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0	IN THE SUPERIOR COURT (	OF
8	IN AND FOR THE CO	UI
9	STRONG COMMUNITIES	1
10	FOUNDATION OF ARIZONA	
10	INCORPORATED, and ERIC LOVELIS;	]
11	Plaintiffs,	1
12	v.	
13	MARICOPA COUNTY; BILL GATES,	
14	STEVE GALLARDO, THOMAS	
15	GALVIN, CLINT HICKMAN, and JACK SELLERS, in their respective	
16	official capacities as members of the	
	Maricopa County Board of Supervisors;	
17	and STEPHEN RICHER, in his official	
18	capacity as Maricopa County Recorder;	
19	Defendants.	
20	Defendants.	1
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#### JENNIFER WRIGHT ESQ., PLC

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NTY OF MARICOPA

Case No. CV 2024-002441

THE STATE OF ARIZONA

PLAINTIFFS' COMPLAINT FOR SPECIAL ACTION RELIEF





The Plaintiffs hereby allege and state as follows:

#### INTRODUCTION

- 1. Majorities of Arizona voters—55 percent—"believe it is likely that problems with the 2022 election in Maricopa County affected the outcome." With public confidence in elections being so low, the need for our elections to be scrupulously administered in accordance with the law has never been higher.
- 2. Election day on November 8, 2022 (the 2022 general election) was marred by "widespread failures" and "technical problems" that led to "the anger and frustration of voters who were subjected to inconvenience and confusion at voter centers." *Lake v. Hobbs*, CV 2022-095403 at 3-4, (Ariz. Super. Ct. Dec. 24, 2022) (Under Advisement Ruling).
- 3. Election day on November 3, 2020 (the 2020 general election) was similarly marred.
- 4. For years, the Defendants have consistently failed in their duties to administer elections lawfully and fairly in Maricopa County.
- 5. The Defendants are fully aware of the myriad deficiencies in how they administer elections, yet they have consistently failed to take effective action to rectify them. Instead, they have stubbornly dug their heels in. Rather than fix their past mistakes, they try to fight, silence, or shame anyone questioning their maladministration.
- 6. Because of their intransigence, there is a near-certainty that the November 5, 2024, election (the 2024 general election) will be marred by the same mistakes and maladministration as the 2020 and 2022 elections.
- 7. On January 29, 2023, the American Law Institute issued a report by a bipartisan group of elections officials entitled *Ethical Standards for Election*

<sup>&</sup>lt;sup>1</sup> Most Arizona Voters Believe Election 'Irregularities' Affected Outcome, Rasmussen Reports, (Mar. 17, 2023), https://tinyurl.com/45j5pcnt.

Administration. The report listed "seven core principles for adoption by the profession." The first of those principles is to "[a]dhere to the law" because "[e]lection officials have a duty to administer the law as written and interpreted by the relevant authorities." Defendant Bill Gates was one of the report's nine-member drafting committee.<sup>2</sup> This lawsuit merely seeks to hold him—and the other Defendants—accountable for complying with this basic principle that Chairman Gates has advocated in rhetoric, if not in practice.

- 8. The Defendants' administration of elections in Maricopa County has been sloppy, shoddy, and rife with mistakes. Their mismanagement has made Maricopa County—and the entire State of Arizona—the laughingstock of the nation. The Defendants' mistakes and unlawful conduct are so numerous that it is beyond the scope of one single lawsuit to correct. This complaint merely identifies the most egregious of the legions of errors and illegalities and seeks judicial remedy to correct them.
  - 9. It is time to restore the public's confidence in Maricopa County's elections.

#### **PARTIES**

10. Plaintiff Strong Communities Foundation of Arizona Incorporated is an Arizona 501c3 nonprofit that was incorporated on September 16, 2018. It is an Arizona-based and Arizona-focused grassroots organization headquartered in Maricopa County. Its mission is to make civic participation easy and accessible for all Americans. It trains Arizonans about becoming more civically involved and offers community neighborhood events to engage neighbors who want to stay informed but are generally not civically engaged. An essential part of its mission to increase civic engagement is ensuring that Arizona's elections are free, fair, and lawfully administered. Together with its associated 501c4 organization, it has 59,000 subscribers to its mailing list, it has received donations from 4,305 people, and conducts 90 or more public events per year. It conducts significant

<sup>&</sup>lt;sup>2</sup> American Law Institute, *Ethical Standards for Election Administration* at 3-4, (Jan. 29, 2024),

subscribers, and followers view it as the public voice for their concerns.

11. Plaintiff Eric Lovelis is a resident of Maricopa County, where he is

voter outreach and education and reached over 150,000 voters in 2022. Its donors,

- registered to vote. He is an enrolled member of the Choctaw Nation of Oklahoma.

