them aren't," *The News & Observer*, November 23, 2016, available at `http://www.newsobserver.com/news/politics-government/election/article116789083.html` (last accessed November 15, 2020).

as well that measurement error in official election data could explain "a significant portion, if not all" of the cases of double voting that they identify.

45 By "measurement error," Goel et al. are referring to inaccuracies in turnout records. These inaccuracies can be the result of human recording errors, for example, in which a voting jurisdiction's record of one individual is mistakenly associated with the record of another.

46 With two academics, I published an article on voter fraud in the 2016 General Election. This article—Cottrell, Herron and Westwood (2018)—appears in *Electoral Studies*, a peer-reviewed, academic journal that focuses on elections. The article assesses the voter fraud allegations promulgated by Donald Trump and individuals associated with him.

47 My co-authors and I twice described some of our results in *The Washington Post*.[8] The first time was on December 2, 2016, and the second, on February 28, 2017.

48 In our article, my colleagues and I used statistical techniques to search for evidence of three types of fraud. In particular, we looked for:

I. Evidence of widespread non-citizen voter fraud across counties in the United States.

II. Evidence that election officials in the United States conspired against Donald Trump.

III. Evidence that the 2016 General Election in New Hampshire was contaminated by residents of Massachusetts who, allegedly, traveled north on November 8, 2016, in order to cast illegal votes.

[8] Our short articles in *The Washington Post* are available at `https://www.washingtonpost.com/news/monkey-cage/wp/2016/12/02/we-checked-trumps-allegations-of-voter-fraud-we-found-no-evidence-at-all` and at `https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/28/we-cant-find-any-evidence-of-voting-fraud-in-new-hampshire` (last accessed November 15, 2020).

49 With respect to the first two points above, my co-authors and I uncovered no evidence of widespread non-citizen voter fraud and no evidence that election officials in the United States conspired against Trump. Our county-level consideration of three states mentioned post-election by Donald Trump—California, New Hampshire, and Virginia—also did not turn up evidence of widespread fraud (these states were also examined by the aforementioned Famighetti, Keith and Pérez (2017)). With respect to the third point above, my co-authors and I found no evidence of illegal voting in New Hampshire.

50 My research project on voter fraud was initiated during the summer of 2016, months before the presidential election. My co-authors and I are cognizant of the fact that establishing a negative is challenging, and we do not argue that our failure to uncover evidence of fraud surrounding the 2016 General Election conclusively proves that there was not voter fraud in that election. Rather, what one can infer from my co-authored study on voter fraud is that its attempts to uncover evidence of widespread and systematic fraud were not successful.

51 The literature on voter fraud reviewed here is peer-reviewed, in most cases in publicly accessible journals and books, and in some cases is available online. It incorporates a variety of different research designs and data sources. Despite these differences, the contributions to the literature share a common finding: voter fraud in American elections is rare.[9] While election scholars do not assert that the fraud rate in American elections is literally zero, no credible scholars working in this literature have concluded that voter fraud poses a threat to election integrity in the United States.

[9]One exception to the scholarly consensus about a lack of widespread voter fraud in the United States is Richman, Chattha and Earnest (2014), who derive estimates of non-citizen voting rates from the 2008 and 2010 waves of the Internet-based survey known as the Cooperative Congressional Election Study (CCES). Some CCES survey respondents indicated that, although they were non-citizens, they had voted in the 2008 General Election or in the 2010 Midterm Election.

Richman, Chattha and Earnest's (2014) claims about non-citizen voting would be dramatic if valid, and they would contradict effectively all of the studies on voter fraud discussed in this report. However, Ansolabehere, Luks and Schaffner (2015) show that it is virtually certain that Richman, Chattha and Earnest's results on non-citizen voting reflect survey measurement error, in particular, the incorrect classification of citizen CCES respondents as non-citizen respondents.

52 No evidence contradicting this finding was produced by a presidential commission on voter fraud established in the aftermath of the 2016 General Election and shut down on January 3, 2018. No official reports of widespread and systematic voter fraud have come to light based on the commission's work.[10] Recently, Benjamin Ginsberg, a co-chair of the 2013 Presidential Commission on Election Administration, commented on the work of this commission, noting that, "[A]fter decades of looking for illegal voting, there's no proof of widespread fraud. At most, there are isolated incidents – by both Democrats and Republicans."[11]

E.3 Voter fraud and mail voting

53 There is no evidence that voter fraud rates associated with mail-in voting are systematically higher than voter fraud rates associated with other forms of voting and with other aspects of election administration.

54 Drawing on recent entries in a database of potential election irregularities developed by *The Heritage Foundation*, a study released by *The Brookings Institution* considers the prevalence of voter fraud specifically in the country's five all-mail states.[12] The authors of this report identify 29 "fraudulent votes attempted by mail" out of 49,917,586 general election votes cast in the period under review. The number 29 is approximately 0.000058 percent of 49,917,586.[13]

[10] On the origins and end of the presidential voter fraud commission, which offered no evidence that widespread fraud affected the 2016 General Election, see "Trump Closes Voter Fraud Panel That Bickered More Than It Revealed," *The New York Times*, January 4, 2018, available at `https://www.nytimes.com/2018/01/04/us/voting-fraud-commission.html` (last accessed November 15, 2020).

[11] For Mr. Ginsburg's comments on the lack of evidence about voter fraud in the United States, see "Republicans have insufficient evidence to call elections 'rigged' and 'fraudulent'," *The Washington Post*, September 8, 2020, available at `https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/` (last accessed November 15, 2020). The 2013 Presidential Commission on Election Administration, on which Mr. Ginsburg served, is described at `https://bipartisanpolicy.org/the-presidential-commission-on-election-administration/` (last accessed November 15, 2020).

[12] For the Heritage Foundation's database, see `https://www.heritage.org/voterfraud` (last accessed November 14, 2020). My referencing this database should be not considered an endorsement of it. I note it here because the database is the source for the cited *Brookings Institution* report.

[13] "Low rates of fraud in vote-by-mail states show the benefits outweigh the risks," *The Brookings Institution*, June 2, 2020, available at `https://www.brookings.edu/blog/fixgov/2020/06/02/low-rates-of-fraud-in-vote-by-mail-states-show-the-benefits-outweigh-the-risks/` (last accessed November 12, 2020).

F Allegations in the Bromberg Declaration of voter fraud in Maricopa County

55 The allegations in the Bromberg Declaration about Maricopa County appear on pp. 14-15, in the Declaration's section titled "Maricopa Precinct Analysis."

F.1 Precinct size and support for Joe Biden

56 In its analysis of Maricopa County, the Bromberg Declaration contains two figures, both of which plot candidate vote shares (in percentages) against precinct size. These figures constitute the entirety of the Declaration's evidence of fraud in Maricopa County. In particular, Figure 18 in the Bromberg Declaration plots the vote percentages of Joe Biden, Donald Trump, and third party presidential candidates against precinct size, and Figure 19 is similar except it focuses only on aggregate third party presidential candidates.

57 Based on its Figure 18, the Bromberg Declaration asserts that, "The Biden percentage is higher in the smaller precincts, primarily at the expense of Trump…" (p. 14). As shown below, I do not dispute this rough characterization.

58 The Bromberg Declaration goes on to posit that the existence of this relationship "suggest[s] vote switching" (p. 14) and refers to the relationship between precinct size and Biden support as "an anomaly." By "vote switching," the Bromberg Declaration appears to mean a process in which legal votes for Donald Trump were switched to Joe Biden. The Bromberg Declaration implicitly claims that this happened in Maricopa County precincts with relatively few voters.

F.2 The Bromberg Declaration's theory about precinct size

59 The basis in the Bromberg Declaration for the claim that a relationship between precinct size and Biden support is evidence of vote switching can be found on p. 8: "But one could also

theorize the opportunity for cheaters to cheat in small precincts, where there may be less oversight." In other words, the Bromberg Declaration offers the theory that small precincts "may" have less oversight and that "cheaters" take advantage of this.

60 There is no evidence in Bromberg Declaration that Maricopa County precincts with fewer voters do in fact have less oversight; no evidence that election official staffing levels per voter are lower in smaller precincts than they are in larger precincts; no evidence that the physical layout of small precincts is different than the physical layout of large precincts; and in fact no evidence that small precincts in Maricopa County differ in any way whatsoever from the county's large precincts except for the fact that the former have fewer voters.

61 There is no evidence in the academic literature on voter fraud reviewed earlier in favor of the Bromberg Declaration's "theory" that small precincts are susceptible to voter fraud. Moreover, there are no citations in the Bromberg Declaration to peer-reviewed studies of the relationship between precinct size and voter fraud.

62 It is well known that the political affiliations of voters are not uniformly distributed across jurisdictions like counties. Some areas of counties (in particular, urban areas) have more Democratic voters, and other areas (those less urban), more Republican voters (e.g., Rodden, 2019). If precinct size measured by numbers of voters is correlated geographically with political preferences, this will induce a *spurious* relationship between precinct size and candidate vote shares within precincts. Spurious relationships are not evidence of voter fraud.

63 In its discussion of precinct size and the "theory" that small precincts are relatively prone to fraud, the Bromberg Declaration cites "An Electoral System in Crisis," a webpage dating to 2016 that claims to be an analysis of the Wisconsin recount that took place four years ago. The authors of this webpage argue that a relationship between precinct size and candidate vote totals indicates the presence of "irregularities" but provide no evidence at all in favor of this assertion outside of an

offhand comment that such a relationship is a "complete violation of the Law of Large Numbers."

64 This assertion is nonsensical. The Law of Large Numbers in its standard form is a result in probability theory which states that independent samples from a common population converge to true population parameters as the number of observations increases. It is not clear in the Wisconsin recount webpage what units are being sampled and whether these units are drawn from the same population. The webpage's invocation of the Law of Large Numbers does not make any sense. The webpage does not provide any calculation that support its "complete violation" allegation – just rhetoric.

65 In short, Bromberg Declaration asserts that a relationship between precinct size and Biden vote share is indicative of fraud, but there is no reason whatsoever to believe this and no evidence to support such a "theory."

F.3 Whether small precincts are fraud-prone is irrelevant because Maricopa County used voting centers in the 2020 election

66 Regardless of whether there is any evidence behind it, the "theory" in the Bromberg Declaration about precinct size and voter fraud is applicable to the study of Maricopa County in the 2020 election only to the extent that in-person voters in the county actually voted in their precincts. In fact, they did not do this.

67 In the 2020 election, Maricopa County offered in-person voting at what are known as *voting centers*. A voting center is a location at which any eligible voter in the county may cast an in-person ballot. In particular, there were 175 voting centers in Maricopa County for the purposes of in-person voting during the 2020 General Election.[14]

[14] I downloaded the set of Maricopa County voting centers from `http://web.archive.org/web/20201104002036/https://recorder.maricopa.gov/pollingplacefiles/VotingSitesSchedule.xlsx` (last accessed December 4, 2020).

68 The Maricopa County elections department informed the county's voters that, "There are **no** assigned locations" (bold in original) for voting in the 2020 election. See Appendix B, which displays text from the Maricopa County elections office webpage.

69 Consequently, the author of the Bromberg Declaration has literally no idea where any of the ballots attributed to the county's precincts were actually cast. To make matters worse, the author appears not even to distinguish between in-person votes and ballots mailed in or submitted via drop boxes (and this distinction is in principle important insofar as the "theory" of voter fraud in the Bromberg Declaration that connects precinct size and fraud does not make sense when applied to votes not cast in-person).[15] In short, the number of votes associated with any given precinct in Maricopa County—and this is what is displayed in Figures 18 and 19 in the Bromberg Declaration—has no implications for how many ballots were actually cast in said precinct and thus, per the "theory" in the Bromberg Declaration, were ostensibly vulnerable to fraud.

70 I downloaded precinct returns for the 2020 General Election from the Maricopa County elections department webpage.[16] There were 744 unique precinct names used in the 2020 election. Insofar as there were in this election 175 voting centers in Maricopa County, I know for certain that there is not a one-to-one match between the precincts and voting centers (not to mention the fact that the county's webpage was explicit that voters could cast in-person ballots in any voting center that they wished).

F.4 Precinct size and support for Democratic candidates

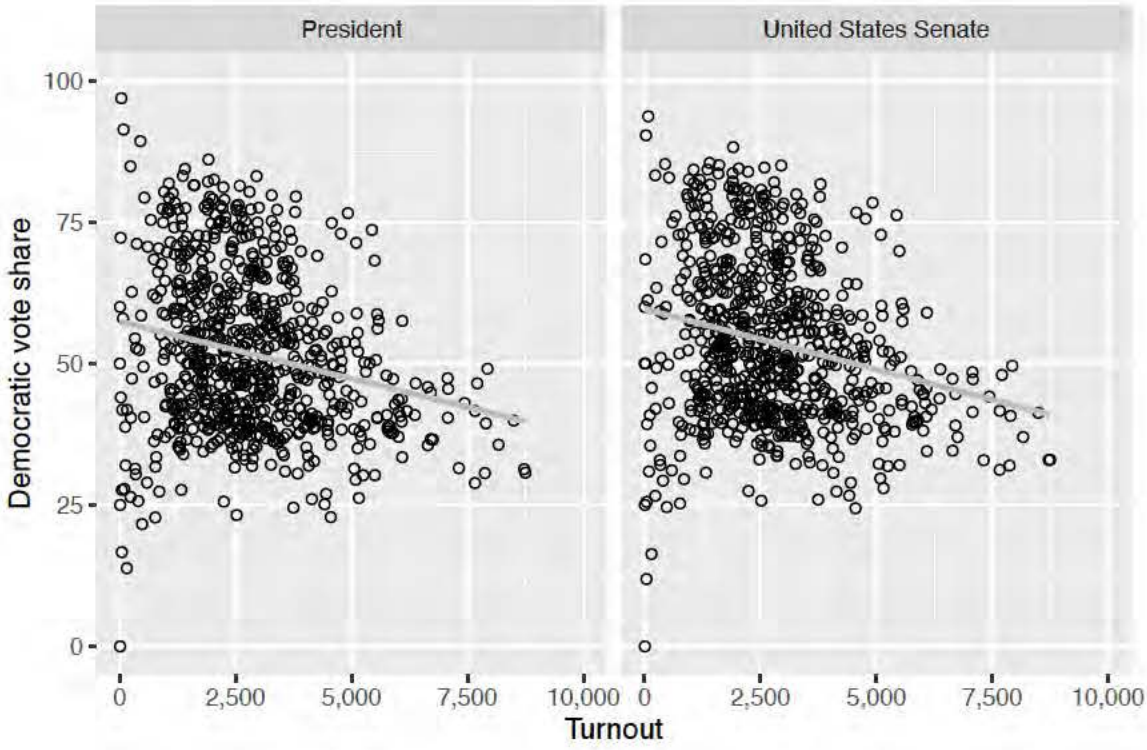
71 Figure 1 displays the relationship between precinct size (horizontal axis) and support for Democratic candidates (vertical axis). Each point in the figure denotes a single precinct in Maricopa County. The figure's left panel is for the United States presidential contest, and in this panel

[15] Because the author of Bromberg Declaration has not, to the best of my knowledge, disclosed his computer code, I cannot be entirely what he did to produce his Figures 18 and 19. However, the text of Bromberg Declaration refers generically to precinct "size," which I take to mean, the number of votes cast in the precinct.

[16] These returns are available at `https://recorder.maricopa.gov/media/ArizonaExportByPrecinct_110320.txt` (last accessed December 3, 2020).

Democratic vote share means, Joe Biden's vote share. In Figure 1's right panel, Democratic vote share for the United State Senate race means, Mark Kelly's vote share.

Figure 1: Democratic candidate support and turnout by precinct



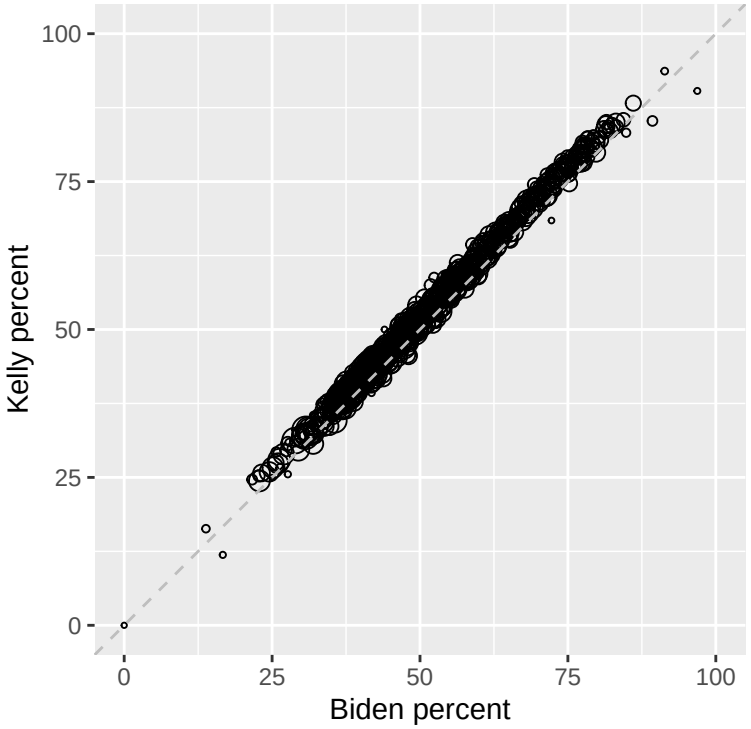
72 Both panels of Figure 1 have superimposed linear regression lines to ease interpretation. These lines are sloped down, indicating that precincts in Maricopa County with greater voter turnout had lower Biden vote share (left panel) and lower Kelly vote share (right panel).

73 The key implication of Figure 1 is the similarly between its two panels. They are, evidently, virtually identical. This suggests that the relationship between turnout and Democratic vote share across Maricopa County precincts reflects established political preference in the county—not vote switching that affected the 2020 presidential contest.

74 More evidence to this effect is apparent in Figure 2, which plots Joe Biden and Mark Kelly vote shares against each other. Each point in the figure is again a precinct where the size of each

point is proportional to overall precinct turnout.

Figure 2: Joe Biden and Mark Kelly support rates by precinct



75 Figure 2 has a dashed 45-degree line superimposed on it. Points *above* the line connote precincts where Mark Kelly's vote share was greater than Joe Biden's; points *below* the line connote precincts where Joe Biden's vote share was greater than Mark Kelly's; and, points on the line connote precincts where Joe Biden's vote share was equal to Mark Kelly's.

76 The points in Figure 2 show that precincts in Maricopa County where Joe Biden did well (upper right of the figure) are also precincts where Mark Kelly did well. And, precincts in Maricopa County where Joe Biden did less well (lower left) are similarly precincts where Mark Kelly did not do well. This clear regularity suggests that the relationship noted in the Bromberg Declaration between precinct turnout and Biden vote share is spurious and has nothing to do with voter fraud. Rather, the distribution of precincts across the county is such that smaller ones (namely, those with lower turnout in the 2020 election) tended to be consistently Democratic. There is noth-

ing anomalous about this correlation between political preferences and geography and nothing irregular.

G Allegations in the Bromberg Declaration of voter fraud beyond Arizona

77 Most of claims in the Bromberg Declaration do not directly concern Arizona, instead speaking to alleged voter fraud in Georgia (pp. 4-5), Pennsylvania (pp. 5-6) and Milwaukee, Wisconsin (pp. 6-8).