  12. Defendant Maricopa County is a political subdivision of the State of Arizona.
- It has the power under state law to "[s]ue and be sued." A.R.S. § 11-201(A)(1). Through its Board of Supervisors and the County Recorder, it administers and conducts elections in the County. *E.g.* A.R.S. §§ 11-251(3), 16-447(A), -511, -531, -542, -543, -544, -550, -602, -621, -642, -645.
- 13. Defendant Bill Gates is a member of the Maricopa County Board of Supervisors and is also the Chairman of the Board. Defendants Steve Gallardo, Thomas Galvin, Clint Hickman, and Jack Sellers are members of the Maricopa County Board of Supervisors. All five members of the Board are sued in their official capacities. The Board of Supervisors is charged by law with conducting elections within the county's jurisdictional boundaries, including overseeing the operations of polling locations on election day and canvassing the returns of elections in Maricopa County. *E.g.* A.R.S. §§ 11-251(3), 16-447(A), -511, -531, -642, -645.
- 14. Defendant Stephen Richer is the Maricopa County Recorder. He is sued in his official capacity. The County Recorder is the principal elections officer of Maricopa County and is responsible for overseeing and directing numerous components of election administration within the county, including early voting procedures and the tabulation and auditing of votes. *E.g.*, A.R.S. §§ 16-542, -543, -544, -550, -602, -621.

#### **JURISDICTION**

15. The events and omissions giving rise to this action occurred in Maricopa County, Arizona.

- 16. This Court has subject matter jurisdiction over the Plaintiff's claims under Article 6, sections 14 and 18 of the Arizona Constitution. The Court further has subject matter jurisdiction and the authority to grant relief under A.R.S. §§ 12-123(B), -1801, -1803, -1831, -2021, and Ariz. R. Special Actions ("RPSA") Rules 3 and 4.
- 17. Venue lies in Maricopa County pursuant to RPSA 4(b) and pursuant to A.R.S. § 12-401. However, because one of the Defendants in this action is Maricopa County, the Plaintiffs are "entitled to a change of venue to some other county" as of right. A.R.S. § 12-408.

#### **GENERAL ALLEGATIONS**

18. The 2020 general election was a debacle. However, rather than learning from their mistakes to improve the administration of the 2022 election, the Defendants doubled down on their errors and illegalities, specifically failing to address the following issues.

#### **Chain of Custody Failures**

- 19. Arizona law requires that "[t]he county recorder or other officer in charge of elections shall maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation." A.R.S. § 16-621(E).
- 20. The Elections Procedures Manual (EPM) further requires that the number of ballots be counted and recorded on specified forms.
- 21. The Election Assistance Commission (EAC) is an independent federal agency established by the Help America Vote Act (HAVA), PL 107–252, 116 Stat 1666 (Oct. 29, 2002). Part of the EAC's mission is to establish "voluntary voting system guidelines ... including ... methods to detect and prevent fraud." 52 U.S.C.A. § 20961(e)(e).
- 22. Arizona's elections statutes have incorporated HAVA's requirements into State law. A.R.S. § 16-442 ("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.")

- 23. The EAC explains that "[c]hain of Custody refers to the processes, or paper trail, that documents the transfer of materials from one person (or place) to the next."
- 24. "Chain of custody is essential to a transparent and trustworthy election.... The chain of custody of ballots, voting equipment, and associated data is essential to ensure the election system remains trustworthy."<sup>4</sup>
- 25. "The chain of custody of ballots, voting equipment, and associated data is essential to ensure the election system remains trustworthy.... Once a chain of custody process is initiated, it must be followed with every step documented."<sup>5</sup>
- 26. "Mailed ballot accounting is an important element of a well-run election. Reconciling the number of ballots mailed with the number of requests received and keeping a daily accounting of the number of ballots received in person, from a drop box or in the mail, provides a record of the number of ballots in the possession of an election official at a given point in time."
  - 27. The EAC has clearly explained that:

It is a best practice to have a log with space for multiple entries to record when seals are broken and replaced on sealed storage containers of mail ballots, with the date, time, detailed reason why it was accessed and signed by no less than two people to provide evidence each time mail ballot containers are accessed. The chain of custody documents for mailed ballots should include at least the following:

• The name and date of the election

<sup>&</sup>lt;sup>3</sup> EAC, Best Practices: Chain of Custody at 2, (Jul. 13, 2021), http://tinyurl.com/57wax8nx.

<sup>&</sup>lt;sup>4</sup> *Id*.

<sup>&</sup>lt;sup>5</sup> *Id*.

<sup>&</sup>lt;sup>6</sup> *Id*.at 11.

- Who was involved in the decision or completed a process
- Documentation of the number of ballots collected, delivered, or counted
- The date and time a process occurred
- Name and signatures of witnesses who are attesting to the event<sup>7</sup>
- 28. During the 2022 general election, the Defendants failed to keep proper chain of custody records for ballots as required by Arizona law.
- 29. Rather than counting the exact number of early ballots received on election day as they were received and/or transported, the Defendants relied on estimates.
- 30. For example, the Defendants transported early ballots received on election day to the Maricopa County Tabulation and Election Center (MCTEC), loaded them onto trays, and then, rather than count them, the Defendants estimated the number of ballots based on the number of trays.
- 31. From MCTEC, the Defendants transported the ballots to Runbeck Election Services ("Runbeck"), where they were then counted and scanned for signature verification.
- 32. In the gubernatorial race in 2022, the "estimate" of ballots at MCTEC was 263,379 ballots, but Runbeck later reported that it scanned 298,942 early ballots for signature verification, leading to a discrepancy of over 25,000 votes, which was higher than the margin of victory.
- 33. The very existence of this 25,000-ballot discrepancy between the initial estimates and the final ballot totals proves that the Defendants' current practice of estimating ballot totals is unlawful. As the EAC has explained, the whole point of the chain of custody requirement is to ensure "a transparent and trustworthy election." The plain language of A.R.S. § 16-621(E) makes it abundantly clear that the legislature imposed the

<sup>&</sup>lt;sup>7</sup> *Id.* (emphasis added)

<sup>&</sup>lt;sup>8</sup> *Id*.

chain of custody requirement to do just that: to increase the transparency and trustworthiness of our elections. A 25,000-ballot discrepancy does the exact *opposite*. It decreases transparency and decreases public confidence in elections.

#### **Reconciliation Failures**

- 34. Arizona law requires that "[a]fter the close of the polls and after compliance with § 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." A.R.S. § 16-608(A).
- 35. Section 16-602 provides, "For any primary, special or general election in which the votes are cast on an electronic voting machine or tabulator, the election judge shall compare the number of votes cast as indicated on the machine or tabulator with the number of votes cast as indicated on the poll list and the number of provisional ballots cast and that information shall be noted in a written report prepared and submitted to the officer in charge of elections along with other tally reports." A.R.S. § 16-602(A).
- 36. The procedures outline in A.R.S. § 16-602(A) and -608(A) are colloquially known as "reconciliation procedures."
- 37. According to the EAC, "[b]allot reconciliation is the method in which election officials keep track of each ballot that has been printed or issued to a voter. Tracking the number of ballots printed, used, and unused during an election cycle ensures that election officials have accounted for every ballot created. When results are certified, election officials can be confident that the results include every valid ballot cast."

<sup>&</sup>lt;sup>9</sup> EAC, *Ballot Reconciliation: Election Day* at 1, (Nov. 30, 2021), http://tinyurl.com/eb9k4fu4 (emphasis added).

- 38. The importance of reconciliation procedures for avoiding tabulation errors and for deterring election fraud is obvious. If the numbers of ballots cast and voters checked in are not tracked and reconciled, it is easy for mistakes to happen or for fraud to be perpetrated.
- 39. Astoundingly, notwithstanding the Defendants' legal obligations to follow the State's mandated reconciliation procedures, and notwithstanding the importance of those procedures for avoiding mistake and fraud, the Defendants do not perform any reconciliation procedures *at all*.

#### **Failure of Voting Center Printers**

- 40. Precinct voting is the historical norm in Arizona and is still the model used by almost all counties. In 2011, the legislature amended A.R.S. § 16-411 to authorize counties to abandon precinct voting in favor of countywide voting centers, but it required that each "voting center shall allow *any* voter in that county to receive the *appropriate* ballot for that voter on election day after presenting identification as prescribed in § 16-579 and to lawfully cast the ballot." A.R.S § 16-411(B)(4) (emphasis added).
- 41. Maricopa County has transitioned to the sole use of voting centers for election-day voting but has failed to comply with the conditions for their use that are established in A.R.S § 16-411(B)(4).
- 42. During the general election of 2022, a majority of voting centers in Maricopa County suffered from "issues" with their "ballot-on-demand printers.... result[ing] from mechanical malfunctions." *Lake v. Hobbs*, 254 Ariz. 570, 575 ¶ 14 (App. 2023), *vacated in part on other grounds*, No. CV-23-0046-PR, 2023 WL 7289352 (Ariz. Mar. 22, 2023).
- 43. Among other things, these printer malfunctions included printing 19-inch ballot images on 20-inch paper, making them unreadable to tabulator machines. Additionally, printers were incorrectly set to print ballots using an ink-saving "eco"

function that led to speckled or faded printing that also made ballots unreadable by tabulator machines.

- 44. These printer malfunctions led to the "frustration and anger of voters who had to wait in longer lines due to these failures." *Lake*, CV 2022-095403, Under Advisement Ruling at 4.
- 45. Because of these failures, some voters could not vote and were disenfranchised.
- 46. Because of these failures, some voters did not receive an "appropriate" ballot that could be read by tabulator machines.
- 47. Maricopa County's use of voting centers serves little rational purpose and confers virtually no benefit because nearly all voters still vote at the voting center closest to their residence, similar to how they used to vote under precinct voting.