78 The number of fraudulent votes claimed in Bromberg Declaration is extensive. For example, the Declaration claims "that 105,639 fraudulent Biden ballots were added between Wednesday and Thursday of 11/05/2020 in Milwaukee alone" (p. 8). Total turnout in Milwaukee was 315,483 voters,[17] meaning that the Bromberg Declaration asserts that roughly one-third of Milwaukee's ballots were contaminated by fraud. There is nothing remotely close to a result like this in the literature on voter fraud that I have surveyed above.

79 None of what follows bears directly on the Bromberg Declaration's discussion of Maricopa County. However, the material below is nonetheless notable insofar as it shows that literally all of the claims in the Declaration about voter fraud—and not simply those concerning Arizona—do not follow from the analysis in the Declaration.

G.1 A model of voting and voter fraud

80 The Bromberg Declaration offers what its author calls two models of candidate vote share. One model assumes that there is no voter fraud (see equation (2) in the Declaration) and the second

[17] "SUMMARY REPORT," *City of Milwaukee Election Commission*, December 6, 2020, `https://city.milwaukee.gov/election/ElectionInformation/ElectionResults` (last accessed December 4, 2020).

that there is a form of voter fraud in which a some votes are switched from one candidate to another (see equation (3)). Henceforth I refer to a singular model in the Bromberg Declaration, by which I mean both the no-fraud and fraud-based models mentioned in this paragraph.

81 Two key assumptions render the model in the Bromberg Declaration of no use in the study of voter fraud.

G.2 An arbitrary assumption for the prior probability of fraud

82 Key to the technical exposition of the model in Bromberg Declaration is a parameter called p_F that denotes what is called the "prior probability of fraud." Intuitively, this prior probability of fraud is the probability of fraud in a jurisdiction that one would have assumed before (i.e., *prior* to) an election.

83 The Bromberg Declaration assumes that $p_F = 0.01$, meaning that there is a one percent chance of vote switching in a jurisdiction (p. 3).

84 The Bromberg Declaration provides no explanation, no justification, and no citations for its assumption about the likelihood of fraud. The number 0.01 is simply invented.

85 Sometimes scholars must make assumptions in their research. However, it is incumbent on such researchers to explore the consequences of their assumptions and to see if their results depend on a particular assumption or are robust to alternative assumptions. No such robustness checks appear in the Bromberg Declaration. I cannot conduct any robustness checks because, to the best of my knowledge, no computer code associated with the Declaration has been disclosed. Thus, the arbitrariness of the prior fraud parameter in Bromberg Declaration undermines any value that the model could have had.

G.3 Changes in candidate support among absentee ballots do not constitute

86 Underlying the model in Bromberg Declaration is the implicit assumption that there is no correlation between the timing of when a set of ballots was counted in November 2020 and the presidential votes on these ballots. The model, when it encounters temporal changes in a jurisdiction's presidential candidate support (i.e., ten hours after polls closed on November 3, Joe Biden's support changes from 42 percent to 44 percent) attributes these changes to fraud.

87 Intuitively speaking, this is because the model does not allow for the possibility that ballot counting is not completed uniformly across a jurisdiction, like a state. For example, the model rules out (with the exception of fraud) the possibility that ballots counted in the immediate aftermath of an election are different than those counted 24 hours later.

88 This assumption is contrary to what is known about contemporary American elections. In particular, Foley (2013) and Foley and Stewart III (2020) document what they call a "blue shift" in which a state's presidential results shift in the days after an election in a Democratic direction. The Bromberg Declaration is written as if the blue shift phenomenon simply does not exist.

89 The 2020 election was historic in its heavy use of mail-in ballots. However, Democrats were more likely to vote via mail than Republicans, and this was known well before November 3.[18] Give that some states counted absentee ballots in the days after November 3 (in particular Pennsylvania), this feature of the 2020 election certainly exaggerated the blue shift compared to what one would have expected had ballots been case in 2020 like they were in 2016.[19]

90 Ignoring the issue regarding the technical assumption about the prior fraud parameter noted above, the results in the Bromberg Declaration about Georgia, Pennsylvania, and Milwaukee, Wis-

[18] See "Huge Absentee Vote in Key States Favors Democrats So Far," *The New York Times*, October 10, 2020, available at `https://www.nytimes.com/2020/10/10/us/politics/early-voting-swing-states.html` (last accessed December 4, 2020).

[19] On Pennsylvania, see "Why Pennsylvania is still counting votes after Election Day," *ABCNews*, November 3, 2020, available at `https://abcnews.go.com/Politics/pennsylvania-counting-votes-election-day/story?id=73993649` (last accessed December 4, 2020).

consin are not examples of fraud. They can be easily rationalized by the blue shift.

G.4 Concluding thoughts about analyses beyond Arizona

91 Earlier I noted that the part of Bromberg Declaration that engages states other than Arizona does not bear directly on the claims made in this litigation. Nonetheless, I have now explained that all the Declaration's claims about voter fraud rest on false assumptions, either an assumption about a "theory" relating precinct size and presidential vote share (no such theory exists) or an assumption that when a ballot is counted is orthogonal to the presidential vote on it (which is known not to be the case).

92 None of the claims in Bromberg Declaration about voter fraud—and not simply those concerning Arizona—follow from the arguments made in the Declaration.

H Conclusion

93 This report evaluates the contention in the Bromberg Declaration that there was voter fraud in Maricopa County, Arizona in the 2020 presidential election.

94 The contention relies on a "theory" that does not exist and a misunderstanding of how in-person voting proceeded in Maricopa County county this past November. Namely, the Bromberg Declaration assumes that voters in the county cast in-person ballots in their precincts (of which there were 744), but in reality they did not, voting in-person in voting centers (of which there were 175). This misunderstanding of how Maricopa County voters cast ballots is a fatal flaw to the Declaration's analysis of the county, which was already flawed based on its reliance on a non-existent theory. In short, Bromberg Declaration contains no evidence whatsoever that there were any fraudulent ballots cast in Maricopa County in the 2020 General Election.

95 The Bromberg Declaration also contains no evidence whatsoever that there were any fraudulent ballots cast in Georgia, Pennsylvania, and the Milwaukee, Wisconsin. Its claims of voter fraud in these locales rest on a faulty assumption that when a ballot is counted has no bearing on the presidential candidate supported on it. In fact, it is known that ballots counted later in presidential elections tend to be Democratic, and this fact undermines the Bromberg Declaration's analysis of Georgia, Pennsylvania, and Milwaukee, Wisconsin.

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Academic appointments

William Clinton Story Remsen 1943 Professor, Department of Government, Dartmouth College. July 2013–present.

Chair, Program in Quantitative Social Science, Dartmouth College. July 2015–June 2020.

Visiting Scholar, Hertie School of Governance, Berlin, Germany. August 2016–July 2017.

Chair, Program in Mathematics and Social Sciences, Dartmouth College. July 2014– June 2015.

Professor, Department of Government, Dartmouth College. July 2009–June 2013.

Visiting Professor of Applied Methods, Hertie School of Governance, Berlin, Germany. August 2011–August 2012.

Associate Professor, Department of Government, Dartmouth College. July 2004–June 2009.

Visiting Associate Professor, Department of Government, Harvard University. July 2008–January 2009.

Visiting Associate Professor, Wallis Institute of Political Economy, University of Rochester. September 2006–December 2006.

Visiting Assistant Professor, Department of Government, Dartmouth College. July 2003–June 2004.

Assistant Professor, Department of Political Science, Northwestern University. September 1997–June 2004.

Faculty Associate, Institute for Policy Research, Northwestern University. September 2002–June 2004.

Education

PhD Business (Political Economics), Stanford University, January 1998.
Dissertation: Political Uncertainty and the Prices of Financial Assets
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MS Statistics, Stanford University, June 1995.

MA Political Science, University of Dayton, August 1992.

BS Mathematics and Economics, with University Honors, Carnegie Mellon University, May 1989.

Fellowships

Elizabeth R. and Robert A. Jeffe 1972 Fellowship, Dartmouth College. September 2010–June 2011.

Fulbright Scholar Program fellowship for research and teaching at the Heidelberg Center for American Studies, Heidelberg University, September 2009 - February 2010 (declined).

Post–doctoral Research Fellow, Center for Basic Research in the Social Sciences, Harvard University. September 2000–August 2001.

Publications

Journal articles

"Postal Delivery Disruptions and the Fragility of Voting by Mail: Lessons from Maine" (with Daniel A. Smith). Forthcoming, *Research & Politics*.

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"If more states start using Ohio's system, how many voters will be purged?" (with Daniel A. Smith). *The Washington Post*, Monkey Cage, June 17, 2018.

"Do we have a right not to vote? The Supreme Court suggests we don't" (with Daniel A. Smith). *New York Daily News*, June 12, 2018.

"Nearly 4 million black voters are missing. This is why" (with David Cottrell, Javier M. Rodriguez, and Daniel A. Smith). *The Washington Post*, Monkey Cage, April 11, 2018.

"We can't find any evidence of voting fraud in New Hampshire" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, February 28, 2017.

"We checked Trump's allegations of voter fraud. We found no evidence at all" (with David Cottrell and Sean Westwood). *The Washington Post*, Monkey Cage, December 2, 2016.

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"Ohio 2004 Election: Turnout, Residual Votes and Votes in Precincts and Wards" (with Walter R. Mebane, Jr.), in "Democracy At Risk: The 2004 Election in Ohio," report published by the Democratic National Committee. 2005.

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"Ballot cost Gore thousands of votes" (with Henry E. Brady and Jonathan N. Wand). *The San Diego Union–Tribune*, p. G3, November 19, 2000.

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"Residual votes in the 2020 election in Georgia" (with David Cottrell, Felix E. Herron, and Daniel A. Smith).

"Vote-by-mail ballot rejection and experience with mail-in voting" (with David Cottrell and Daniel A. Smith).

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida" (with Michael D. Martinez and Daniel A. Smith).

Awards

Best Paper Award, State Politics and Policy Section, 2013 Annual Meeting of the American Political Science Association. *Getting Your Souls to the Polls: The Racial Impact of Reducing Early In-Person Voting in Florida* (with Daniel A. Smith).

Grants

Committee for Scholarly Innovation and Advancement Awards, Dartmouth College, February, 2014. Project title: "The Dynamics of Voting Lines in Miami-Dade County." Financial support: $32,000.

The Rockefeller Center for Public Policy and the Social Sciences, Dartmouth College, May, 2006. Project title: "Large Scale Survey of Americans in Multiple Congressional Districts." Financial support: $8,500.

National Science Foundation, SES-041849, July, 2004. Project title: "A Ballot-Level Study of Intentional and Unintentional Abstention in Presidential Election Voting." Financial support: $65,749.

Nelson A. Rockefeller Center for the Social Sciences, Dartmouth College, January, 2004. Project title: "Intentional Invalid Votes in Leon County, Florida." Financial support: $1,115.

American Enterprise Institute, August, 1999. Project title: "Tenure in Office and Congressional Voting" (with Kenneth W. Shotts). Financial support: $182,500.

University Research Grants Committee, Northwestern University, February, 1999. Project Title: "Representation, Policy Uncertainty, and Divided Government." Financial support: $4,087.

Stanford University Graduate School of Business, 1997–1998 Academic Year. Dissertation Research Grant.

Recent conference presentations

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," 2019 Annual Meeting of the American Political Science Association, Washington, DC.

"Ballot design, voter intentions, and representation: A study of the 2018 midterm election in Florida," Election Sciences, Reform, and Administration conference, 2019, University of Pennsylvania.

"Did ballot design oust an incumbent senator? A study of the 2018 midterm election in Florida," Congressional Elections & the Presidency: Politics in 2018, March 30, 2019, Saint Anselm College, Manchester NH.

"Estimating the Differential Effects of Purging Inactive Registered Voters," 2018 Annual Meeting of the American Political Science Association, Boston MA.

"Estimating the Differential Effects of Purging Inactive Registered Voters," Election Sciences, Reform, and Administration conference, 2018, University of Wisconsin-Madison.

Keynote address, "Mortality, Incarceration, and African-American Disenfranchisement," *Balancing the Scales: The United States in an Age of Inequality*, November 11, 2016, John F. Kennedy Institute, Freie Universität Berlin.

"Missing Black Men and Representation in American Political Institutions," 2016 Annual Meeting of the Midwest Political Science Association, Chicago, IL.

Invited seminars

University of Iowa, 1999
Boston University, 2000
Dartmouth College, 2000
Harvard University, 2000
University of Minnesota, 2000
University of Rochester, 2000
University of Wisconsin, Madison, 2000
Yale University, 2000
Columbia University, 2001
University of California, Berkeley, 2002
University of Illinois, 2002
Brown University, 2003
Temple University, 2003
University of Chicago, 2003
New York University, 2004
Princeton University, 2004
University of Michigan, 2005
George Washington University, 2006
Emory University, 2006
Harvard University, 2007
Loyola Law School, 2007
Columbia University, 2007
University of Chicago, 2007
Yale University, 2007
Stanford University, 2008
Columbia University, 2008
Northwestern University, 2008
Princeton University, 2008
Duke University, 2009
Hertie School of Governance, 2010
Emory University, 2010
University of Mannheim, 2011
University of Heidelberg, 2011
University of Passau, 2012
University of Göttingen, 2012
Freie Universität Berlin, 2012
Laval University, 2012
University of Montreal, 2012
Middlebury College, 2013
University of Illinois, Champaign, 2013
University of Illinois, Chicago, 2013
University of Wisconsin, Madison, 2013
Yale University, 2014
University of Virginia, 2015
University of California, San Diego, 2015
American University, 2015
Massachusetts Institute of Technology, 2015
Princeton University, 2015
University of California, Los Angeles, 2016
The Ohio State University, 2016
Freie Universität Berlin, 2016
Deutsch-Amerikanisches Institut, Nürnberg, 2017
Universität Bonn, 2018
Freie Universität Berlin, 2018
Northwestern University, 2018
University of Pittsburgh, 2019
University of Salzburg, 2019
Universität Bonn, 2019
Freie Universität Berlin, 2019
Humboldt University, 2019
University of North Carolina, Charlotte, 2019

Professional activities

Division Chair, Representation and Electoral Systems, 2017 Annual Meeting of the Midwest Political Science Association.

Associate Editor, *Research & Politics*. November, 2016–present.

Editorial Board, *American Politics Research*, September, 2015–present.

Editorial Board, *Political Analysis*, January, 2010–present.

Editorial Board, *USENIX Journal of Election Technology and Systems*, March 2013–June 2016.

Editorial Board, *American Political Science Review*, 2010–2012.

Editorial Board, *American Journal of Political Science*, 2006–2009.

"Race, Voting Procedures, and New Developments in Voting Rights," panel organized for the 2013 Annual Meeting of the Midwest Political Science Association.

Division Chair, Formal Theory, 2007 Annual Meeting of the American Political Science Association.

Co-editor, *The Political Methodologist*, Fall 2004–Spring 2006.

Publications Committee, Society for Political Methodology, 2005–2006, 2015–present.

Dartmouth College activities

Chair, American Politics Search Committee, Department of Government, August 2018–March 2019.

Chair, Committee on Priorities, July 2015–June 2016.

Committee on Priorities, July 2013–June 2015, Fall 2019–present.

American politics search committee, Department of Government, August 2014–December 2014.

Research Computing Director search committee, October 2013–October 2014.

Senior Search Committee, Department of Government, 2013.

Research Computing Advisory Committee, Spring 2013.

Chair, American Politics Search Committee, Department of Government, 2012-2013.

Recruitment Planning Committee, Department of Government, 2010 and 2012-2013.

Committee on Standards, 2008-2010.

Task Force on Collaboration and Social Software, 2007-2008.

Biostatistics search committee, Dartmouth Medical School, 2006-2007.

Research Computing Oversight Committee, 2006.

Council on Computing, 2005-2007.

Clement Chair search committee, Department of Government, 2005-2006.

Northwestern University activities

Program Committee, Mathematical Methods in the Social Sciences, 2001-2002.

American Politics Search Committee, Department of Political Science, 2000–2001, 2001-2002.

Formal Theory Search Committee, Department of Political Science, 1997–1998.

Teaching interests

Statistical methods: introductory and applied statistics, research design, computing in R.

American politics: representation, election irregularities, election administration.

Political economy: game theory.

Reviewer for

American Journal of Political Science
American Political Science Review
American Politics Quarterly
American Politics Review
British Journal of Political Science
Cambridge University Press
Chapman & Hall
Congress & the Presidency
Du Bois Review
Economics & Politics
Election Law Journal
Electoral Studies
Emerging Markets Finance & Trade
Interest Groups & Advocacy
Int'l Journal of Environmental Research and Public Health
John Wiley & Sons, Inc.
Journal of Legal Studies
Journal of Money, Credit and Banking
Journal of Politics
Journal of Public Economics
Journal of Race, Ethnicity, and Politics
Journal of Theoretical Politics
Journal of Women, Politics & Policy
Legislative Studies Quarterly
The National Science Foundation
Nonprofit Policy Forum
Perspectives on Politics
Policy Studies Journal
Political Analysis
Political Behavior
Political Research Quarterly
Political Science Quarterly
Political Science Research and Methods
Political Studies
Politics & Gender
Politics, Groups, and Identities
Polity
Prentice Hall Higher Education Group
Proceedings of the National Academy of Sciences
Public Administration
Public Choice
Public Opinion Quarterly
PS: Political Science and Politics
Quarterly Journal of Economics
Quarterly Journal of Political Science
Race and Social Problems
Science Advances
The Social Science Journal
Social Science Quarterly
Sociological Methods & Research
The Sociological Quarterly
Springer
State Politics & Policy Quarterly
Time-Sharing Experiments for the Social Sciences
The University of Michigan Press
W. W. Norton & Company
World Politics

Foreign language

German: C1 (telc Prüfung, Ausstellung July 27, 2017).

Other employment

Intelligence Analyst and Military Officer, United States Air Force, Foreign Technology Division, Wright–Patterson Air Force Base, 1989–1992.

B Maricopa County description of voting center

96 This appendix displays part of the Maricopa County elections department page that explains to eligible voters that they can vote in any voting center in the county. The source of this image is `http://web.archive.org/web/20201104002036/https://recorder.maricopa.gov/pollingplace/` (last accessed December 4, 2020).

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MARICOPA COUNTY
Elections Department

MENU

English Content (default.aspx)
Contenido Español (default_es.aspx)

Where Do I Vote?

Election Day is Tuesday, November 3. There are **no** assigned locations. Maricopa County voters can drop off an early ballot or vote in person at any Vote Center. Visit BeBallotReady.Vote (http://web.archive.org/web/20201104002036/http://beballotready.vote/) to find out if you're registered, what's on your ballot and more. All Vote Centers in the list below are open from 6 a.m. – 7 p.m. on Election Day. If you have any questions please call us at (602) 506-1511.

Roopali H. Desai (024295)
D. Andrew Gaona (028414)
Kristen Yost (034052)
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Phoenix, AZ 85004
T: (602) 381-5478
rdesai@cblawyers.com
agaona@cblawyers.com
kyost@cblawyers.com

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dbrook@susmangodfrey.com

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Tyler Bowyer; Michael John Burke; Nancy Cottle; Jake Hoffman; Anthony Kern; Christopher M. King; James R. Lamon; Sam Moorhead; Robert Montgomery; Loraine Pellegrino; Greg Safsten; Salvatore Luke Scarmardo; Kelli Ward; and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona; and Katie Hobbs, in her official capacity as Arizona Secretary of State,

Defendants.