#### **Racially Discriminatory Location of Voting Centers**

- 48. Voters in Maricopa County who reside in dense urban areas are more likely to vote early by mail than in person on election day. However, the Defendants have concentrated voting centers disproportionately in urban areas where they are less likely to be used.
- 49. The vast majority of 2020 and 2022 election-day voters whose residence was located more than two miles from a voting center ("Long Distance Voters") lived in census blocks that were majority White or Native American.
- 50. The Defendants' choice of location for voting centers has a discriminatory effect and/or disparate impact on White and Native American voters that makes it harder for them to vote.
- 51. The unequal distribution of Defendants' site locations for voting centers is not a result of a lack of facilities. In the areas in which Long Distance Voters are concentrated, there are a number of available facilities whose owners or managers are

willing to allow for their use as voting centers. These facilities include public buildings, schools, community centers, and churches.

52. In sum, the location of voting centers in Maricopa County unlawfully makes it easier for Hispanics and Blacks to vote and more difficult for Whites and Native Americans.

#### Unlawful Use of Software for Signature Verification

- 53. Arizona law requires that "the *county recorder or other officer* in charge of elections shall compare the signatures [on early ballots] with the signature of the elector on the elector's registration record." A.R.S. § 16-550(A) (emphasis added).
- 54. In other words, human beings—and only human beings—may perform signature verification. The statute does not allow signature verification to be performed with the input or advice of software, which may bias the signature verifier's judgment.
- 55. On or around June 1, 2020, the Defendants contracted with Runbeck to use Runbeck's Verus Pro "Automated Signature Verification" software application for up to four (4) million signatures per year.
- 56. In an internal email dated March 3, 2020 (and which was obtained through a public records request), Maricopa County Elections Director Ray Valenzuela referred to the use of Verus Pro software as "the AI signature process" and the "AI process."
- 57. The Verus Pro software assigns a confidence score to signatures between 0 and 100, with a higher number indicating a better match.
- 58. Upon information and belief, a Score of "0" in Verus Pro means that nothing about the signatures has been detected as a match. A score of "100" means that the signatures are identical.
- 59. In the 2020 election, the Defendants used Verus Pro to compare signatures from ballot envelopes with the voter's registration file, and the county configured the software to mark any signature with a score of 10 or higher as a match.

- 60. Upon information and belief, the Defendants used the confidence scores from Verus Pro to segregate ballot envelope signatures into separate low- and high-confidence batches, and then signature verifiers were told whether they were reviewing a high- or low-confidence batch.
- 61. Upon information and belief, providing this information to signature verifiers biased their evaluations and gave them a false sense of certainty, causing them to rely on the judgment of the software rather than on their own.
- 62. The Defendants' use of software to bias the judgment of signature verifiers is particularly pernicious because they set the threshold for a "high confidence" match so abysmally low.
- 63. Signature matching software is not sophisticated enough yet to perform reliable signature matching, and banks universally do *not* use software to match signatures on important documents such as checks, deeds, and contracts.
- 64. Ballots are at least as important as checks, deeds, and contacts. Therefore, it is unreasonable for the Defendants to use signature comparison software judged in the private sector to be unreliable.
- 65. Maricopa County did not establish any written policies about how the Verus Pro software was to be used, but internal emails from the 2020 election make it clear that Maricopa County and Runbeck employees viewed this new process as at least a partial substitute for manual signature verification.
- 66. It appears Maricopa County began testing the new system during the 2020 primary election. During that time, one Maricopa County employee explained the following in an email that was obtained through a public records request: "We provided 10001 tif, Runbeck created10001\_Document\_Alpha tif and that is what they use to do the actual signature verification." The Director of Elections commented that "[a]s for the Primary, we still have to look at 100% of the signatures so not a major issue," implying

that Maricopa County would not have to look at 100% of signatures once the process was implemented for the general election.

- 67. The Defendants had many problems getting Verus Pro to work.
- 68. At one point when the system failed, a Runbeck employee wrote in an email dated July 27, 2020, that "I've stopped Verus Pro from automatically verifying new signatures, and am researching the cause of the failure now[.]" And the same Runbeck employee later informed Maricopa County that, "The incoming signatures from this morning are finished verifying[.]"
- 69. On October 9, 2020, Maricopa County elections director Ray Valenzuela complained about the difficulties of the software by writing in an email: "Excuse my French but this shit show needs to be improved on post haste from [Runbeck] side."
- 70. Notwithstanding these problems, the Defendants used Verus Pro in the signature verification process for the 2020 general election.
- 71. County Recorder Stephen Richer has publicly claimed that the County did not use Verus Pro during the 2022 elections. However, the Defendants renewed their contract with Runbeck to retain continued access to the software during the 2024 elections. The Defendants, therefore, still retain the technical capability to use software to do signature comparisons and verification, and no written policy, rule, or procedure would prevent it.
- 72. The Defendants' renewal of their Verus Pro contract for 2024 indicates that they intend to use it during the 2024 general election.

#### **Unauthorized Cancellations of Voter Registration**

73. Starting in 2020, the Defendants have been wrongly canceling the voter registrations of hundreds, and possibly thousands, of Maricopa County residents, whose registrations have been erroneously switched to other counties in the State. This has been happening without those voters' knowledge or consent, even though these voters had not

actually moved out of Maricopa County and are still qualified electors for Maricopa County.

- 74. The Defendants automatically canceled these voter registrations without voter consent or input, based solely on the Defendants' inference derived from information generated from the third-party Arizona Department of Transportation Service Arizona system
- 75. Even worse, the Defendants never bothered to notify these voters about the cancellation of their registrations, thus making it impossible for the canceled voters to rectify the mistake.
- 76. Upon information and belief, the Defendants were aware *before* the 2022 general election that these voter registration procedures were causing some voters to be systematically disenfranchised.
- 77. On election day for the 2022 general election, hundreds, and possibly thousands, of voters appeared at voting centers in Maricopa County to vote and were told that they were no longer registered to vote in Maricopa County, even though they had not moved away, had not knowingly requested that their registration be canceled or transferred, had not consented to the cancellation of their registration, and had never been informed of the cancellation of their registration.
- 78. These voters were forced to cast provisional ballots, which the Defendants never counted.
  - 79. The Defendants' actions unlawfully disenfranchised these voters.
- 80. The number of voters disenfranchised during the 2022 general election by the Defendants' unlawful cancellations was larger than the margin of victory in some races. If these voters' provisional ballots had been counted, it would likely have changed the results of some races.

81. Regardless of whether the Defendants knew of this systemic disenfranchisement of voters before the 2022 general election, they are now fully aware of this problem yet have taken no action to remedy it.

#### **Unlawful Curing Procedures**

- 82. If a signature on an early ballot appears inconsistent with the voter's signature on file, Arizona law requires the Defendants to "make reasonable efforts to contact the voter" and allow the voter to cure the error. A.R.S.. § 16-550(A)
- 83. Ballot envelopes have a space for voters to fill in their phone number "[i]f signature is questioned."
- 84. The Defendants' current curing procedure is to call the phone number on the envelope without verifying if that number matches the voter's registration file.
- 85. When someone answers the call, no attempt is made to authenticate the voter's identity beyond asking for verbal confirmation.
- 86. If the Defendants are able to contact someone who claims to be the voter, the person is asked if his or her signature is correct. However, the Defendants merely ask for verbal confirmation over the phone without actually showing the alleged signature to the purported voter.

#### **Unstaffed Drop Boxes**

- 87. Maricopa County maintains unstaffed ballot boxes where anyone may deposit early ballot envelopes.
- 88. It is a class 6 felony to "knowingly collect[] voted or unvoted early ballots from another person," unless the other person is a "family member, household member or caregiver of the voter." A.R.S. § 16-1005(H)-(I). Unlawfully collecting early ballots in this manner is colloquially known as "ballot harvesting."
- 89. It is a class 5 felony to establish a "a ballot drop off site" unless it is "staffed by election officials." A.R.S. § 16-1005.

- 99. The EPM further requires that the ballots be counted and recorded on specified forms.
- 100. Rather than counting the number of ballots at each stage where the chain of custody records are required, Maricopa County relies on estimates.
- 101. During the 2022 general election, Maricopa County's chain of custody failures resulted in a discrepancy of over 25,000 votes, which was larger than the margin of victory in many 2022 statewide races, including the governor's race.
  - 102. Estimating is not the same as counting.
- 103. Relying on estimates of ballot numbers violates the statutory requirement to maintain chain of custody.
- 104. Any chain of custody procedure that results in a discrepancy of 25,000 ballots violates the plain language of A.R.S. § 16-621(E), which requires the Defendants to "maintain records that record the chain of custody for *all* election ... ballots during early voting through the completion of provisional voting tabulation." (emphasis added). A chain of custody procedure that fails to account for 25,000 ballots has not recorded the chain of custody for "*all*" ballots.
- 105. Maricopa County unlawfully failed to maintain proper chain of custody, as required by Arizona statutes, the EPM, and EAC guidelines.
- 106. Maricopa County has taken no action to rectify its prior unlawful conduct. It has not corrected its unlawful chain of custody practices and procedures.
- 107. The Defendants' unlawful chain of custody procedures will continue to be applied during the 2024 general election absent judicial intervention.

# COUNT II Reconciliation Procedures A.R.S. § A.R.S. § 16-602(A) and -608(A)

108. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.