Maricopa County Board of Supervisors; and Adrian Fontes, in his official capacity as Maricopa County Recorder,

Intervenors.

No. CV-20-02321-PHX-DJH

DEFENDANT SECRETARY OF STATE HOBBS' NOTICE OF SUBMISSION OF EXHIBIT OF PRESENTATION USED AT DECEMBER 8, 2020 HEARING

Secretary Katie Hobbs submits as Exhibit A to this Notice the presentation used at the hearing on December 8, 2020. With two minor typographical corrections, the attached Exhibit represents the presentation as shown to the Court.

Respectfully submitted this 8th day of December, 2020.

SUSMAN GODFREY L.L.P.

By s/ Justin A. Nelson
Justin A. Nelson
Stephen E. Morrissey
Stephen Shackelford
Davida Brook

COPPERSMITH BROCKELMAN PLC

Roopali H. Desai
D. Andrew Gaona
Kristen Yost

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

EXHIBIT A

Bowyer et al
v.
Ducey et al

Arizona Official Canvass Certification

STATE OF ARIZONA OFFICIAL CANVASS

2020 General Election - Nov 03, 2020

Compiled and Issued by the Arizona Secretary of State

Report Date/Time:11/24/2020 1:35:33 PM

2020 GENERAL ELECTION OFFICIAL CANVASS CERTIFICATION

I, Katie Hobbs, Arizona Secretary of State, do hereby certify that the foregoing canvass is a true, correct and complete tabulation of the votes cast at the 2020 General Election held in the State of Arizona on the 3rd day of November, 2020. This canvass displays the name of each person who appeared on the ballot for a federal and state office in the election and the number of votes received for each person, as shown by the tabulations received from the Boards of Supervisors of each county in the State of Arizona.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Arizona, this 30th day of November, 2020, at the Capitol in Phoenix.

Katie Hobbs
Secretary of State

A.R.S. § 16-648 requires that this canvass be conducted in the presence of the Governor and Attorney General whose affirming signatures follow.

Doug Ducey
Governor

Mark Brnovich
Attorney General

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Gov. Ducey Ex. 1

Gov. Ducey and Sec. Hobbs Sign Cert. of Ascertainment

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

CERTIFICATE OF ASCERTAINMENT FOR PRESIDENTIAL ELECTORS

I, Douglas A. Ducey, Governor of the State of Arizona, do hereby certify that:

The Official Canvass of the General Election held on Tuesday, November 3, 2020, shows the following results for the office of Presidential Electors for President and Vice President of the United States, as certified by the boards of supervisors of the several counties of the state of Arizona. The Official Canvass indicates that the following group of eleven individuals:

Heredia, Luis Alberto	1,672,143
Jackson, Constance	1,672,143
Kennedy, Sandra D.	1,672,143
Lewis, Stephen Roe	1,672,143
McLaughlin, James	1,672,143
Nez, Jonathan	1,672,143
Norris, Ned	1,672,143
Romero, Regina	1,672,143
Rotellini, Felecia	1,672,143
Yamashita, Fred	1,672,143

received the highest number of votes cast for any candidate for this office, and having complied with all provisions required by law for candidates in general elections, they are duly elected Presidential Electors.

I further certify that the following Presidential Electors received the number of votes indicated:

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

PRESIDENTIAL ELECTORS
Write-in Presidential Candidate President R. Boddie

IN WITNESS WHEROF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

DOUGLAS A. DUCEY
GOVERNOR

DONE at the Capitol in Phoenix on this thirtieth day of November in the Year Two Thousand Twenty and of the Independence of the United States of America Two Hundred Forty-Fifth.

ATTEST:

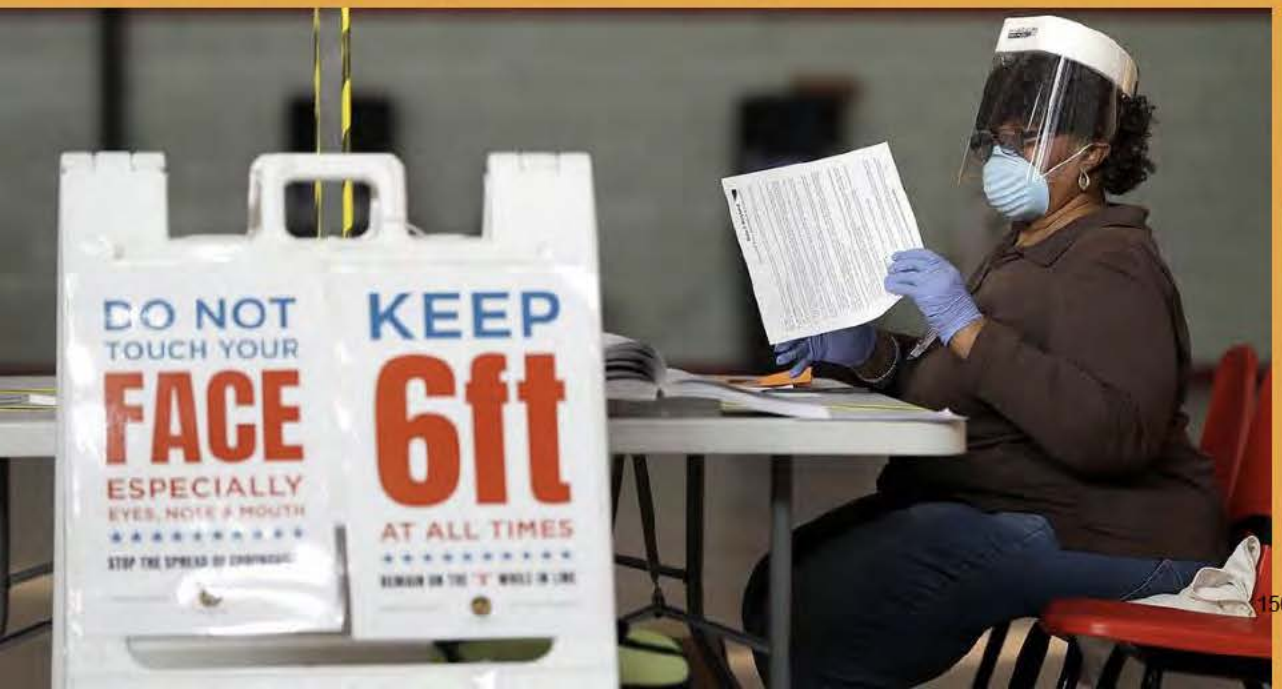
KATIE HOBBS
SECRETARY OF STATE

568 Ducey Ex. 2

A Free and Fair Election









Nearly-Identical Cases Filed

- Georgia

  Pearson v. Kemp, No. 1:20-cv-04809-TCB (N.D. Ga.)

- Michigan

  King v. Whitmer, No. 2:20-cv-13134 (E.D. Mich.)

- Wisconsin

  Feehan v. Wis. Elections Comm'n, No. 20-cv-1771-pp (E.D. Wis.)



1570

Michigan: *King v. Whitmer*

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY KING, MARIAN ELLEN SHERIDAN, JOHN EARL HAGGARD, CHARLES JAMES RITCHARD, JAMES DAVID HOOPER, and DAREN WADE RUBINGH,

Plaintiffs,

v.

Civil Case No. 20-13134
Honorable Linda V. Parker

GRETCHEN WHITMER, in her official capacity as Governor of the State of Michigan, JOCELYN BENSON, in her official capacity as Michigan Secretary of State, and MICHIGAN BOARD OF STATE CANVASSERS,

Defendants,

and

CITY OF DETROIT, DEMOCRATIC NATIONAL COMMITTEE and MICHIGAN DEMOCRATIC PARTY, and ROBERT DAVIS,

Intervenor-Defendants

OPINION AND ORDER DENYING PLAINTIFFS' "EMERGENCY MOTION FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF" (ECF NO. 7)

The right to vote is among the most sacred rights of our democracy and, in turn, uniquely defines us as Americans. The struggle to achieve the right to vote is

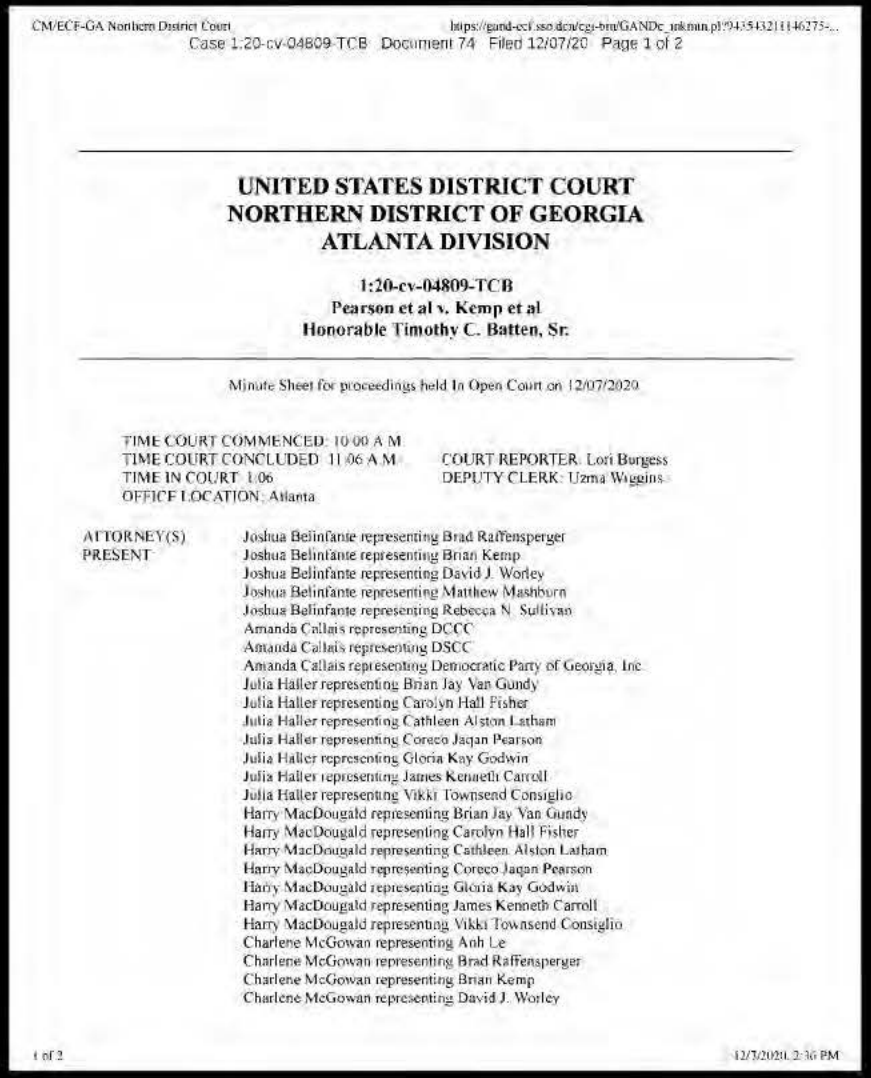
1

Against this backdrop, Plaintiffs filed this lawsuit, bringing forth claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots. They seek relief that is stunning in its scope and breathtaking in its reach. If granted, the relief would disenfranchise the votes of the more than 5.5 million Michigan citizens who, with dignity, hope, and a promise of a voice, participated in the 2020 General Election. The Court declines to grant Plaintiffs this relief.

Page 2

1571

Georgia: *Pearson v. Kemp*



CM/ECF-GA Northern District Court https://gand-ecf.sso.dcn/cgi-bin/GANDc_inkmin.pl?943543211146275-...
Case 1:20-cv-04809-TCB Document 74 Filed 12/07/20 Page 1 of 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

1:20-cv-04809-TCB
Pearson et al v. Kemp et al
Honorable Timothy C. Batten, Sr.

Minute Sheet for proceedings held In Open Court on 12/07/2020.

TIME COURT COMMENCED: 10:00 A.M.
TIME COURT CONCLUDED: 11:06 A.M.
TIME IN COURT: 1:06
OFFICE LOCATION: Atlanta
COURT REPORTER: Lori Burgess
DEPUTY CLERK: Uzma Wiggins

ATTORNEY(S) PRESENT:
Joshua Belinfante representing Brad Raffensperger
Joshua Belinfante representing Brian Kemp
Joshua Belinfante representing David J. Worley
Joshua Belinfante representing Matthew Mashburn
Joshua Belinfante representing Rebecca N. Sullivan
Amanda Callais representing DCCC
Amanda Callais representing DSCC
Amanda Callais representing Democratic Party of Georgia, Inc.
Julia Haller representing Brian Jay Van Gundy
Julia Haller representing Carolyn Hall Fisher
Julia Haller representing Cathleen Alston Latham
Julia Haller representing Coreco Jaqan Pearson
Julia Haller representing Gloria Kay Godwin
Julia Haller representing James Kenneth Carroll
Julia Haller representing Vikki Townsend Consiglio
Harry MacDougald representing Brian Jay Van Gundy
Harry MacDougald representing Carolyn Hall Fisher
Harry MacDougald representing Cathleen Alston Latham
Harry MacDougald representing Coreco Jaqan Pearson
Harry MacDougald representing Gloria Kay Godwin
Harry MacDougald representing James Kenneth Carroll
Harry MacDougald representing Vikki Townsend Consiglio
Charlene McGowan representing Anh Le
Charlene McGowan representing Brad Raffensperger
Charlene McGowan representing Brian Kemp
Charlene McGowan representing David J. Worley

1 of 2 12/7/2020, 2:36 PM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

1:20-cv-04809-TCB
Pearson et al v. Kemp et al
Honorable Timothy C. Batten, Sr.

MOTIONS RULED ON:	[43]Motion to Dismiss GRANTED [63]Motion to Dismiss GRANTED
MINUTE TEXT:	Defendants' motions are GRANTED. TRO is DISSOLVED. Case is DISMISSED. Clerk shall close the case.

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Georgia: *Pearson v. Kemp*



"The relief that the plaintiffs seek this court cannot grant. They ask the court to order the secretary of state to decertify the election results as if such a mechanism even exists, and I find that it does not."



"Federal courts don't entertain post-election conduct, excuse me, contests about vote-counting misconduct."



"In their Complaint, the Plaintiffs essentially ask the court for perhaps the most extraordinary relief ever sought in any federal court in connection with an election. They want this court to substitute its judgment for that of two and a half million Georgia voters who voted for Joe Biden - and this I am unwilling to do."



"The Plaintiffs waited too late to file their suit."

Source: https://twitter.com/TheInsiderPaper/status/1335988370980352003,
https://www.cnbc.com/2020/12/07/judge-dismisses-sidney-powell-lawsuit-challenging-trump-georgia-loss.html

Breathtaking Scope of Relief

Sidney Powell (pro hac application forthcoming)
Sidney Powell PC
Texas Bar No. 16209700
(517) 763-7499
Sidney@federalappeals.com

Alexander Kolodin, AZ Bar No. 030826
Christopher Viskovic, AZ Bar No. 035860[1]
KOLODIN LAW GROUP PLLC
3443 N. Central Ave. Ste. 1009
Phoenix, AZ 85012
Telephone: (602) 730-2985
Facsimile: (602) 801-2539
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Alexander.Kolodin@KolodinLaw.com
CViskovic@KolodinLaw.com
SAtkinson@KolodinLaw.com (file copies)

Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COU

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

PRAYER FOR RELIEF

142. Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

1574

"At Stake Is Faith in Our System of Free and Fair Elections"

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

December 4, 2020

To:

Gregory M. Erickson
Erick G. Kaardal
Mohrmann, Kaardal and Erickson
150 S. 5th Street, Suite 3100
Minneapolis, MN 55414

Colin T. Roth
Thomas C. Bellavia
Colin R. Stroud
Brian P. Keenan
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

Brian S. Levy
Katten & Temple
11512 N. Port Washington Road, Suite 101J
Mequon, WI 53092

Joseph S. Goode
Mark M. Leitner
John W. Halpin
Allison E. Laffey
Laffey, Leitner & Goode LLC
325 E. Chicago Street, Suite 200
Milwaukee, WI 53202

*Address list continued on page 5.

You are hereby notified that the C

No. 2020AP1930-OA Wisc

A petition for leave to cor
a supplement thereto, a supportin
filed on behalf of petitioners, Wisc
filed by respondents, Wisconsin E
Bostelman, Julie M. Glancey, Dea
been filed by respondent Governc
grant leave to commence an origi
(2) the City of Milwaukee; (3) Wi
Tech and Civic Life. In addition
respondent, Democratic National

After considering all of t
standards for granting leave to co

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

December 4, 2020

fundamental than the winner of Wisconsin's electoral votes as implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once

1575

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. Standing
4. Mootness
5. Laches
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

This Court Should Dismiss the Case

1. **Arizona Election Contest Is Exclusive Remedy**
2. Eleventh Amendment
3. Standing
4. Mootness
5. Laches
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

The Complaint Admits It is Based on Arizona Law

Sidney Powell (pro hac application forthcoming)
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SAtkinson@KolodinLaw.com (file copies)

Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

15. Nonetheless, the factual basis of this Complaint would also support an election contest under Arizona law since A.R.S. § 16-672 allows for contests on the grounds of misconduct, offenses against the elective franchise, on account of illegal votes, and by reason of erroneous count of votes.

16. Similarly, the relief sought is in accord with Arizona law. A.R.S. § 16-676 provides clear remedies in the event of a successful contest, providing that the results of an election may either be annulled and set aside, A.R.S. § 16-676(B), or, if it appears that the winner was other than the person certified, the erroneously declared winner's certificate of election can be revoked A.R.S. § 16-676(C).

1578

Violations of Arizona Election Law

Sidney Powell (pro hac application forthcoming)
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Sidney@federalappeals.com

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Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

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DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

45. Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary to enjoin the certification of the election results and invalidate the election results...

I. VIOLATIONS OF ARIZONA ELECTION LAW

A. Arizona Election Law

46. Pursuant to A.R.S. § 16-550(A), the county recorder or other officer in charge of elections shall compare the signatures on the early ballot affidavit with the signature of the elector on the elector's registration record. If the signature is inconsistent, the county recorder or other officer in charge of elections shall make reasonable efforts to contact the voter and allow the voter to correct or confirm the inconsistent signature.

47. Pursuant to A.R.S. § 16-625, the officer in charge of elections shall ensure that electronic data from and electronic or digital images of ballots are protected from physical and electronic access, including unauthorized copying or transfer, and that all

The Claims Here Belong in An Election Contest

Sidney Powell (pro hac application forthcoming)
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Sidney@federalappeals.com

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Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

COMPL
DECLA
EMERGI
PERMANEN
RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

141. Plaintiffs have no adequate remedy at law. Plaintiffs contest the results of Arizona's 2020 General Election because it is fundamentally corrupted by fraud. Defendants should be enjoined from certifying an election where there were intentional violations of multiple provisions of Arizona law to elect Biden and other Democratic candidates and defeat President Trump and other Republican candidates.

Count 1 – Electors/Elections Clause

Sidney Powell (pro hac application forthcoming)
Sidney Powell PC
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Sidney@federalappeals.com

Alexander Kolodin, AZ Bar No. 030826
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Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

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[1] District of Arizona admission scheduled for 12/9/2020

106. Defendants are not part of the Arizona Legislature and cannot exercise legislative power. Because the United States Constitution reserves for the Arizona Legislature the power to set the time, place, and manner of holding elections for the President and Congress, county boards of elections and state executive officers have no authority to unilaterally exercise that power, much less to hold them in ways that conflict with existing legislation.

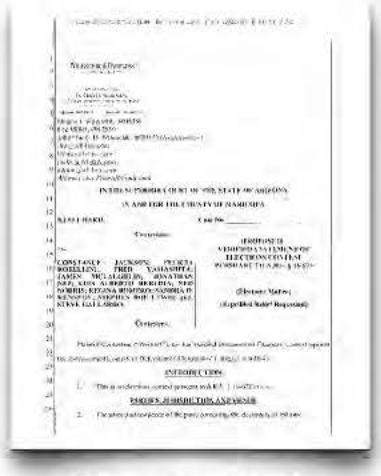
145. For these reasons, Plaintiffs ask this Court to enter a judgment in their favor and provide the following emergency relief:

* * *

5. A declaratory judgment declaring that Arizona's failed system of signature verification violates the Electors and Elections Clause by working a de facto abolition of the signature verification requirement;

1581

Same Plaintiff



Doc. 40, Ex. B

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KELLI WARD,

Contestant;

vs.

CONSTANCE JACKSON; FELICIA ROTELLINI; FRED YAMASHITA; JAMES MCLAUGHLIN; JONATHAN NEZ; LUIS ALBERTO HEREDIA; NED NORRIS; REGINA ROMERO; SANDRA D. KENNEDY; STEPHEN ROE LEWIS; and, STEVE GALLARDO;

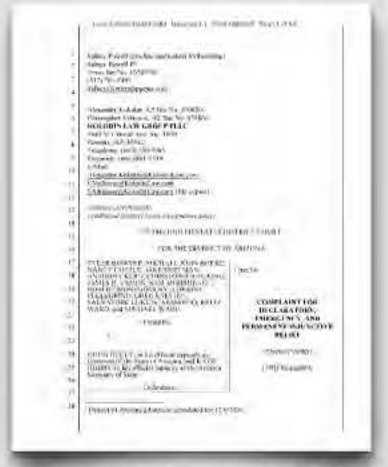
Contestees.

Case No. _____

[PROPOSED]
VERIFIED STATEMENT OF ELECTIONS CONTEST PURSUANT TO A.R.S. § 16-673

(Elections Matter)

(Expedited Relief Requested)



Bowyer Complaint

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

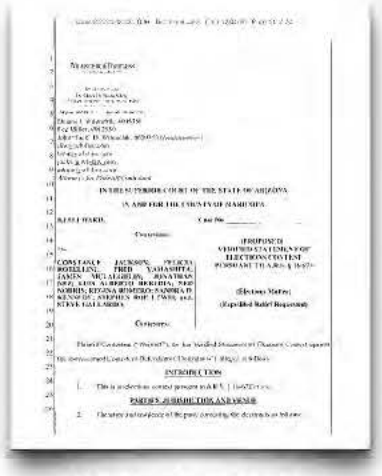
Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

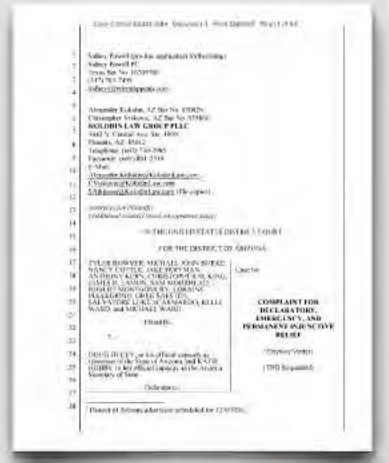
Relief Sought is The Same



Doc. 40, Ex. B

[PROPOSED]
VERIFIED STATEMENT OF
ELECTIONS CONTEST
PURSUANT TO A.R.S. § 16-673

B. That the Court declare that the certificate of election of the Biden Electors is of no further legal force or effect, and that the election is annulled and set aside in accordance with A.R.S. § 16-676(B);



Bowyer Complaint

COMPLAINT FOR
DECLARATORY,
EMERGENCY, AND
PERMANENT INJUNCTIVE
RELIEF

PRAYER FOR RELIEF

142. Accordingly, Plaintiffs seek an emergency order instructing Defendants to de-certify the results of the General Election for the Office of President.

1583

State Court Decision in *Ward v. Jackson*

Clerk of the Superior Court
*** Filed ***
12/4/2020 4:05 p.m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

KELLI WARD DENNIS I WILENCHIK

v.

CONSTANCE JACKSON, et al SARAH R GONSKI

ROOPALI HARDIN DESAI
JOSEPH EUGENE LA RUE
DAVID SPILSBURY
ROY HERRERA
DANIEL A. ARELLANO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE WARNER
BRUCE SPIVA
PERKINS COIE LLP
700 THIRTEENTH STREET NW
SUITE 600
WASHINGTON DC 20005

MINUTE ENTRY

East Court Building – Courtroom 414

9:15 a.m. This is the time set for a continued Evidentiary Hearing on Plaintiff's anticipated election contest petition via GoToMeeting.

Docket Code 901 Form V000A Page 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-015285 12/04/2020

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
C. Ladden
Deputy

KELLI WARD DENNIS I WILENCHIK

V.

CONSTANCE JACKSON, et al. SARAH R GONSKI

The Court finds no misconduct, no fraud, and no effect on the outcome of the election.

4. **The Evidence Does Not Show Illegal Votes.**

5. **The Evidence Does Not Show An Erroneous Vote Count.**

IT IS FURTHER ORDERED, as required by A.R.S. § 16-676(B), confirming the election.

1584

Collateral Estoppel Applies Here

- Same Plaintiff and Same Defendants
- Plaintiff Ward is Chair of AZ GOP and Appoints Electors Under §16-344
- Other Elector Plaintiffs in Privity with Ward, and Had Opportunity to Participate in Contest

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. **Eleventh Amendment**
3. Standing
4. Mootness
5. Laches
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

Eleventh Amendment



- *Pennhurst:* Eleventh Amendment Bars Relief Against State Officials Based on State Law—Even When Styled As Federal Claims
- No Connection Under *Ex Parte Young* Between Defendants and Factual Allegations
- Allegations of General Oversight Are Insufficient

1587

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. **Standing**
4. Mootness
5. Laches
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

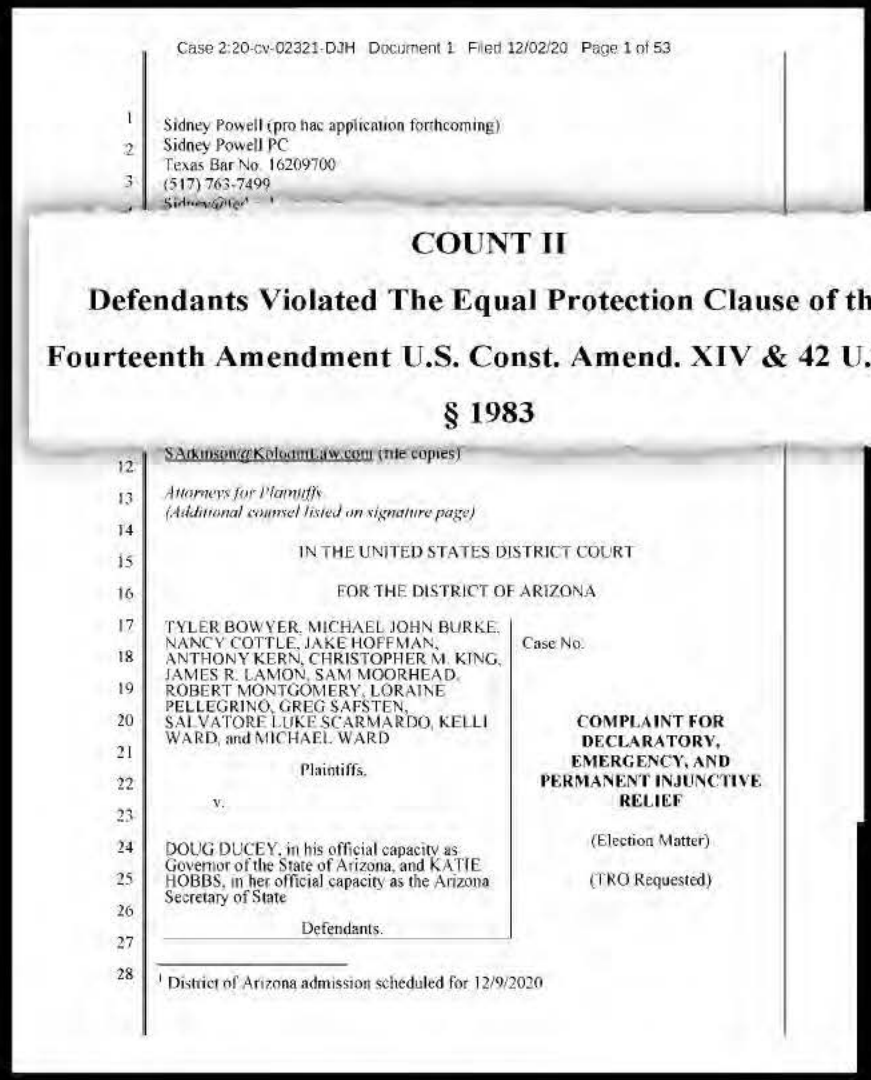
No Standing Under Election/Electors Clause



- "Plaintiffs lack standing to sue under the Elections and Electors Clauses"
  - *King*, Op. & Order, at *28-*30.
  - *Bognet v. Sec'y of Commonwealth*, No. 20-3214, 2020 WL 6686120, at *19 (3d Cir. Nov. 13, 2020)

1589

Counts 2-4 – Vote Dilution and "Ballot Fraud"



Case 2:20-cv-02321-DJH Document 1 Filed 12/02/20 Page 1 of 53

Sidney Powell (pro hac application forthcoming)
Sidney Powell PC
Texas Bar No. 16209700
(517) 763-7499
Sidney@Sid

COUNT II

Defendants Violated The Equal Protection Clause of the Fourteenth Amendment U.S. Const. Amend. XIV & 42 U.S.C. § 1983

SAtkinson@KologrmLaw.com (file copies)

Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

v.

DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State

Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

COUNT III

Fourteenth Amendment, Amend. XIV & 42 U.S.C. § 1983

Denial of Due Process On The Right to Vote

COUNT IV

Wide-Spread Ballot Fraud

117. Defendants failed to comply with the requirements of Arizona law and the Equal Protection Clause and thereby diluted the lawful ballots of the Plaintiffs and of other Arizona voters and electors in violation of the United States Constitution guarantee of Equal Protection.

129. The right to vote includes not just the right to cast a ballot, but also the right to have it fairly counted if it is legally cast. The right to vote is infringed if a vote is cancelled or diluted by a fraudulent or illegal vote, including without limitation when a single person votes multiple times.

No Standing for Vote Dilution Claims



By contrast, "no single voter is specifically disadvantaged" if a vote is counted improperly, even if the error might have a "mathematical impact on the final tally and thus on the proportional effect of every vote." *Bognet v. Sec'y Commonwealth of Pa.*, __ F.3d __, 2020 WL 6686120, at *12 (3d Cir. Nov. 13, 2020) (internal quotation marks omitted). Vote dilution in this context is a "paradigmatic generalized grievance that cannot support standing." *Id.* (internal quotation marks omitted).

Wood v. Raffensberger, — F.3d —, 2020 WL 7094866, at *12 (11th Cir., Dec. 5, 2020).

1591

No Traceability or Redressability



- **No Traceability**:

  Neither Plaintiffs' "Conspiracy" Allegations Nor Allegations of State Law Violations Traceable to Gov. Ducey or Sec. Hobbs.

- **No Redressability**:

  A Federal Court Has No Power to Order a "De-Certification."

1592

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. Standing
4. **Mootness**
5. Laches
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

Plaintiffs' Claims Are Moot



- The Ministerial Tasks of Canvassing and Certification Have Occurred
- A Federal Court Cannot Simply "Undo" Them
- Any Claim to "Undo" or "Decertify" Belongs in State Court Under State Law
- *Wood*: The court "cannot turn back the clock and create a world in which the 2020 election results are not certified."

1594

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. Standing
4. Mootness
5. **Laches**
6. Abstention
7. Pleading Standards – Rule 9 and Rule 12

Laches Bars Plaintiffs' Claims



- *Soules*: Laches appropriate "lest the granting of post-election relief encourage sandbagging on the part of wily plaintiffs" and "the extremely disruptive effect of election invalidation and the havoc it wreaks upon local political continuity."
- *King*: Plaintiffs "waited too long to knock on the Court's door."
- Plaintiffs Have Known For Months
- Plaintiffs' Excuse is Based on State Law!

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. Standing
4. Mootness
5. Laches
6. **Abstention**
7. Pleading Standards – Rule 9 and Rule 12

Pullman Abstention Applies



1. The Conduct of Elections is a Quintessential State Activity.
2. Adjudication Can Be Avoided By Resolution of the State Issues.
3. Plaintiffs' Argument Depends on a Decidedly Uncertain Assertion—That Arizona Law Requires Invalidation of Ballots in These Circumstances

1598

This Court Should Dismiss the Case

1. Arizona Election Contest Is Exclusive Remedy
2. Eleventh Amendment
3. Standing
4. Mootness
5. Laches
6. Abstention
7. **Pleading Standards – Rule 9 and Rule 12**

1599

Plaintiffs Allege An Utterly Implausible "Fraud"

Sidney Powell (pro hac application forthcoming)
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Sidney@federalappeals.com

Alexander Kolodin, AZ Bar No. 030826
Christopher Viskovic, AZ Bar No. 035860[1]
KOLODIN LAW GROUP PLLC
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Phoenix, AZ 85012
Telephone: (602) 730-2985
Facsimile: (602) 801-2539
E-Mail:
Alexander.Kolodin@KolodinLaw.com
CViskovic@KolodinLaw.com
SAtkinson@KolodinLaw.com (file copies)

Attorneys for Plaintiffs
(Additional counsel listed on signature page)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD, and MICHAEL WARD

Plaintiffs,

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Defendants.

Case No.

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

(Election Matter)

(TRO Requested)

[1] District of Arizona admission scheduled for 12/9/2020

COMPLAINT FOR DECLARATORY, EMERGENCY, AND PERMANENT INJUNCTIVE RELIEF

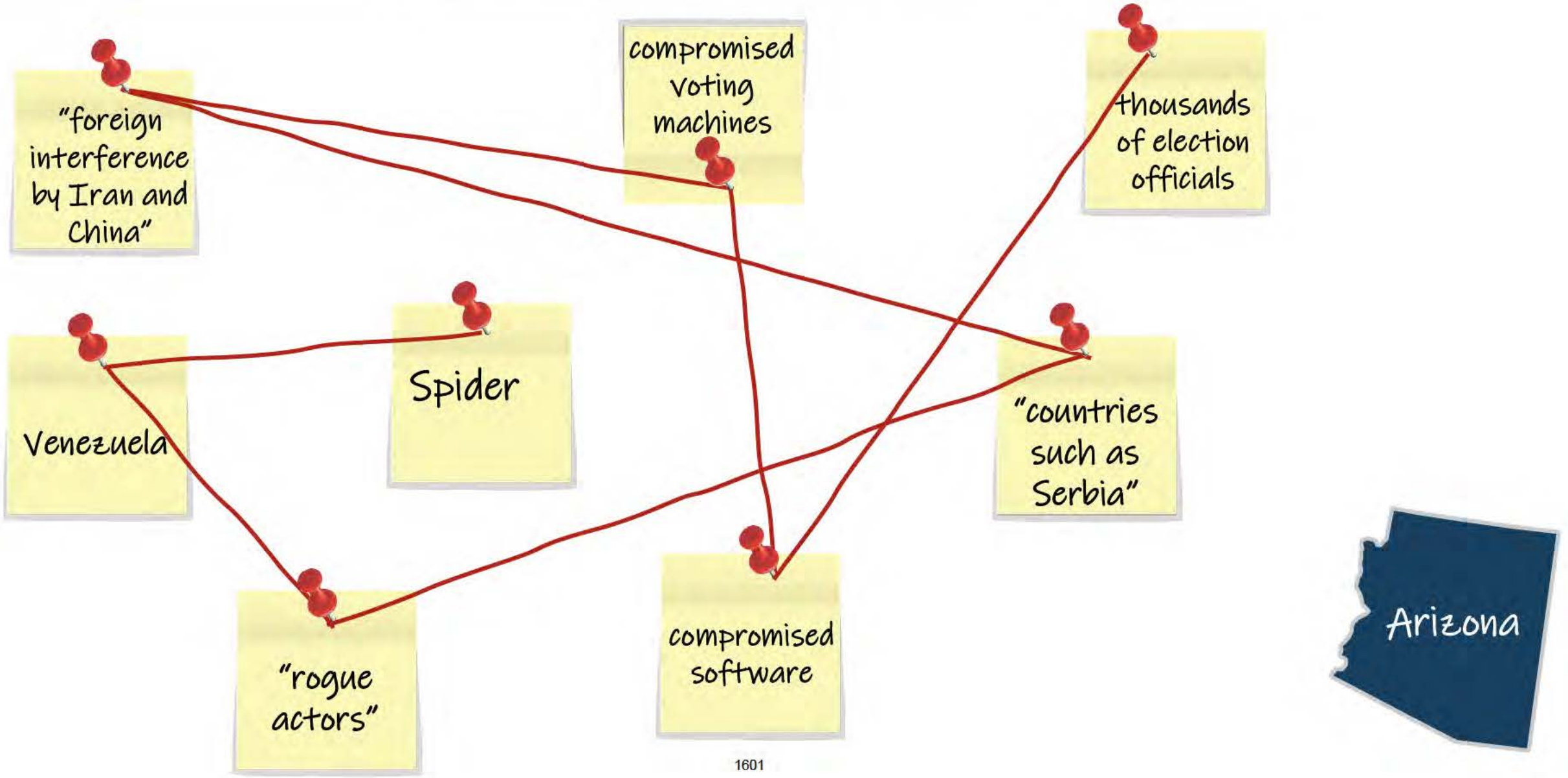
NATURE OF THE ACTION

1. This civil action brings to light a massive election fraud, of the Election and Electors Clauses, and the Equal Protection and Due Process Clauses of the Fourteenth Amendment, of the U.S. Constitution and multiple violations of the Arizona election laws. These violations occurred during the 2020 General Election throughout the State of Arizona, as set forth in the affidavits of eyewitnesses and the voter data cited, the statistical anomalies and mathematical impossibilities detailed in the affidavits of expert witnesses.

2. The scheme and artifice to defraud was for the purpose of illegally and fraudulently manipulating the vote count to manufacture an election of Joe Biden as President of the United States, and also of various down ballot democrat candidates in the 2020 election cycle.