- 109. Arizona law requires that the Defendants follow the reconciliation procedures outlined in A.R.S. § 16-602(A) and -608(A).
- 110. The Defendants' failure to follow reconciliation procedures is not only unlawful, but unwise, as it increases the probability of tabulation errors and voter fraud.
- 111. The Defendants have failed to rectify their failures to follow reconciliation procedures.
- 112. The Defendants' unlawful failure to follow reconciliation procedures will continue during the 2024 general election absent judicial intervention.

#### **COUNT III**

### Voting Center Printer Failures—Failure to Allow "Any" Voter to Cast a Ballot A.R.S § 16-411(B)(4)

- 113. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.
- 114. The Defendants have transitioned to the sole use of voting centers for election-day voting but have failed to comply with the conditions for their use that are established in A.R.S § 16-411(B)(4): that "any" voter be "allow[ed]" "to receive the appropriate ballot,"
- 115. Specifically, the 2022 general election printer failures in Maricopa County led to long lines such that many voters were unable to vote, thus violating the statute's requirement that "any" voter should be allowed to vote at a voting center.
- 116. The Defendants have failed to take adequate measures to avoid the same problem happening again. These same problems are thus likely to recur in the 2024 General Election.

#### **COUNT IV**

## Voting Center Printer Failures—Failure to Provide an "Appropriate Ballot" A.R.S § 16-411(B)(4)

117. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.

1	118. Voters at voting centers must receive an "appropriate ballot." A.R.S § 16-
2	411(B)(4).
3	119. The 2022 general election printer failures in Maricopa led to the widespread
4	misprinting of ballots that were unreadable by tabulators.
5	120. A misprinted and/or mis-sized ballot that cannot be read by tabulators is not
6	an "appropriate ballot" as required by law.
7	121. The Defendants have failed to take adequate measures to avoid the same
8	problem happening again. These same problems are thus likely to recur in the 2024 General
9	Election.
10	COUNT V
11	Racially Discriminatory Location of Voting Centers Ariz. Const. art. II, § 21
12	122. The Plaintiffs incorporate by reference the preceding allegations as if fully
13	set forth herein.
14	123. The Constitution of Arizona requires that "[a]ll elections shall be free and
15	equal." Ariz. Const. art. II, § 21.
16	124. Voting centers in Maricopa County are distributed in a racially
17	discriminatory way, such that Long Distance Voters are disproportionately White and
18	Native American.
19	125. Maricopa County's racially discriminatory distribution of voting centers
20	violates the Arizona Constitution's "free and equal" requirement.
21	126. The Defendants have failed to correct the racially discriminatory distribution
22	of their voting centers.
23	127. The same racial discrimination will continue in the 2024 general election
24	absent judicial intervention.
25	
26	

#### **COUNT VI**

### Racially Discriminatory Location of Voting Centers Ariz. Const. art. XX, Par. 7.; A.R.S § 16-411(B)(4)

- 128. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.
- 129. The Constitution of Arizona requires that "[t]he state shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude." Ariz. Const. art. XX, Par. 7.
- 130. As applied by Maricopa County, A.R.S § 16-411(B)(4) is unconstitutional because it has restricted or abridged the right of suffrage of White and Native American voters.
- 131. The Defendants have failed to correct the racially discriminatory distribution of its voting centers.
- 132. The same racial discrimination will continue in the 2024 general election absent judicial intervention.

## COUNT VII Unlawful Use of Software in Signature Verification A.R.S. § 16-550(A)

- 133. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.
- 134. Arizona law requires that "on receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record." A.R.S. § 16-550(A).
- 135. Using software to sort signatures into low- and high-confidence batches unlawfully biases the judgment of the persons performing signature review.
- 136. Furthermore, providing other information from Verus Pro to signature reviewers, such as the confidence score, also biases the human judgment of the reviewers.

- 137. Any use of signature verification software necessarily biases and alters the human judgment of signature reviewers.
- 138. And even if Verus Pro did not bias signature verifiers, its use is still unlawful because A.R.S. § 16-550(A) only allows the judgment and discernment of human beings to be involved in the signature verification process.
- 139. The Defendants' use of Verus Pro for any purpose violates A.R.S. § 16-550(A).
- 140. The Defendants have renewed their contract for the use of Verus Pro during the 2024 general election and have therefore demonstrated their intent to use the software for the 2024 general election.
- 141. Absent judicial intervention, the Defendants' unlawful use of Verus Pro in the signature verification process will continue in the 2024 general election.

## COUNT VIII Unlawful Cancellation of Voter Registrations A.R.S. § § 16-112, 16-121, and 16-165

- 142. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.
- 143. The Defendants have been automatically canceling the valid voter registrations of county residents without those voters' knowledge or consent.
- 144. Under § 16-165(L), "[a]fter canceling a [voter] registration ... the county recorder *shall* send a notice by forwardable mail informing the person that the person's registration has been canceled, the reason for cancellation, the qualifications of electors pursuant to § 16-101 and instructions on registering to vote if the person is qualified." (emphasis added).
- 145. The Defendants' policy of automatically canceling voter registrations without sending notice to those voters violates Arizona law.