1600

Plaintiffs' Claims Not Plausible



Allegations Not Remotely Plausible Under Rule 12



- *Iqbal*: Dismissal "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct."
- Plaintiffs Do Not Attempt to Show Connection Between Fraud and Any Change of Vote
- Supposed "Experts" Have No Expertise and Their Opinions Have Fatal Methodological Flaws

1602

Federal Pleading Standards Apply in Federal Court





1603

Plaintiffs' Claims Not Plausible



MARICOPA COUNTY, ARIZON
GENERAL ELECTION – NOVEMBER 3, 20
HAND COUNT/AUDIT REPORT

Synopsis:
Pursuant to A.R.S. §16-602(B), Maricopa County conducted the hand count/early b
3, 2020 General Election, 2% of the polling places (vote centers) were counted a
amounted to **4** polling places (vote centers) out of **175** total polling places (vote ce

The hand count begin on **Wednesday, November 4, 2020** at **6:08 p.m.** when the M
Republican, Democrat and **Libertarian** Party met to select the polling places (vote c
audit batches to be audited. All ballots were accounted for in the central counting
process started. The selection order was chosen by lot, and the **Republican** Pa
followed by the **Libertarian** Party and then the **Democrat** Party.

With the order established, the specific polling places (vote centers) to be cou
participating County Party Chairs alternating the various selections. Once the polli
chosen, the 5,000 early ballots to be audited were selected. A total of **26 batches**
reach this 1% or 5,000 ballot total, whichever is less.

Five contested races were chosen as required by law: 1 Presidential, 1 Statewi
Measure, 1 Federal Race and 1 State Legislative Race were counted. Specifically, t
contested races that were audited:

- Presidential - **President**
- Statewide Candidate – **Corporation Commissioner**
- Statewide Ballot Measure – **Proposition 208**
- Federal Candidate – **U.S. Representative**
- State Legislative – **State Senator**

The master precinct and race selection lists are attached for review. The physical ra
on **Saturday, November 7, 2020** and was paused at **5:08 p.m.** and then restarted
November 9, 2020 at **1:15 p.m.** The tabulation method used was the stacking meth
audit was conducted by **26** boards made up of 3 members, of which not more tha
same political party. This hand count included votes cast on both the scanned ballo
devises from the selected polling places (vote centers).

Early Ballot Audit:
Over 5,000 early ballots were audited, per the requirement to audit 1% or 5,000 e
as required per Arizona State Law. The early ballot audit consisted of **26** batches wi
machine used for tabulation. Each batch contained approximately **200** early ballot
million early ballots cast in Maricopa County for the **November 3, 2020 General El**

Comments:
No discrepancies were found by the Hand Count Audit Boards. Please find to follow the polling places (vote centers) and early ballot reports for review.

Reynaldo Valenzuela Jr.
Director of Election Services and Early Voting
Office of Maricopa County Recorder Adrian Fontes

Scott Jarrett
Director of Election D
Maricopa County Ele

MARICOPA COUNTY, ARIZONA
GENERAL ELECTION – NOVEMBER 3, 2020
HAND COUNT/AUDIT REPORT

Synopsis:
Pursuant to A.R.S. §16-602(B), Maricopa County conducted the hand count/early ballot audit for the **November 3, 2020 General Election**, 2% of the polling places (vote centers) were counted as required by statute, which amounted to **4** polling places (vote centers) out of **175** total polling places (vote centers).

Presidential - **President**

Comments:
No discrepancies were found by the Hand Count Audit Boards. Please find to follow the polling places (vote centers) and early ballot reports for review.

Plaintiffs Cannot Satisfy Rule 9(b)



- Rule 9(b) Requires Particularized Allegations of the Circumstances Constituting Fraud.
- Plaintiffs Do Not Mention Any Fact to Support Their Fraud Claims
- No First-Hand Allegations of Fraud
- Expert Reports Are Wildly Implausible, Fatally Flawed, and Couched in Uncertainty

1605

"At Stake Is Faith in Our System of Free and Fair Elections"

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

December 4, 2020

To:

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Erick G. Kaardal
Mohrmann, Kaardal and Erickson
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Joseph S. Goode
Mark M. Leitner
John W. Halpin
Allison E. Laffey
Laffey, Leitner & Goode LLC
325 E. Chicago Street, Suite 200
Milwaukee, WI 53202

*Address list continued on page 5.

You are hereby notified that the C

No. 2020AP1930-OA Wisc

A petition for leave to cor
a supplement thereto, a supportin
filed on behalf of petitioners, Wisc
filed by respondents, Wisconsin E
Bostelman, Julie M. Glancey, Dea
been filed by respondent Governc
grant leave to commence an origi
(2) the City of Milwaukee; (3) Wi
Tech and Civic Life. In addition
respondent, Democratic National

After considering all of t
standards for granting leave to co

fundamental than the winner of Wisconsin's electoral votes as implicated in this case. At stake, in some measure, is faith in our system of free and fair elections, a feature central to the enduring strength of our constitutional republic. It can be easy to blithely move on to the next case with a petition so obviously lacking, but this is sobering. The relief being sought by the petitioners is the most dramatic invocation of judicial power I have ever seen. Judicial acquiescence to such entreaties built on so flimsy a foundation would do indelible damage to every future election. Once

OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WI 53701-1688

TELEPHONE (608) 266-1880
FACSIMILE (608) 267-0640
Web Site: www.wicourts.gov

December 4, 2020

Gov. Ducey and Sec. Hobbs Sign Cert. of Ascertainment

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

CERTIFICATE OF ASCERTAINMENT FOR PRESIDENTIAL ELECTORS

I, Douglas A. Ducey, Governor of the State of Arizona, do hereby certify that:

The Official Canvass of the General Election held on Tuesday, November 3, 2020, shows the following results for the office of Presidential Electors for President and Vice President of the United States, as certified by the boards of supervisors of the several counties of the state of Arizona. The Official Canvass indicates that the following group of eleven individuals:

Heredia, Luis Alberto	1,672,143
Jackson, Constance	1,672,143
Kennedy, Sandra D.	1,672,143
Lewis, Stephen Roe	1,672,143
McLaughlin, James	1,672,143
Nez, Jonathan	1,672,143
Norris, Ned	1,672,143
Romero, Regina	1,672,143
Rotellini, Felecia	1,672,143
Yamashita, Fred	1,672,143

received the highest number of votes cast for any candidate for this office, and having complied with all provisions required by law for candidates in general elections, they are duly elected Presidential Electors.

I further certify that the following Presidential Electors received the number of votes indicated:

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA

PROCLAMATION

PRESIDENTIAL ELECTORS
Write-in Presidential Candidate President R. Boddie

IN WITNESS WHEROF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

DOUGLAS A. DUCEY
GOVERNOR

DONE at the Capitol in Phoenix on this thirtieth day of November in the Year Two Thousand Twenty and of the Independence of the United States of America Two Hundred Forty-Fifth.

ATTEST:

KATIE HOBBS
SECRETARY OF STATE

607 Ducey Ex. 2

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

Thomas P. Liddy (019384)
Emily Craiger (021728)
Joseph I. Vigil (018677)
Joseph J. Branco (031474)
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Attorneys for Maricopa County Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, Michael John Burke, Nancy Cottle, Jake Hoffman, Anthony Kern, Christopher M. King, James R. Lamon, Sam Moorhead, Robert Montgomery, Loraine Pellegrino, Greg Safsten, Salvatore Luke Scarmardo, Kelli Ward, and Michael Ward,

Plaintiffs,

v.

Doug Ducey, in his official capacity as Governor of the State of Arizona, and Katie Hobbs, in her official capacity as the Arizona Secretary of State

Defendants.

NO. CV20-02321-PHX-DJH

NOTICE OF SUPPLEMENTAL AUTHORITY

***WARD v. JACKSON*,**
NO. CV-20-0343-AP/EL
(ARIZ. S. CT., DECEMBER 8, 2020)

The Maricopa County Intervenor-Defendants file this notice of supplemental authority concerning the Arizona Supreme Court's Decision Order in *Ward v. Jackson*,

No. CV-20-0343-AP/EL, which the court issued this evening. A copy of the Decision Order is attached as Exhibit A.

On page 7 of the Decision Order, the Arizona Supreme Court **affirmed** the trial court's decision, which was previously provided to this Court, and which held that there was no misconduct or illegal votes in Maricopa County's November 3, 2020, general election. (Doc. 58). On the same page, the Arizona Supreme Court **confirmed** the election of the Biden Electors under A.R.S. § 16-676(B), and also noted that the plaintiff Kelli Ward (who is one of the Plaintiffs in the instant matter) failed to "establish any degree of fraud."

RESPECTFULLY submitted this 8th day of December, 2020.

ALLISTER ADEL
MARICOPA COUNTY ATTORNEY

BY: */s/ Thomas P. Liddy*
Thomas P. Liddy
Emily Craiger
Joseph I. Vigil
Joseph J. Branco
Joseph E. LaRue
Attorneys for Maricopa County Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s/Joseph E. La Rue

Exhibit A

SUPREME COURT OF ARIZONA

KELLI WARD, Plaintiff/Appellant, v. CONSTANCE JACKSON; FELICIA ROTELLINI; FRED YAMASHITA; JAMES MCLAUGHLIN; JONATHAN NEZ; LUIS ALBERTO HEREDIA; NED NORRIS; REGINA ROMERO; SANDRA D. KENNEDY; STEPHEN ROE LEWIS; and, STEVE GALLARDO, Defendants/Appellees, and KATIE HOBBS, in her official capacity as the Arizona Secretary of State; ADRIAN FONTES, in his official capacity as the Maricopa County Recorder; and the MARICOPA COUNTY BOARD OF SUPERVISORS, Intervenors.	Arizona Supreme Court No. CV-20-0343-AP/EL Maricopa County Superior Court No. CV2020-015285 **FILED 12/08/2020**

DECISION ORDER

The Court accepted jurisdiction of this expedited election appeal and en banc has considered the record, the trial court's December 4, 2020 minute entry, and the briefing of Appellant Kelli Ward, Defendant Biden Electors, Intervenors Maricopa County and the Secretary of State, and amicus curiae The Lincoln Project.

The Secretary duly certified the statewide canvass and on

November 30, 2020, she and the Governor signed the certificate of ascertainment for presidential electors, certifying that in Arizona the Biden Electors received 1,672,143 votes and the Trump Electors received 1,661,686 votes (a difference of 10,457 votes out of a total of 3,333,829 cast for these two candidates). Although slim, the margin was outside the one-tenth of one percent of the total number of votes cast for both of the presidential electors which is the statutory trigger for an automatic recount. A.R.S. § 16-661(A)(1).

The Secretary's certification followed Maricopa County's audit. Under Arizona law, the county officer in charge of the election conducts a hand count prior to the canvass. A.R.S. § 16-602(B). The statute provides detailed instructions on the hand count process, and in this case the November 9, 2020 Maricopa County hand count included 5000 early ballots and a hand count of Election Day Ballots from two-percent of the vote centers. The audit revealed no discrepancies in the tabulation of the votes between hand count totals and machine totals. The County completed its canvass on November 23, 2020.[1] Maricopa County is the only county implicated in this proceeding.

Appellant filed her contest under A.R.S. § 16-673 raising three statutory bases for a challenge under A.R.S. § 16-672 which include "misconduct" by an election board or officer; "[o]n account of illegal votes"; or "[t]hat by reason of erroneous count of votes the

[1] https://azsos.gov/sites/default/files/2020 General Maricopa Hand Count.pdf

person declared elected ... did not in fact receive the highest number of votes." A.R.S. § 16-672(A)(1), (4) and (5). In her First Amended Complaint, Appellant sought the inspection of an unspecified number of ballots under A.R.S. § 16-677, which authorizes the inspection of ballots before preparing for trial after the statement of contest has been filed.

Under Arizona law, "If any ballot, including any ballot received from early voting, is damaged, or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled 'duplicate' and shall bear a serial number that shall be recorded on the damaged or defective ballot." A.R.S. § 16-621(A).

In this election, Maricopa County had 27,869 duplicate ballots pertaining to the Presidential Electors. Witness testimony explained that "duplicate ballots" include those reflecting "overvotes" or votes for more than one candidate; overseas ballots; and ballots that are damaged or otherwise cannot be machine tabulated. The trial court also heard testimony from a number of witnesses who presented credible testimony that they saw errors in which the duplicate ballot did not accurately reflect the voter's apparent intent as reflected in the original ballot.

Before the trial, the parties conducted a review of randomly

chosen sample ballots. The first review was of 100 ballots and the second was of 1526 ballots, and of the 1626 total, there were nine errors, (1617 correct duplicate ballots) that if correct would have given the Trump Electors an additional seven votes and the Biden Electors an additional two votes. The Secretary maintains that this constitutes an error of no more than 0.37% within the sample. Appellant argues that the error rate was 0.55%, and the trial court concluded the results were "99.45% accurate." When this is extrapolated to the total number of duplicate ballots it is not sufficient to come close to warranting a recount under A.R.S. § 16-661.

Although Appellant requested additional time and the opportunity to review additional ballots, Appellant offered no evidence to establish that the 1626-ballot sample was inadequate to demonstrate any fraud, if present. As the trial court noted, this review confirmed the witness testimony that there were mistakes in the duplication process, the mistakes were few, and when brought to the attention of election workers, they were fixed. Extrapolating this error rate to all 27,869 duplicate ballots in the county would result in a net increase of only 103 votes based on the 0.37% error rate or 153 votes using the 0.55% error rate, neither of which is sufficient to call the election results into question.

The parties also presented evidence after reviewing a sample of the envelope signatures on mail-in ballots. Their experts determined

that out of 100 signatures, six to eleven of the signatures were "inconclusive" but neither expert could identify any sign of forgery or simulation and neither could provide any basis to reject the signatures.

Election contests are "purely statutory and dependent upon statutory provisions for their conduct." *Fish v. Redeker*, 2 Ariz. App. 602 (1966). Elections will not be held invalid for mere irregularities unless it can be shown that the result has been affected by such irregularity. *Territory v. Board of Sup'rs of Mohave County*, 2 Ariz. 248 (1887). The validity of an election is not voided by honest mistakes or omissions unless they affect the result, or at least render it uncertain. *Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). Where an election is contested on the ground of illegal voting, the contestant has the burden of showing that sufficient illegal votes were cast to change the result, *Morgan v. Board of Sup'rs*, 67 Ariz. 133 (1948).

The legislature has expressly delegated to the Secretary the authority to promulgate rules and instructions for early voting. A.R.S. § 16-452(A). After consulting with county boards and election officials, the Secretary is directed to compile the rules "in an official instructions and procedures manual." The Election Procedures Manual or "EPM," has the force of law. The Court recently considered a challenge to an election process and granted relief where the county recorder adopted a practice contrary to the EPM.

Arizona Pub. Integrity All. v. Fontes, ___ Ariz. ___, 475 P.3d 303, 305 (Ariz. November 5, 2020). Here, however, there are no allegations of any violation of the EPM or any Arizona law.

Intervenor Maricopa County argues that the trial court could not entertain this challenge under A.R.S. § 16-672(A) which authorizes a contest of the "election of any person declared elected to state office." Intervenors/Defendants/Amicus contend that the Court must decide this matter within the "safe harbor" deadline of 3 U.S.C. § 5.

The Court concludes, unanimously, that the trial judge did not abuse his discretion in denying the request to continue the hearing and permit additional inspection of the ballots. The November 9, 2020 hand count audit revealed no discrepancies in the tabulation of votes and the statistically negligible error presented in this case falls far short of warranting relief under A.R.S. § 16-672. Because the challenge fails to present any evidence of "misconduct," "illegal votes" or that the Biden Electors "did not in fact receive the highest number of votes for office," let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results, the Court need not decide if the challenge was in fact authorized under A.R.S. § 16-672 or if the federal "safe harbor" deadline applies to this contest. Therefore,

IT IS ORDERED affirming the trial court decision and confirming the election of the Biden Electors under A.R.S. § 16-676(B).

IT IS FURTHER ORDERED directing Defendants/Intervenors to file a

response, which may be a collective response, to Appellant's Motion to Unseal Exhibits no later than Friday, December 11, 2020.

IT IS FURTHER ORDERED denying the Secretary's request for attorneys' fees under A.R.S. § 12-349.

DATED this 8th day of December, 2020.

_____/S/_____
ROBERT BRUTINEL
Chief Justice

TO:

Dennis I Wilenchik
N L Miller Jr
John D Wilenchik
Sarah R Gonski
Daniel A Arellano
Roy Herrera
Joseph I Vigil
Joseph Branco
Thomas P Liddy
Emily M Craiger
Joseph Eugene La Rue
Roopali H Desai
Kristen M Yost
Susan M Freeman
Bruce E Samuels
Hon. Randall H Warner
Hon. Jeff Fine

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Tyler Bowyer, et al., Plaintiffs, v. Doug Ducey, et al., Defendants.	No. CV-20-02321-PHX-DJH **ORDER**

Plaintiffs bring their Complaint seeking injunctive relief from this Court, specifically, to "set aside the results of the 2020 General Election," because they claim the election process and results were "so riddled with fraud, illegality and statistical impossibility . . . that Arizona voters, courts and legislators cannot rely on or certify" its results. (Doc. 1 at 2). By any measure, the relief Plaintiffs seek is extraordinary. If granted, millions of Arizonans who exercised their individual right to vote in the 2020 General Election would be utterly disenfranchised. Such a request should then be accompanied by clear and conclusive facts to support the alleged "egregious range of conduct in Maricopa County and other Arizona counties . . . at the direction of Arizona state election officials." (*Id.*) Yet the Complaint's allegations are sorely wanting of relevant or reliable evidence, and Plaintiffs' invocation of this Court's limited jurisdiction is severely strained. Therefore, for the reasons stated herein, the Complaint shall be dismissed.

I. Background

In Arizona, more than 3.4 million voters participated in the November 3, 2020,

General Election. Thereafter, pursuant to A.R.S. § 16-602, several counties performed a hand count of sample ballots to test the tabulation equipment, and either no discrepancies were found or, if there were, they were "within the acceptable margin."[1] Arizona law also requires the secretary of state, in the governor's presence, to certify the statewide canvas on the fourth Monday after a general election. A.R.S. § 16-648. On November 30, 2020, Secretary of State Katie Hobbs, in the presence of Governor Doug Ducey, certified the statewide canvas. (Doc. 40 at 4). The Canvas shows that former Vice President Joseph Biden prevailed over President Donald Trump by more than ten thousand votes.[2] On that same day, Governor Ducey signed the Certificate of Ascertainment for Vice President Biden's presidential electors. (Doc. 40 at 4). The Certificate was then transmitted to the United States Archivist pursuant to the Electoral Count Act. (*Id.*); s*ee also* 3 U.S.C. § 6.

In their Complaint and the accompanying Motion for Temporary Restraining Order ("TRO") filed on December 2, Plaintiffs "contest" the election and ask this Court to compel the Governor to "de-certify" these results. (Docs. 1 ¶ 145; 2 at 10). The Complaint also requests that this Court grant a permanent injunction "enjoining Secretary Hobbs and Governor Ducey from transmitting the currently certified election results to the Electoral College," declare the election results unconstitutional, and seize all voting machines, equipment, software, and other election-related records and materials, including all ballots cast.[3] (Doc. 1 at 51–52). The Complaint claims to show "multifaceted schemes and artifices implemented by Defendants and their collaborators" to defraud the election. (*Id.* at ¶ 3). And these schemes allegedly resulted in "the unlawful counting, or fabrication, of hundreds of thousands of illegal, ineligible, duplicate or purely fictitious ballots." (*Id.*)

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[1] Ariz. Sec'y of State, *Summary of Hand Count Audits–2020 General Election* (Nov. 17, 2020), https://azsos.gov/election/2020-general-election-hand-count-results.

[2] Ariz. Sec'y of State, State of Arizona Official Canvass, https://azsos.gov/sites/default/files/2020_General_State_Canvass.pdf.