- 146. "A person continues to be a qualified elector until that person's registration is canceled pursuant to § 16-165...." A.R.S. § 16-121(A).
- 147. A cancelation of voter registration is only complete after the Defendants have complied with *all* of the requirements of A.R.S. § 16-165. For any voter to whom the Defendants have not mailed a cancellation notice, the cancellation is incomplete, and that voter is still a "qualified elector" in Maricopa County.
- 148. Furthermore, "the requirements of the national voter registration act of 1993" are binding under Arizona law for voter registration actions taken in connection with a citizen's driver license registration. A.R.S. § 16-112(B)(4).
- 149. The National Voter Registration Act (NVRA) requires that a "state shall not remove the name of a registrant from the official list of eligible voters...on the ground that the registrant has changed residence unless the registrant...confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction" or "failed to respond" to requisite notice. 52 U.S. Code § 20507(d)(1)(A), (B) (emphasis added).
- 150. The Defendants have failed to comply with the NVRA's requirements to obtain confirmation in writing before canceling voters' registrations.
- 151. The Defendants know that their policies disenfranchise voters, but they have not taken any steps to correct these problems.
- 152. Without judicial intervention, the same problem will persist and disenfranchise voters during the 2024 general election.

#### COUNT IX Unlawful Curing Procedures A.R.S. § 16-550(A)

153. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.

- 154. When the signature on an early ballot envelope "is inconsistent with the elector's signature on the elector's registration record," then the Defendants "shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature." A.R.S. § 16-550(A).
- 155. The Defendants' curing practice of only calling the phone number that the purported voter has written onto the early ballot envelope does not constitute a "reasonable effort[]" to contact the voter. This is because an apparent signature inconsistency suggests possible fraud or mistake, and someone casting a fraudulent ballot is unlikely to write down the voter's correct phone number.
- 156. A "reasonable effort[]" to contact a voter in this context thus requires that the Defendants use the phone number listed in the voter's registration file or other authoritative government database.
- 157. The voter's signature on an early ballot envelope is the only method for authenticating a voter's identity. When there is an apparent signature inconsistency, a voter's identity is in doubt.
- 158. Thus, any "reasonable effort[]" to cure an apparent signature discrepancy requires that the Defendants also securely authenticate the purported voter's identity.
- 159. Arizona's election statute sets forth in A.R.S. § 16-579(A)(1) how a voter's identity is to be established when a voter casts a vote in person with specified types of photo ID and proof of address. When the identity of a person casting an early vote is in doubt because of an apparent signature inconsistency, any "reasonable effort[]" to confirm the voter's identity must, at a minimum, comply with the basic requirements of A.R.S. § 16-579(A)(1). Just as it would be unreasonable for a poll worker to authenticate an inperson voter's identity based only on the purported voter's verbal affirmation, it would be

unreasonable to do so in the context of ballot curing, where there is an apparent signature discrepancy casting doubt on the purported voter's identity.

- 160. Additionally, the Defendants' curing practice of asking only for verbal confirmation that an apparently inconsistent signature is accurate is not a "reasonable effort[]." It is impossible for a voter to confirm whether a signature belongs to him- or herself without seeing the signature. This is especially true in a curing context, where an apparent signature inconsistency suggests possible fraud or mistake. For example, a voter may have submitted his or her signed ballot envelope only for it to have been lost and/or substituted with a fraudulent ballot. Thus, any "reasonable effort[]" to cure an apparently inconsistent ballot signature requires that the Defendants actually *show* a copy of the signature to the voter to confirm that the signature really does belong to the voter.
- 161. The Defendants' unlawful curing procedures remain in place and will be applied during the 2024 general election absent judicial intervention.

#### COUNT X Unstaffed Drop Boxes A.R.S. § 16-1005(E)

- 162. The Plaintiffs incorporate by reference the preceding allegations as if fully set forth herein.
- 163. Only drop boxes staffed by elections officials are lawful, and maintaining an unstaffed ballot drop box is a class 5 felony. A.R.S. § 16-1005(E).
- 164. Among other things, the requirement that ballot drop boxes be staffed is to deter unlawful ballot harvesting.
- 165. Based on a plain reading of the statute and the legislature's clear intent, a drop box only qualifies as being "staffed" if at least two election officials are present at the box and positioned close enough to be able to view each person who deposits ballots into the box such that the election officials can observe conduct that might be unlawful ballot harvesting.

- 166. A ballot drop box at which no elections officials are present is not "staffed" under the meaning of A.R.S. § 16-1005(E).
  - 167. Any ballot drop box that is not staffed is unlawful.
- 168. Maricopa County maintains unstaffed, unlawful ballot boxes and will continue to do so during the 2024 general election absent judicial intervention.