[3] Under 3 U.S.C. § 5, if a state enacts and applies procedures to decide election controversies before election day, and a decision regarding a contested election is made at least six days before the electors' meetings, then the decision is conclusive and will apply in counting the electoral votes. That deadline, referred to as the "safe harbor" deadline, was December 8, 2020, as the Electoral College will meet on December 14, 2020. *See* 3 U.S.C. § 7.

Of the fourteen named Plaintiffs, three are registered voters and GOP Chairs for various Arizona counties. (*Id.* at ¶¶ 29–31). The remaining eleven are Republican nominees for Arizona's presidential electors. (*Id.* at ¶ 28). One of the eleven, Dr. Kelli Ward, filed suit in state-court over allegations of fraud in this election. *See Ward v. Jackson*, Case No. CV2020-015285, slip. op. (Ariz. Super. Ct. Dec. 4, 2020) (finding no evidence of alleged fraud and dismissing claims of election misconduct); (Doc. 55-1). In that case, on December 8, 2020, the Arizona Supreme Court affirmed the Maricopa County Superior Court's findings that there was no evidence of fraud or misconduct in Arizona's election. (*Ward v. Jackson*, CV2020-015285 (Ariz. 2020); (Doc. 81-1).

Plaintiffs' Complaint contains four counts, three of which assert 42 U.S.C. § 1983 claims for violations of the Constitution's Elections and Electors Clauses, as well as the Fourteenth Amendment's Due Process and Equal Protection guarantees. (Doc. 1 ¶¶ 103–34). The final count, which does not specify a cause of action, is for "Wide-Spread Ballot Fraud." (*Id.* at ¶¶ 135–41).

On December 3, the day after Plaintiffs filed their Complaint, the Court received a Motion to Intervene from the Arizona Democratic Party, which was subsequently denied.[4] (Docs. 26 and 69). The Court also received a Motion to Intervene from the Maricopa County Board of Supervisors and Maricopa County Recorder Adrian Fontes, which was granted. (Docs. 27 and 32). The Court held a status conference on the same day, in which it scheduled a December 8 hearing on the TRO. (Doc. 28). By subsequent Order (Doc. 43), the Court converted that hearing to oral argument on the Motions to Dismiss filed on December 4. (Docs. 36, 38, and 40). Plaintiffs have filed their Response to the Motions (Doc. 44), and Defendants have filed their Replies. (Docs. 53, 54, and 55). On December 8, 2020, the Court held oral argument on the Motions to Dismiss and took this matter under advisement. Being fully briefed on the matter, the Court now issues its ruling.

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[4] The Arizona Democratic Party sought intervention under theories of permissive joinder. While the Court did not believe the Motion was inappropriate, the Court did not find their presence necessary to this lawsuit and therefore denied the Motion to Intervene.

II. Analysis

Given the import of the overarching subject—a United States Presidential Election—to the citizens of Arizona, and to the named Plaintiffs, the Court is compelled to make clear why it finds it inappropriate to reach the merits of Plaintiffs' Complaint and why it must grant the Motions to Dismiss this matter in its entirety. The Court will endeavor to lay bare the independent reasons for its conclusions, including those related to Article III standing, abstention, laches, mootness, and the federal pleading standards, which govern its review.

A. Article III Standing

"To ensure that the Federal Judiciary respects the proper—and properly limited—role of the courts in a democratic society, a plaintiff may not invoke federal-court jurisdiction unless he can show a personal stake in the outcome of the controversy." *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (internal citations omitted). Article III provides that federal courts may only exercise judicial power in the context of "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992). For there to be a case or controversy, the plaintiff must have standing to sue. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) ("*Spokeo II*"). Whether a plaintiff has standing presents a "threshold question in every federal case [because it determines] the power of the court to entertain the suit." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 341 (2006). A suit brought by a plaintiff without Article III standing is not a "case or controversy," and an Article III federal court therefore lacks subject matter jurisdiction. *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 101 (1998).

"[A] plaintiff seeking relief in federal court must first demonstrate . . . a personal stake in the outcome," *Baker v. Carr*, 369 U.S. 186, 204 (1962), distinct from a "generally available grievance about government," *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per

curiam). "That threshold requirement ensures that we act as judges, and do not engage in policymaking properly left to elected representatives." *Gill*, 138 S. Ct. at 1923. To establish standing, a plaintiff has the burden of clearly demonstrating that she has: "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo II*, 136 S. Ct. at 1547 (*quoting Warth*, 422 U.S. at 518); *accord Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (noting the party asserting jurisdiction bears the burden of establishing subject matter jurisdiction on a Rule 12(b)(1) motion to dismiss).

To establish an injury in fact, "a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo,* 136 S. Ct. at 1548 (*quoting Lujan,* 504 U.S. at 560). "When we have used the adjective 'concrete, we have meant to convey the usual meaning of the term—'real,' and not 'abstract.'" *Id*. The plaintiff must establish a "particularized" injury, which means that "the injury must affect the plaintiff in a personal and individual way." *Raines v. Byrd*, 521 U.S. 811, 819 (1997). Moreover, "[a]lthough imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is certainly impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). Where a plaintiff has not established the elements of standing, the case must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

Rule 12(b)(1) authorizes a court to dismiss claims over which it lacks subject-matter jurisdiction. A Rule 12(b)(1) challenge may be either facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). In a facial attack, the court may dismiss a complaint when the allegations of and documents attached to the complaint are insufficient to confer subject-matter jurisdiction. *See Savage v. Glendale Union High Sch. Dist. No. 205*, 343 F.3d 1036, 1039 n.2 (9th Cir. 2003). In this context, all allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. *Fed'n of African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir.

1996). In contrast, when a court evaluates a factual challenge to jurisdiction, a court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Safe Air for Everyone*, 373 F.3d at 1039 ("In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment.").

1. Elections and Electors Clause – Count One

Plaintiffs allege in Count One that Defendants violated the Elections and Electors Clauses and 28 U.S.C. § 1983 by, among other things, losing or destroying absentee ballots, and/or replacing those ballots with "blank ballots filled out by election workers, Dominion or other third parties" sending thousands of absentee ballots to someone besides the registered voter that "could have been filled out by anyone." (Doc. 1 at 41). Defendants argue that Plaintiffs do not have standing to assert such a claim. (Doc. 40 at 8–9).

The Elections Clause of the United States Constitution states: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof[.]" U.S. Const. art. I, § 4, cl. 1. The Elections Clause authorizes the state governments to regulate federal elections held in the state, while Congress retains "exclusive control" to alter a state's regulations. *Colegrove v. Green*, 328 U.S. 549, 554 (1946). A separate provision, the "Electors Clause" of the Constitution, states: "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . ." U.S. Const. art. II, § 1, cl. 2.[5]

Plaintiffs' Complaint alleges that Defendants violated the Elections Clause. However, the Complaint does not allege grounds for standing to assert this claim, nor does it distinguish between the status of the groups of Plaintiffs. At oral argument, Plaintiffs'

[5] While the Electors Clause and Elections Clause are separate Constitutional provisions, they share "considerable similarity." *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 839, (2015) (Roberts, C.J., dissenting). These provisions are therefore often considered together. *See Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 348–52 (3d Cir. 2020) (analyzing standing for Elections Clause and Electors Clause under the same test); *Wood v. Raffensperger*, 2020 WL 6817513, at *1 (N.D. Ga. Nov. 20, 2020) (same); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995) (holding that state's "duty" under Elections Clause "parallels the duty" described by Electors Clause). Plaintiffs do not meaningfully distinguish between the two clauses in their Complaint or briefing.

counsel stated that eleven of the Plaintiffs were Republican Party nominees to be electors, and the other three were county GOP Chairs. As an initial matter, Plaintiffs' briefing does not contain any arguments that the GOP Chairs have standing to assert this claim and the Court will dismiss the claim as to the GOP Chairs outright.

Plaintiffs argue that the Plaintiff Electors should be considered "candidates," and thus that they have standing under the Electors and Elections Clause pursuant to an Eighth Circuit case, *Carson v. Simon*, 978 F.3d 1051 (8th Cir. 2020). (Doc. 44 at 5). That case, which is based on the operation of Minnesota state election law, allowed electors to bring claims under the Elections Clause because electors were treated as candidates for office under Minnesota law and thus would be injured by the governor's failure to seat them if chosen as the state's electors. *See Carson*, 978 F.3d at 1057.

Plaintiff Electors likewise assert that under Arizona law they should also be considered "candidates." (Doc. 44 at 5–6) (citing A.R.S. § 16-344). However, the Electors are not candidates for office as the term is generally understood. Arizona law makes clear that the duty of an Elector is to fulfill a ministerial function, which is extremely limited in scope and duration, and that they have no discretion to deviate at all from the duties imposed by the statute. *See* A.R.S. § 16-212(C) ("After the secretary of state issues the statewide canvass containing the results of a presidential election, the presidential electors of this state ***shall cast their electoral college votes for the candidate for president and the candidate for vice president who jointly received the highest number of votes*** in this state as prescribed in the canvass.") (emphasis added). Arizona voters do not show up to vote for any single Electors listed next to the presidential candidates' names; they vote for their preferred presidential candidate. By specifying that the electors "shall be enclosed in a bracketed list" next to "the surname of the presidential candidate and vice-presidential candidate," A.R.S. § 16-507(B) clarifies and distinguishes the Electors' ministerial status from that of the presidential candidate running for office, the latter who unquestionably suffers the discrete injury required for standing.[6] Notably, the Republican candidate whose

[6] A.R.S. § 16-507(B) in its entirety reads: "Presidential electors, which, shall be enclosed in a bracketed list and next to the bracketed list shall be printed in bold type the surname

name was on the ballot is not a plaintiff in this case.

Other circuit courts to reach the issue have cited the *Carson* decision with disapproval, noting that there was no precedent for expanding standing in the way that it did.[7] *See Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 351 n.6 (3d Cir. 2020) ("Our conclusion departs from the recent decision of an Eighth Circuit panel which, over a dissent, concluded that candidates for the position of presidential elector had standing under *Bond* [*v. United States*, 564 U.S. 211 (2011)] to challenge a Minnesota state-court consent decree that effectively extended the receipt deadline for mailed ballots. . . . The *Carson* court appears to have cited language from *Bond* without considering the context—specifically, the Tenth Amendment and the reserved police powers—in which the U.S. Supreme Court employed that language. There is no precedent for expanding *Bond* beyond this context, and the *Carson* court cited none."). Indeed, as numerous other courts have held, where, as here, the injury alleged by plaintiffs is that defendants failed to follow the Elections Clause, the Supreme Court has stated that the "injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance." *Lance*, 549 U.S. at 442.

Elector Plaintiffs have not established they can personally bring suit, and therefore, they do not have standing to bring Count One.[8] Therefore, the Court will dismiss Count

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of the presidential candidate and vice-presidential candidate who is seeking election jointly with the presidential candidate shall be listed directly below the name of the presidential candidate. The indicator for the selection of the presidential and vice-presidential candidates shall be directly next to the surname of the presidential candidate, and one mark directly next to a presidential candidate's surname shall be counted as a vote for each elector in the bracketed list next to the presidential and vice-presidential candidates."

[7] *See also Carson,* 78 F.3d at 1063 (Kelly, J., dissenting) ("I am not convinced the Electors have Article III standing to assert claims under the Electors Clause. Although Minnesota law at times refers to them as 'candidates,' *see, e.g.*, Minn. Stat. § 204B.03 (2020), the Electors are not candidates for public office as that term is commonly understood. Whether they ultimately assume the office of elector depends entirely on the outcome of the state popular vote for president. *Id.* § 208.04 subdiv. 1 ('[A] vote cast for the party candidates for president and vice president shall be deemed a vote for that party's electors.'). They are not presented to and chosen by the voting public for their office, but instead automatically assume that office based on the public's selection of entirely different individuals.").

[8] The Court notes that Count One of the Complaint makes passing references to the "VRA and HAVA," (the Voting Rights Act and the Help America Vote Act of 2002) but does not bring any claims under these statutes. (Doc. 1 ¶ 106).

One.

2. Vote Dilution – Count Two

In Count Two, Plaintiffs allege Equal Protection violations based on Defendants' failure to comply with Arizona law by permitting "illegal votes," allowing "voting fraud and manipulation," and in preventing "actual observation and access to the elector process," which allegedly resulted in "the dilution of lawful votes . . . and the counting of unlawful votes." (Doc. 1 at 45). Plaintiffs ask the Court to order that "no ballot processed by a counting board in Arizona can be included in the final vote tally unless a challenger [i]s allowed to meaningfully observe the process." (Doc 1 ¶ 120). Absent from the Complaint is an allegation that Plaintiffs (or any registered Arizona voter for that matter) were deprived of their right to vote. Instead, they bring baseless claims of "disparate treatment of Arizona voters, in subjecting one class of voters to greater burdens or scrutiny than another." (Doc. 1 ¶ 115). They do not allege what "class" of voters were treated disparately. Nor do the Elector Plaintiffs cite to any authority that they, as "elector delegates," are a class of protected voters. Defendants contend that Plaintiffs do not have standing to assert these claims and point out that these allegations are nothing more than generalized grievances that any one of the 3.4 million Arizonans who voted could make if they were so allowed. The Court agrees.

Here, Plaintiffs have not alleged a concrete harm that would allow the Court to find Article III Standing for their vote dilution claim. As courts have routinely explained, vote dilution is a very specific claim that involves votes being weighed differently and cannot be used generally to allege voter fraud. "Contrary to the Voter Plaintiffs' conceptualization, vote dilution under the Equal Protection Clause is concerned with votes being weighed differently." *Bognet*, 980 F.3d at 355; *see also Rucho v. Common Cause*, – — U.S. ——, 139 S. Ct. 2484, 2501 (2019) ("[V]ote dilution in the one-person, one-vote cases refers to the idea that each vote must carry equal weight."). "This conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment. Violation

of state election laws by state officials or other unidentified third parties is not always amenable to a federal constitutional claim." *Bognet*, 980 F.3d at 355; *see also Shipley v. Chicago Bd. of Election Comm'rs*, 947 F.3d 1056, 1062 (7th Cir. 2020) ("A deliberate violation of state election laws by state election officials does not transgress against the Constitution."); *Powell v. Power*, 436 F.2d 84, 88 (2d Cir. 1970) (rejecting Equal Protection claim where allegations of state's erroneous counting of votes cast by voters unqualified to participate).

Additionally, Plaintiffs cannot sustain their Equal Protection Clause claim on a vote dilution theory. *See Bognet*, 980 F.3d at 355 (rejecting Equal Protection theory and explaining "[t]his conceptualization of vote dilution—state actors counting ballots in violation of state election law—is not a concrete harm under the Equal Protection Clause of the Fourteenth Amendment"); *see also Shipley*, 947 F.3d at 1062 ("A deliberate violation of state election laws by state election officials does not transgress against the Constitution") (internal citations omitted); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) (holding that allegations of "vote dilution" as a result of alleged voting process irregulates "[are] speculative and, as such, are more akin to a generalized grievance about the government than an injury in fact."); *Powell*, 436 F.2d at 88 (rejecting Equal Protection Clause claim arising from state's erroneous counting of votes cast by voters unqualified to participate in closed primary); *Snowden v. Hughes*, 321 U.S. 1, 11 (1944) ("It was not intended by the Fourteenth Amendment . . . that all matters formerly within the exclusive cognizance of the states should become matters of national concern.").

Setting aside that Plaintiffs' claims regarding the election are not viable vote dilution claims, Plaintiffs also have not requested relief that is redressable in a tailored way as is required. *See Gill*, 138 S. Ct. at 1934 ("A plaintiff's remedy must be tailored to redress the plaintiff's particular injury."); *see also Lewis v. Casey*, 518 U.S. 343, 357 (1996) ("The remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established."). Therefore, even if Plaintiffs could somehow establish that

their vote dilution claim was more than a generalized grievance to the point of asserting an injury, Plaintiffs have not established that the Court can redress this grievance. To give Plaintiffs the relief they desire would disenfranchise the nearly 3.4 million Arizonans that voted in the 2020 General Election. Under Plaintiffs' theory of dilution, this would transform all of the alleged diluted votes from being "diluted" to being destroyed. As Plaintiffs raise "only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large," the Court finds that Plaintiffs' Count Two "does not state an Article III case or controversy." *See Lance*, 549 U.S. 437 at 439. Therefore, Plaintiffs do not have standing to bring suit in this forum.[9]

B. Abstention

Defendants also argue the Court should abstain from reaching Plaintiffs' claims based on their similarities with ongoing state court cases. Yesterday, the Arizona Supreme Court ruled on one such case—filed by Dr. Kelli Ward—seeking to "set aside the 2020 General Election results." *See Ward*, CV 2020-015285 (Ariz. 2020); (Doc. 81-1). That case was filed pursuant to A.R.S. § 16-672 and was also filed after Governor Ducey certified the election results on November 30, 2020. (Doc. 58-1 at 17). The *Ward* plaintiffs alleged an insufficient opportunity to observe election officials, an overcounting of mail-in ballots by not adequately comparing signatures on the ballot envelopes, and errors in the ballot duplication process. (*Id.* at 17–21). After an evidentiary hearing, the Maricopa County Superior Court issued a ruling on December 4, 2020, finding that there was no misconduct, fraud, or effect on the outcome of the election.[10] (*Id.*) This ruling was

[9] Having established that the Court does not have jurisdiction over Plaintiffs' Counts One through Three, the Court will decline to exercise supplemental jurisdiction over Count Four, which pleads no federal cause of action and is entirely based on alleged fraud under Arizona law.

[10] Judge Randall H. Warner of the Maricopa County Superior Court addressed Ward's allegations of election misconduct. First, Ward argued that there was an insufficient opportunity to observe the actions of election officials. The State Court dismissed that claim as untimely, holding that "[t]he observation procedures for the November general election were materially the same as for the August primary election, and any objection to

unanimously affirmed by an *en banc* panel of the Arizona Supreme Court on expedited review.[11]

Here, Plaintiffs' Complaint similarly relies upon A.R.S. § 16-672 and its provisions related to bringing suit for alleged election misconduct, including illegal votes and erroneous counting. (Doc. 1 at ¶ 15). A.R.S. § 16-672 also provides that an elections contest brought under this statute should be filed in the superior court of the county in which the person contesting resides or in the superior court of Maricopa county. A.R.S. § 16-672(B). Plaintiffs aver that their claims seek federal action under federal statutes, and therefore, their claims are distinguishable from the claims being litigated in the state court. The Court disagrees.

Generally, a federal court has a duty to exercise the jurisdiction conferred by Congress. However, under certain circumstances, it is prudent for a federal court to abstain from hearing a matter. "Indeed, we have held that federal courts may decline to exercise its jurisdiction, in otherwise 'exceptional circumstances,' where denying a federal forum would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins.*

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them should have been brought at a time when any legal deficiencies could have been cured," and citing *Lubin v. Thomas*, 144 P.3d 510, 511 (Ariz. 2006) ("In the context of election matters, the laches doctrine seeks to prevent dilatory conduct and will bar a claim if a party's unreasonable delay prejudices the opposing party or the administration of justice."). Second, Ward alleged that "election officials overcounted mail-in ballots by not being sufficiently skeptical in their comparison of signatures on the mail-in envelope/affidavits with signatures on file." The state court allowed Ward to examine a sampling of mail-in ballots, and the court held that "[t]he evidence does not show that these affidavits are fraudulent, or that someone other than the voter signed them. There is no evidence that the manner in which signatures were reviewed was designed to benefit one candidate or another, or that there was any misconduct, impropriety, or violation of Arizona law with respect to the review of mail-in ballots." Lastly, Ward alleged errors with duplication of ballots. The state court also allowed Ward to examine a sampling of duplicate ballots and held that '[t]he duplication process prescribed by the Legislature necessarily requires manual action and human judgment, which entail a risk of human error. Despite that, the duplication process for the presidential election was 99.45% accurate. And there is no evidence that the inaccuracies were intentional or part of a fraudulent scheme. They were mistakes. And given both the small number of duplicate ballots and the low error rate, the evidence does not show any impact on the outcome." The state court concluded by holding that "[t]he Court finds no misconduct, no fraud, and no effect on the outcome of the election." *Ward*, CV 2020-015285 (Ariz. Super. Ct. Dec. 4, 2020); (Doc. 58-1).

[11] "The Court concludes, unanimously, that the trial judge did not abuse his discretion in denying the request to continue the hearing and permit additional inspection of the ballots." *Ward*, CV 2020-015285, at *7 (Ariz. 2020); (Doc. 81-1).

Co., 517 U.S. 706, 716 (1996) (citing *County of Allegheny v. Frank Mashuda Co*., 360 U.S. 185, 189 (1959)). Abstention may be "warranted by considerations of proper constitutional adjudication, regard for federal-state relations, or wise judicial administration." *Id.* *Colorado River* abstention permits a federal court to abstain from exercising jurisdiction over a matter in deference to a state court suit regarding similar claims and allegations. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 813, 817 (1976).

The Ninth Circuit has enumerated an eight-part test for whether *Colorado River* abstention is warranted, stressing that the factors are "not a mechanical checklist," with some factors that "may not have any applicability to a case." *Seneca Ins. Co., Inc. v. Strange Land, Inc*., 862 F.3d 835, 841–42 (9th Cir. 2017). The factors are: (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court. *Id.*

Factors two through seven all support abstaining from this case.[12] To begin, this federal forum is less convenient than the state forum, considering the state election law violations alleged, the claims are brought against state actors, and the interplay of state election law. Moreover, the present suit reflects the very essence of "piecemeal litigation," with many of the same parties and attorneys litigating related matters in both forums. As to the primacy of cases, this case was the last filed case. All of the state court litigation filed related to the election preceded this action. As to the nature of the claims, while Plaintiffs bring their claims under federal laws, the crux of their arguments, and the statutes upon which they rely, involve Arizona election law and the election procedures carried out at the county and state level by state officials. The state courts are adequately equipped to

[12] The Court finds that the first factor is not relevant to the facts alleged herein.

protect the rights of the named Plaintiffs, especially considering that Plaintiff Ward already pursued her grievances there. Moreover, as Congress has conferred concurrent jurisdiction on state courts to adjudicate Section 1983 claims, there is no concern that the state is unable to adjudicate Plaintiffs' Section 1983 claims. *Felder v. Casey*, 487 U.S. 131, 139 (1988). Lastly, abstention would alleviate the necessity to consider whether this matter was filed in this Court as a form of forum shopping, especially considering that a number of other related state court lawsuits have already been disposed of. The eighth factor is the only factor that weighs against abstention, as it does not appear that Plaintiffs' allegations of widespread fraud in relation to the tabulation systems and software were before the state court. However, as discussed *infra*, the Court finds that claim lacks Rule 9(b) particularity and plausibility.

Moreover, when considering abstention, "proper constitutional adjudication, regard for federal-state relations, or wise judicial administration," also inform this Court. *Quackenbush*, 517 U.S. at 716. If the Court were to reach the merits of Plaintiffs' claims, it would be entirely possible today for it to reach a different legal determination, or the same conclusion but with a different analysis, than the Arizona Supreme Court reached in *Ward v. Jackson*. The Court cannot think of a more troubling affront to "federal-state relations" than this. *See Quackenbush*, 517 U.S. at 716. Therefore, the Court finds that abstention of these parallel issues is appropriate and indeed necessary.

C. Eleventh Amendment

Defendants also argue that the Eleventh Amendment bars Plaintiffs' demands for relief because they, as state officials who have not consented to being sued, are immune from suit. Further, they argue that no exception applies, that the relief Plaintiffs seek is not prospective, and that the claims are barred.

The Eleventh Amendment to the Constitution provides:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. Const. amend. XI. Such immunity applies when a citizen brings a claim against their own state. *See Hans v. Louisiana*, 134 U.S. 1, 19 (1890). The immunity extends to "suit[s] against state officials when the state is the real, substantial party in interest." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). "This jurisdictional bar applies regardless of the nature of the relief sought." *Id.* "When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself." *Id.* at 101. "The general rule is that a suit is against the sovereign . . . if the effect of the judgment would be to restrain the Government from acting, or to compel it to act." *Dugan v. Rank*, 372 U.S. 609, 620 (1963).

There are three recognized exceptions to the above: (1) Congress has abrogated the immunity within a federal statute; (2) the State has waived immunity and allowed individuals to sue it pursuant to specific state statutes; and (3) in "claims seeking *prospective* injunctive relief against state officials to remedy a state's *ongoing* violation of *federal* law." *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 865 (9th Cir. 2016) (citing *Ex parte Young*, 209 U.S. 123 (1908)) (emphasis added).

None of these exceptions are present here. As for Plaintiffs' 42 U.S.C. § 1983 claims, Congress did not abrogate the states' immunity from suit in the enacting language of Section 1983, and therefore, the Eleventh Amendment bars those claims. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989) (holding that Section 1983 "does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties"). Plaintiffs provided no argument or authority that the state has explicitly waived its immunity for elections challenges. Therefore, the second exception does not apply. As for the remaining claims, the Court must determine whether Plaintiffs are seeking prospective relief to cure an ongoing violation of federal law.

"In determining whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645

(2002) (internal citations omitted). However, where the claims are state law claims, masked as federal law claims, *Ex parte Young* is inapplicable and the Eleventh Amendment clearly bars the suit. *See Massey v. Coon*, 865 F.2d 264 (9th Cir. 1989) (affirming dismissal where "on its face the complaint states a claim under the due process and equal protection clauses of the Constitution, [but] these constitutional claims are entirely based on the failure of defendants to conform to state law"); *see also Pennhurst*, 465 U.S. at 90 ("[W]hen a plaintiff alleges that a state official has violated state law" and "when a federal court instructs state officials on how to conform their conduct to state law, this conflicts directly with the principles of federalism that underlie the Eleventh Amendment."). This is true whether the relief requested is "prospective or retroactive" in nature. *Pennhurst*, 465 U.S. at 106.

Here, Plaintiffs face a number of difficulties in their attempt to pierce Defendants' sovereign immunity. Defendants argue that all of Plaintiffs' allegations are actually state law allegations masked under federal law. Defendants point to numerous instances in Plaintiffs' Complaint where Arizona state election law is relied on, including their catch-all fraud claims, which are entirely based on state law. The Eleventh Amendment clearly bars such claims. *See Pennhurst*, 465 U.S. at 106 ("On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.").

However, even assuming that Plaintiffs established that their claims are indeed independent federal claims, it is unclear what *ongoing* violation of federal law is being asserted. Plaintiffs allege Due Process and Equal Protection claims, along with a catch-all fraud claim, that arise from Defendants' alleged failure to follow Arizona state election laws. (Doc. 1 at ¶¶ 106–120). These numerous alleged violations—related to alleged issues with signature verification, ballot duplication, and poll observation—concern past conduct.[13] The relief requested—compelling the Governor to decertify the election—

[13] These include objections regarding poll watchers' ability to observe ballot counting, issues related to the manner and process by which Arizona election officials matched signatures on absentee ballots (Doc. 1 at ¶¶ 46–48); issues related to the process and role assigned to poll referees in settling unresolved disputes between adjudicators (*Id.* at ¶ 49);

similarly seeks to alter past conduct. Plaintiffs have not identified an ongoing violation to enjoin. In short, "Plaintiffs are seeking to undo what has already occurred, as their requested relief reflects." *See King v. Whitmer*, 2020 WL 7134198, at *5 (E.D. Mich. Dec. 7, 2020).

The Eleventh Amendment bars the injunctive relief sought.

D. Laches

Defendants also argue that the doctrine of laches bars Plaintiffs' claims. Laches will bar a claim when the party asserting it shows the plaintiff unreasonably delayed in filing the action and the delay caused prejudice to the defendant or the administration of justice. *Danjaq LLC v. Sony Corp.*, 263 F.3d 942, 951–52 (9th Cir. 2001) (noting that laches requires a "defendant [] prove both an unreasonable delay by the plaintiff and prejudice to itself"). Laches can bar untimely claims for relief in election cases, even when the claims are framed as constitutional challenges. *Soules v. Kauaians for Nukolii Campaign Comm.*, 849 F.2d 1176, 1181 (9th Cir. 1988); *U.S. v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 9 (2008) ("[A] 'constitutional claim can become time-barred just as any other claim can.'") (*quoting Block v. North Dakota ex rel. Board of Univ. and School Lands*, 461 U.S. 273, 292 (1983)).

Plaintiffs filed their Complaint and request for TRO seeking to "de-certify" the election results on December 2, 2020, nearly a month after the General Election on November 3, 2020. Plaintiffs conclusively argue that they waited this long because they "could not have known the basis of their claim, or presented evidence substantiating their claim, until after the election." (Doc. 44 at 9). They further state that, because "Arizona election officials and other third parties did not announce or publicize their misconduct, and in fact prevented Republican poll watchers from observing the ballot counting and handling, it took Plaintiffs additional time post-election to gather the fact and expert witness testimony presented in the Complaint." (*Id.*) During oral argument, Plaintiffs' counsel repeatedly stated that the alleged fraud related to the Dominion voting machines

"irregularities" with the voting machines (*Id.* at ¶¶ 50–52); and certification of the Dominion voting system on November 18, 2020 (*Id.* at ¶ 53).

was not known until election night, when their experts noted a "blip" in their reporting data that showed an increase in votes for Joe Biden around 8:00 p.m. Plaintiffs also argue that A.R.S. §16-673 supports the timeliness of their Complaint because it requires an elector to file a challenge to the election in state court within five days of certification of the election.

Plaintiffs' Complaint includes a hodge-podge of alleged misconduct by Arizona elections officials, occurring on various dates over the past weeks, months, and even years. In addition to the objections regarding poll watchers' inability to observe ballot counting and handling, Plaintiffs also object to the manner and process by which Arizona election officials matched signatures on absentee ballots (Doc. 1 ¶¶ 46–48); to the process and role assigned to poll referees in settling unresolved disputes between adjudicators (*Id.* at ¶ 49); to "irregularities" with the voting machines on Election Day and before (*Id.* at ¶¶ 50–52); and to the certification of the Dominion voting system on November 18, 2020 (*Id.* at ¶ 53).

The affidavits or declarations upon which Plaintiffs rely clearly shows that the basis for each of these claims was either known well before Election Day or soon thereafter, and thus cannot be excused by a lack of knowledge nor an inability to substantiate their claims through December 2. For example, Plaintiffs' Complaint cites to documents showing that Plaintiffs were in possession of information about suspected irregularities with the Dominion voting machines as early as 2018. (*Id.* at ¶¶ 21, 69, 71–73) (referencing "publicly available evidence (including judicial and administrative proceedings)" that discuss concerns with security flaws in Dominion voting machines dating back to 2018); (Doc. 1-10 at 19, Ex. 20, Declaration of Mark Paul Law dated November 24, 2020 (describing his concerns over Maricopa County Dominion voting machine security and observations while poll watching on October 25, 2020 and November 1, 2020); *id.* at 30, Ex. 22, Declaration of Gregory Wodynski dated November 23, 2020 (describing his concerns over Maricopa County Dominion voting machine security and his perception that "Bruce," a Dominion employee, could manually manipulate voter data files while poll watching on October 24, 2020 and November 1, 2020).

Plaintiffs also include documents showing that the facts underlying their allegations

of ballot counting and verification misconduct occurred weeks before Election Day. Canvassing in Arizona began in October, and the poll watcher declarations and affidavits attached to the Complaint object to the signature verification and ballot process during this time. (*See* Doc. 1-3 at 7, Ex. 5) (containing unsigned Declaration dated October 25, 2020 from poll watcher objecting to "NO EFFECTIVE oversight" in signature verification rooms); *id.* at 9, Ex. 5A (document listing poll watcher objections made on 10/7/20, 10/23/20, 10/24/20, 10/29/20); (Doc. 1-10 at 25, Ex. 21) (containing a Declaration of poll watcher Judith Burns dated November 16, 2020 and noting her objections in observing the signature verification and ballot processing on October 17, 2020 and October 21, 2020). In a statement from Ms. Linda Brickman, the First Vice-Chair of the Maricopa County Republican Committee, she represents that she had ongoing concerns regarding the signature verification for early and mail-in ballots during her time as an elections worker "from 10/19/20 to 11/11/20" (Doc. 1-10 at 38, Ex. 23) and had objections to the Logic and Accuracy Certification of the Dominion voting systems that occurred on November 18, 2020. (*Id.* at 35). Indeed, at least one Plaintiff has already raised some of these complaints in state court.[14] *Ward*, CV2020-015285 (Super. Ct. of Ariz. Dec. 4, 2020) (dismissing the Petition with prejudice); (Doc. 58-1 at 14, Ex. B). Dr. Ward clearly knew the basis of her claim before December 2, 2020 but offers no reasonable explanation for the delay in bringing this suit in federal court. When contesting an election, any delay is prejudicial, but waiting until a month after Election Day and two days after certification of the election is inexcusable. *See Kelly v. Penn.*, 2020 WL 7018314, at *1 (Pa. Nov. 28, 2020) ("Petitioners failed to act with due diligence in presenting the instant claim" when they waited until November 21 to sue to invalidate Pennsylvania's election); *Kistner v. Simon*, No. A20-1486, slip op. at 3–4 (Minn. Dec. 4, 2020); *see also, e.g., Ariz. Libertarian Party*

[14] As she does here, Ms. Ward's state court action claimed that poll watchers were given insufficient opportunity to observe the actions of election officials. Notably, the state court judge found this claim barred by the doctrine of laches, as Ms. Ward had failed to assert it during a time when it could have been corrected. (Doc. 1-10 at 19 ("The observation procedures for the November general election were materially the same as for the August primary election, and any objection to them should have been brought at a time when any legal deficiencies could have been cured.").

v. Reagan, 189 F. Supp. 3d 920, 922–23 (D. Ariz. 2016).

The Court does not find that the Arizona state election challenge deadline excuses delay on Plaintiffs' part in these circumstances. *See* A.R.S. §16-673. As noted above, the facts underlying the suspected irregularities complained of were either known to Plaintiffs prior to Election Day or soon thereafter. Although Arizona electors may have a deadline by which to file election contests in Arizona state court, Plaintiffs here opted to file their federal constitutional challenges in federal court. The exhibits to the Complaint confirm that the events complained of occurred on or before Election Day. Accordingly, the Court rejects Plaintiffs' self-serving statement that they did not know the basis for their claims before December 2, 2020. The documents they submit with their Complaint plainly shows the contrary is true, and the delay—which has resulted in a rush by this Court and Defendants to resolve these issues before the Electoral College meeting deadline of December 14, 2020—is unreasonable.

The second part of the laches test—prejudice—is also unquestionably met. First, the prejudice to the Defendants and the nearly 3.4 million Arizonans who voted in the 2020 General Election would be extreme, and entirely unprecedented, if Plaintiff were allowed to have their claims heard at this late date. *SW Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) ("Interference with impending elections is extraordinary, and interference with an election after voting has begun is unprecedented."). As an Eastern District of Michigan Court stated in a nearly identical case, "[the prejudice] is especially so considering that Plaintiffs' claims for relief are not merely last-minute—they are after the fact. While Plaintiffs delayed, the ballots were cast; the votes were counted; and the results were certified. The rationale for interposing the doctrine of laches is now at its peak." *King*, 2020 WL 7134198, at *7.

Second, the challenges that Plaintiffs assert quite simply could have been made weeks ago, when the Court would have had more time to reflect and resolve the issues. "Unreasonable delay can prejudice the administration of justice by compelling the court to steamroll through . . . delicate legal issues in order to meet election deadlines." *Arizona*

Libertarian Party, 189 F. Supp. 3d at 923 (quotation marks and citations omitted). Plaintiffs offer no reasonable explanation why their claims were brought in federal court at this late date. Their delay and the resulting prejudice bars their claims by laches.

E. Mootness

Defendants also argue that this case is moot. (Docs. 38 at 5; 40 at 22). The Court agrees. "Mootness is a jurisdictional issue, and 'federal courts have no jurisdiction to hear a case that is moot, that is, where no actual or live controversy exists.'" *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir. 2003) (quoting *Cook Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9th Cir. 1999)). In addition, a case is moot when a party cannot obtain relief for its claim. *Id.*; *see also Ruvalcaba v. City of L.A.*, 167 F.3d 514, 521 (9th Cir. 1999).

Plaintiffs request an injunction that (a) enjoins Governor Ducey from transmitting the certified results, (b) orders Defendants to "de-certify" the election results, (c) nullifies votes tabulated by uncertified machines, (d) declares that illegal ballot fraud occurred in violation of the Electors and Elections Clauses and the Fourteenth Amendment's Due Process and Equal Protections Clauses, (e) mandates a manual recount or statistical sampling of all mail-in and absentee ballots, and (f) allows Plaintiffs to seize and inspect voting hardware and software as well as security camera recordings "of all rooms used in Maricopa County" from November 3 to 4. (Doc. 1 at ¶ 145).

Obviously, the Court cannot enjoin the transmission of the certified results because they have already been transmitted. (Doc. 40 at 4). Plaintiffs' counsel orally argued that Defendants had the power to de-certify the election under 3 U.S.C. § 6. Nothing in that statute authorizes this Court to de-certify the results. The manner provided to contest elections under Arizona law requires election contest claims to be brought, "in the superior court of the county in which the person contesting resides or in the superior court of Maricopa County." A.R.S. § 16-672. Therefore, if de-certification were possible, it would only be possible through an action brought in Arizona superior court. In other words, this Court has no power to de-certify the results. But even assuming the Court were able to grant the extraordinary relief requested, ordering Governor Ducey to de-certify the

election, such relief would necessarily run afoul of 3 U.S.C. § 6 by ignoring Arizona law. In this instance, the Court cannot allow Plaintiffs to circumvent both federal and Arizona law.

Because this Court cannot de-certify the results, it would be meaningless to grant Plaintiffs any of the remaining relief they seek. *See Wood v. Raffensperger*, 2020 WL 7094866, at *6 (11th Cir. Dec. 5, 2020) ("[I]t is not possible for us to delay certification nor meaningful to order a new recount when the results are already final and certified."); *King*, 2020 WL 7134198, at *5 n.3 ("[T]he evidence Plaintiffs seek to gather by inspecting voting machines and software and security camera footage only would be useful if an avenue remained open for them to challenge the election results."). Plaintiffs' claims are moot.

F. Failure to State a Claim

"A motion to dismiss a complaint or claim 'grounded in fraud' under Rule 9(b)[15] for failure to plead with particularity is the functional equivalent of a motion to dismiss under Rule 12(b)(6) for failure to state a claim." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107 (9th Cir. 2003). In a Rule 12(b)(6) context, courts must consider all well-pleaded factual allegations as true and interpret them in the light most favorable to the plaintiff. *Schlegal v. Wells Fargo Bank, NA,* 720 F.3d 1204, 1207 (9th Cir. 2013). Dismissal is proper when there is either (1) a lack of a cognizable legal theory or (2) insufficient facts to support a cognizable legal claim. *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011), *cert. denied, Blasquez v. Salazar*, 565 U.S. 1261 (2012).

When pleading allegations concerning fraudulent conduct, Rule 9(b) requires something more than Rule 8: particularity. *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009);

[15] Although Plaintiffs strenuously argue that they can bring their Arizona election law-based claims in federal court because of the presence of federal allegations, they also boldly assert in their Reply that they need not follow the heightened pleading standard of Federal Rule of Civil Procedure 9(b) in pleading their fraud claims with particularity, because the federal rules are somehow abrogated by "controlling Arizona Supreme Court precedent.[15]" (Doc. 44 at 23). Plaintiffs cannot have it both ways. Plaintiffs have not provided any authority that a state court decision can alter the pleading requirements in federal court established by United States Supreme Court precedent and the Federal Rules of Civil Procedure.

see also Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). "This particularity requirement demands a higher degree of notice than that required for other claims. The claim must identify who, what, where, when, and how." *U.S. ex rel. Costner v. United States*, 317 F.3d 883, 888 (8th Cir. 2003).

Moreover, "claims of fraud or mistake . . . must, in addition to pleading with particularity, also plead plausible allegations. That is, the pleading must state enough facts to raise a reasonable expectation that discovery will reveal evidence of the misconduct alleged." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc*., 637 F.3d 1047, 1055 (9th Cir. 2011) (internal citations omitted). Indeed, "Rule 9(b) serves not only to give notice to defendants of the specific fraudulent conduct against which they must defend, but also 'to deter the filing of complaints as a pretext for the discovery of unknown wrongs, to protect [defendants] from the harm that comes from being subject to fraud charges, and to prohibit plaintiffs from unilaterally imposing upon the court, the parties and society enormous social and economic costs absent some factual basis.'" *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001) (citing *In re Stac Elec. Sec. Litig*., 89 F.3d 1399, 1405 (9th Cir. 1996)).

Establishing the plausibility of a complaint's allegations is a two-step process that is "context-specific" and "requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. 679. First, a court must "identif[y] pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id*. Then, assuming the truth only of well-pleaded factual allegations, a court must "determine whether they plausibly give rise to an entitlement to relief." *Id*.; *see also Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 996 (9th Cir. 2014) (identifying the two-step process for evaluating pleadings). Although a plaintiff's specific factual allegations may be consistent with a plaintiff's claim, a district court must assess whether there are other "more likely explanations" for a defendant's conduct such that a plaintiff's claims cannot cross the line "'from conceivable to plausible.'" *Iqbal*, 556 U.S. at 680

(quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard represents a balance between Rule 8's roots in relatively liberal notice pleading and the need to prevent "a plaintiff with a largely groundless claim" from "'tak[ing] up the time of a number of other people, with the right to do so representing an *in terrorem* increment of settlement value.'" *Twombly*, 550 U.S. at 557–58 (quoting *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 347 (2005)).

Advancing several different theories, Plaintiffs allege that Arizona's Secretary of State and Governor conspired with various domestic and international actors to manipulate Arizona's 2020 General Election results allowing Joseph Biden to defeat Donald Trump in the presidential race. The allegations they put forth to support their claims of fraud fail in their particularity and plausibility. Plaintiffs append over three hundred pages of attachments, which are only impressive for their volume. The various affidavits and expert reports are largely based on anonymous witnesses, hearsay, and irrelevant analysis of unrelated elections. Because the Complaint is grounded in these fraud allegations, the Complaint shall be dismissed. *Vess*, 317 F.3d at 1107 ("When an entire complaint, or an entire claim within a complaint, is grounded in fraud and its allegations fail to satisfy the heightened pleadings requirements of Rule 9(b), a district court may dismiss the complaint or claim.").

Plaintiffs first "describe specific violations of Arizona law" to support their fraud claims.[16] In doing so, they attach declarations from poll watchers that observed election officials during the November General Election. (Doc. 1 ¶¶ 46–53). As Intervenor-Defendant Maricopa County points out, these are the only declarants offered by Plaintiffs with first-hand observation of the election administration. (Doc. 36 at 4). But these four declarants do not allege fraud at all. (*See* Doc. 1-10 at 18–24). Instead, they raise objections to the manner and process by which Arizona election officials matched signatures on absentee ballots (Doc. 1 ¶¶ 46–48); to the process and role assigned to poll

[16] Plaintiffs' often scattershot pleadings allege that "Defendants failed to administer the November 3, 2020 election in compliance with the manner prescribed by the ***Georgia legislature***." (Doc 2 at 6) (emphasis added). Plaintiffs also nonsensically include references to Wisconsin state statutes. (Doc. 1 at 33).

referees in settling unresolved disputes between adjudicators (*Id.* at ¶ 49); to "irregularities" with the voting machines on Election Day and before (*Id.* at ¶¶ 50–52); and to the certification of the Dominion voting system on November 18, 2020 (*Id.* at ¶ 53). These objections to the manner in which Arizona officials administered the election cannot serve to overturn the results of the 2020 presidential election in Arizona because they fail to present evidence that supports the underlying fraud claim. At most, these are the type of "garden variety election irregularities" federal courts are "not equipped nor empowered to supervise . . . ." *Griffin v. Burns*, 570 F.2d 1065, 1076, 1077 (1st Cir. 1978) ("If every election irregularity or contested vote involved a federal violation, the court would be thrust into the details of virtually every election, tinkering with the state's election machinery, reviewing petitioners, registration cards, vote tallies, and certificates of election for all manner of error and insufficiency under state and federal law.").

Plaintiffs next argue that they have expert witnesses who can attest to widespread voter fraud in Arizona. As an initial matter, none of Plaintiffs' witnesses identify Defendants as committing the alleged fraud, or state what their participation in the alleged fraudulent scheme was. Instead, they allege that, absentee ballots "*could have* been filled out by anyone and then submitted in the name of another voter," "*could be* filled in by third parties to shift the election to Joe Biden," or that ballots were destroyed or replaced "with blank ballots filled out by election workers, Dominion or other third parties." (Doc. 1 ¶¶ 54–58) (emphasis added). These innuendoes fail to meet Rule 9(b) standards. But perhaps more concerning to the Court is that the "expert reports" reach implausible conclusions, often because they are derived from wholly unreliable sources.

Plaintiffs' expert Mr. William Briggs ("Briggs"), for example, concludes that "troublesome" errors by Arizona election officials "involving unreturned mail-in ballots [] are indicative of voter fraud" and that the election should consequently be overturned. (Doc. 1 at ¶ 54). Briggs relies on data provided by an unknown person named "Matt Braynard," a person who may or may not have tweeted a "Residency Analysis of ABS/EV Voters" on his Twitter account on November 20, 2020 (Doc. 1-2 at 14, Ex. 2); (*Id.* at 52,

Ex. 3). Apart from a screenshot of Mr. Braynard's tweets that day, Plaintiffs offer nothing further about Mr. Braynard's identity, qualifications, or methodologies used in conducting his telephone "survey." But according to the Briggs' report, Mr. Braynard conducted his survey of unknown size and to unknown persons in Georgia, Michigan, Wisconsin, Arizona, and Pennsylvania regarding absentee ballots, and his "findings" were conveyed to Mr. Briggs. (*Id.*) In concluding that there were "clearly a large number of troublesome ballots in each state," Mr. Briggs assumed Mr. Braynard's "survery [sic] respondents [were] representative and the data [was] accurate." (*Id.*) This cavalier approach to establishing that hundreds of thousands of Arizona votes were somehow cast in error is itself troublesome. The sheer unreliability of the information underlying Mr. Briggs' "analysis" of Mr. Braynard's "data" cannot plausibly serve as a basis to overturn a presidential election, much less support plausible fraud claims against these Defendants.

The Complaint is equally void of plausible allegations that Dominion voting machines were actually hacked or compromised in Arizona during the 2020 General Election. Plaintiffs are clearly concerned about the vulnerabilities of voting machines used in some counties across Arizona and in other states. They cite sources that attest to knowledge of "well-known" vulnerabilities, have included letters from concerned citizens, Arizona elected officials, and United States senators. Plaintiffs even attach an affidavit of an anonymous witness with connections to the late Venezuelan dictator Hugo Chavez claiming to be privy as to how officials in Venezuela rigged their elections with the help of a voting systems company whose software "DNA" is now used in voting machines in the United States. (Doc. 1-1, Ex. 1). These concerns and stated vulnerabilities, however, do not sufficiently allege that any voting machine used in Arizona was in fact hacked or compromised in the 2020 General Election. Rather, what is present is a lengthy collection of phrases beginning with the words "could have, possibly, might," and "may have." (Doc. 1 ¶¶ 8, 53, 55, 57, 60, 66, 77, 88, 91, 108, 109, 122). To lend support to this theory, Plaintiffs offer expert Russell Ramsland, Jr., who asserts there was "an improbable, and *possibly impossible* spike in processed votes" in Maricopa and Pima Counties at 8:46 p.m.

on November 3, 2020. (Doc. 1 ¶ 60); (Doc. 1-9, Ex. 17) (emphasis added). He suggests that this spike "could easily be explained" by presuming that Dominion "pre-load[ed] batches of blank ballots in files such as Write-Ins or other adjudication-type files then casting them almost all for Biden using the Override Procedure . . . ." (Doc. 1-9 at 9, Ex. 17). This scenario is conceivable. However, Defendant Hobbs points to a much more likely plausible explanation: because Arizona begins processing early ballots before the election, the spike represented a normal accounting of the early ballot totals from Maricopa and Pima Counties, which were reported shortly after in-person voting closed. (Doc. 40 at 17–18). Thus, the Court finds that while this "spike" *could* be explained by an illicit hacking of voting machinery in Arizona, the spike is "not only compatible with, but indeed was more likely explained by, lawful, unchoreographed" reporting of early ballot tabulation in those counties. *See Iqbal*, 556 U.S. at 680. Plaintiffs have not moved the needle for their fraud theory from conceivable to plausible, which they must do to state a claim under Federal pleading standards. *Id.*

Because Plaintiffs have failed to plead their fraud claims with particularity and because the Complaint is grounded in these claims, it must be dismissed.[17]

G. Motion for TRO and Preliminary Injunction

There are multiple independent grounds upon which to dismiss Plaintiffs' Complaint. Accordingly, it is not necessary to reach the merits of Plaintiffs' requests for a temporary restraining order and preliminary injunction and the Court will therefore only briefly addresses those Motions here.

"The standard for issuing a temporary restraining order is identical to that for issuing a preliminary injunction." *Taylor-Failor v. Cty of Hawaii*, 90 F. Supp. 3d 1095, 1098 (D. Haw. 2015). Under normal circumstances, both are extraordinary and drastic remedies,

[17] Throughout their pleadings, Plaintiffs allege that there were "spikes" of votes for Joe Biden that occurred in Arizona, which also occurred in other states that certified the election for Joe Biden, including Georgia, Wisconsin, Michigan, and Pennsylvania. Regardless of whether these "spikes" shifting the vote majorities from President Trump to Vice President Biden occurred in other states, Plaintiffs have presented nothing to support the claim that these same "spikes" occurred in Arizona, where Biden never trailed Trump in the vote tally.

and "should not be granted unless the movant, by a clear showing, carries the burden of persuasion.'" *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)); *see also Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 24 (2008) ("A preliminary injunction is an extraordinary remedy never awarded as of right.") (citation omitted). A plaintiff seeking a temporary restraining order or preliminary injunction must show that (1) he or she is likely to succeed on the merits, (2) is likely to suffer irreparable harm without an injunction, (3) the balance of equities tips in his or her favor, and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20.

Plaintiffs simply cannot establish they have a likelihood of success on their claims. Plaintiffs face serious jurisdictional impediments in bringing their claims to federal court at the eleventh hour. These insurmountable legal hurdles are exacerbated by insufficiently plead allegations of fraud, rendered implausible by the multiple inadmissible affidavits, declarations, and expert reports upon which their Complaint relies.

Furthermore, granting Plaintiffs the injunctive relief they seek would greatly harm the public interest. As stated by Defendant Hobbs, "the requested relief would cause enormous harm to Arizonans, supplanting the will of nearly 3.4 million voters reflected in the certified election results and potentially imperiling Arizona's participation in the Electoral College. It would be more difficult to envision a case in which the balance of hardships would tip more strongly against a plaintiff." (Doc. 40 at 24). The Court agrees. The significant weight of these two *Winters* factors requires that the Court deny Plaintiffs' requests for injunctive relief. [18]

III. Conclusion

Not only have Plaintiffs failed to provide the Court with factual support for their extraordinary claims, but they have wholly failed to establish that they have standing for the Court to consider them. Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They

[18] The Court will vacate the hearing on Plaintiffs' TRO and Request for Preliminary Injunction scheduled for December 10, 2020.

most certainly cannot be the basis for upending Arizona's 2020 General Election. The Court is left with no alternative but to dismiss this matter in its entirety.

Accordingly,

IT IS HEREBY ORDERED that Defendants' Governor Doug Ducey, Secretary of State Katie Hobbs, and Intervenor Defendants Maricopa County Board of Supervisors and Adrian Fontes' Motions to Dismiss the Complaint (Docs. 36, 38, and 40) are **GRANTED** for the reasons stated herein.

IT IS FURTHER ORDERED that all remaining pending motions (Docs. 14, 62, 65 and 66) are **denied as moot,** and the hearing on Plaintiffs' TRO and Preliminary Injunction set for December 10, 2020 is **vacated**.

IT IS FINALLY ORDERED that this matter is dismissed, and the Clerk of Court is kindly directed to terminate this action.

Dated this 9th day of December, 2020.

Honorable Diane J. Humetewa
United States District Judge

CONSTITUTIONAL PROVISIONS

1. U.S. CONST. ART. II, ART. 1:

> The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

STATUTES

2. 28 U.S.C. § 1254:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> **(1)**
>
> By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> **(2)**
>
> By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

3. 28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

4. 28 USC 1367

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original

jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

> (b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.
>
> (c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> > (1) the claim raises a novel or complex issue of State law,
> >
> > (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
> >
> > (3) the district court has dismissed all claims over which it has original jurisdiction, or
> >
> > (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.
>
> (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.
>
> (e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

5. 28 U.S.C. § 1651

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

6. 42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

7. 42 U.S.C. § 1988(A)

(a)Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

8. 28 USC § 2201

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise

of a free trade area country (as defined in section 516A(f)(9) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

(b) For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

9. 28 USC 2202

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

10. A.R.S. §16-212

16-212. Election of presidential electors; electoral college votes; vacancy; replacement

A. On the first Tuesday after the first Monday in November, 1956, and quadrennially thereafter, there shall be elected a number of presidential electors equal to the number of United States senators and representatives in Congress from this state.

B. After the secretary of state issues the statewide canvass containing the results of a presidential election, the presidential electors of this state shall cast their electoral college votes for the candidate for president and the candidate for vice president who jointly received the highest number of votes in this state as prescribed in the canvass.

C. A presidential elector who knowingly refuses to cast that elector's electoral college vote as prescribed in subsection B of this section is no longer eligible to hold the office of presidential elector and that office is deemed and declared vacant by operation of law. The chairperson of the state committee of the political party represented by that elector shall appoint a person who is otherwise qualified to be a presidential elector. The replacement presidential elector shall cast the elector's electoral college vote as prescribed by this section. Notwithstanding section 16-344 and any other statute, the nomination paper and affidavit of qualification of the replacement presidential elector may be completed and filed with the secretary of state as soon as is practicable after the presidential elector's appointment.

11. A.R.S. § 16-442

16-442. Committee approval; adoption of vote tabulating equipment; experimental use; emergency

A. The secretary of state shall appoint a committee of three persons, to consist of a member of the engineering college at one of the universities, a member of the state bar of Arizona and one person familiar with voting processes in the state, no more than two of whom shall be of the same political party, and at least one of whom shall have at least five years of experience with and shall be able to render an opinion based on knowledge of, training in or education in electronic voting systems, procedures and security. The committee shall investigate and test the various types of vote recording or tabulating machines or devices that may be used under this article. The committee shall submit its recommendations to the secretary of state who shall make final adoption of the type or types, make or makes, model or models to be certified for use in this state. The committee shall serve without compensation.

B. Machines or devices used at any election for federal, state or county offices may only be certified for use in this state and may only be used in this state if they comply with the help America vote act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2002.

C. After consultation with the committee prescribed by subsection A of this section, the secretary of state shall adopt standards that specify the criteria for loss of certification for equipment that was used at any election for federal, state or county offices and that was previously certified for use in this state. On loss of certification, machines or devices used at any election may not be used for any election for federal, state or county offices in this state unless recertified for use in this state.

D. The secretary of state may revoke the certification of any voting system or device for use in a federal, state or county election in this state or may prohibit for up to five years the purchase, lease or use of any voting system or device leased, installed or used by a person or firm in connection with a federal, state or county election in this state, or both, if either of the following occurs:

1. The person or firm installs, uses or permits the use of a voting system or device that is not certified for use or approved for experimental use in this state pursuant to this section.

2. The person or firm uses or includes hardware, firmware or software in a version that is not certified for use or approved for experimental use pursuant to this section in a certified voting system or device.

E. The governing body of a city or town or the board of directors of an agricultural improvement district may adopt for use in elections any kind of electronic voting system or vote tabulating device approved by the secretary of state, and thereupon the voting or marking device and vote tabulating equipment may be used at any or all elections for voting, recording and counting votes cast at an election.

F. The secretary of state or the governing body may provide for the experimental use of a voting system or device without a final adoption of the voting system or device, and its use at the election is as valid as if the machines had been permanently adopted.

G. After consultation with the committee prescribed by subsection A of this section, the secretary of state may approve for emergency use an upgrade or modification to a voting system or device that is certified for use in this state if the governing body establishes in an open meeting that the election cannot be conducted without the emergency certification. Any emergency certification shall be limited to no more than six months. At the conclusion of the certification period the voting system or device shall be decertified and unavailable for future use unless certified in accordance with this section.

12. A.R.S. § 16-625

16-625. Electronic data and digital images; ballots; security

The officer in charge of elections shall ensure that electronic data from and electronic or digital images of ballots are protected from physical and electronic access, including unauthorized copying or transfer, and that all security measures are at least as protective as those prescribed for paper ballots.

13. A.R.S. § 16-672

16-672. Contest of state election; grounds; venue

A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other

question or proposal submitted to vote of the people, upon any of the following grounds:

1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.

2. That the person whose right to the office is contested was not at the time of the election eligible to the office.

3. That the person whose right is contested, or any person acting for him, has given to an elector, inspector, judge or clerk of election, a bribe or reward, or has offered such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise.

4. On account of illegal votes.

5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

B. The contest may be brought in the superior court of the county in which the person contesting resides or in the superior court of Maricopa county.

C. In a contest of the election of a person declared elected to a state office or of an initiated or referred measure, constitutional amendment, or other question or proposal, which has been declared carried, the attorney general may intervene, and upon demand, the place of trial of the contest shall be changed to Maricopa county, if commenced in another county.