#### PRAYER FOR RELIEF

- Based on the preceding, the Plaintiffs respectfully request that this Court issue:
- A. An injunction and/or a writ of mandamus with the following provisions:
  - A requirement that the Defendants properly and accurately document chain of custody;
  - 2. A prohibition on the Defendants using estimates in their chain of custody procedures;
  - 3. A requirement that the Defendants keep exact counts of ballots at all phases of the election, including whenever ballots are stored or transported;
  - 4. A requirement that the Defendants daily produce, no later than 10:00 pm, to the Court and the Plaintiffs copies of all chain of custody forms for each day of early voting, for election day, and for the days after election day until all ballots have been counted and the election results have been certified;
  - 5. An order stating that if the Defendants fail to follow proper chain of custody procedures, or if there are discrepancies between the ballot numbers recorded on the chain of custody forms and the final number of tabulated ballots that is larger the margin of victory in any electoral contest or that is otherwise sufficient to cast the outcome of the election into doubt, that this Court will issue an order either invalidating the 2024 general election results from Maricopa County or requiring that the election in Maricopa County be repeated

with voting to take place in-person over the course of only one day, if it would be possible to do so given the schedule requirements for election certification.

- B. A declaratory judgment that only human beings may make the signature comparison required by A.R.S. § 16-550(A).
- C. An injunction and/or a writ of mandamus prohibiting the Defendants from using Verus Pro or any other software tools to compare or verify signatures or to sort signatures into batches based on the software's confidence scores of the signatures and prohibiting any other use of software tools to provide any indication to a signature verifier about whether a signature is a match or about the closeness of a match between signatures.
- D. A declaratory judgment stating that the Defendants' use of printers during their conduct of the 2022 General Election violated A.R.S § 16-411(B)(4)'s requirements that, at voting centers, "any voter" shall "receive the appropriate ballot."
- E. An injunction and/or a writ of mandamus ordering that, in light of the Defendants' egregious violations of A.R.S § 16-411(B)(4), the Defendants must revert to precinct voting countywide, either at individual precinct locations or by assigning the residents of each precinct to vote at one specific voting center at which the Defendants will provide pre-printed ballots for that precinct.
- F. An injunction and/or a writ of mandamus ordering that the Defendants reallocate the distribution of voting centers using demographic data from the 2020 and 2022 general elections to racially balance the number of election-day Long Distance Voters.
- G. An injunction and/or a writ of mandamus forbidding the Defendants from canceling a voter's registration pursuant to any in-state change of address information received from the Arizona Department of Transportation, the U.S. Postal Service, or any other source until the Defendants have received signed, written confirmation from the voter that the change of address is correct.

- I. An injunction and/or a writ of mandamus ordering the Defendants to count any provisional ballot in the 2024 general election cast by any voter who claims that his or her Maricopa County voter registration was canceled without consent if that voter can prove that he or she had previously been registered to vote in the county and has continued to reside in Maricopa County.
- J. A declaratory judgment stating that it is unlawful for the Defendants to attempt to cure apparently inconsistent signatures by calling the phone number that has been written on a ballot envelope without first independently verifying that the phone number belongs to the voter by consulting the information in the voter's registration file or other authoritative government databases.
- K. A declaratory judgment stating that it is unlawful for the Defendants to attempt to cure apparently inconsistent signatures without first verifying and authenticating a voter's identity by applying the standards in A.R.S. § 16-579(A)(1).
- L. A declaratory judgment stating that it is unlawful for the Defendants to attempt to cure apparently inconsistent signatures without first showing the purported signature (or a photographic reproduction) to the voter.
- M. An injunction and/or a writ of mandamus ordering the Defendants to only attempt to contact voters to cure apparently inconsistent ballot signatures by calling a phone number listed in the voter's registration file or other authoritative government database.
- N. An injunction and/or a writ of mandamus ordering the Defendants only to accept a voter's confirmation that a ballot envelope signature is authentic after the Defendants

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- have confirmed the voter's identity by applying the standards in A.R.S. § 16-579(A)(1) and have shown to the voter the actual signature, or an authentic photographic reproduction thereof.
- O. A declaratory judgment that a drop box only qualifies as being "staffed" within the meaning of A.R.S. § 16-1005(E) if at least two election officials are present at the box and positioned close enough to be able to view each person who deposits ballots into the box such that the election officials can observe conduct that might be unlawful ballot harvesting.
- P. An injunction and/or a writ of mandamus prohibiting the Defendants from providing ballot drop boxes that are not staffed all the time that the box is available for the deposit of ballots.
- O. An injunction and/or a writ of mandamus stating that the Defendants may not collect, count, or open any ballots deposited into a drop box that is not staffed.
- R. An order retaining jurisdiction over this case through the completion and certification of the 2024 general election to ensure that this Court's orders are followed and/or appointing a special master to monitor the election.
- S. An order stating that, if on election day there is credible evidence of any failures or irregularities in the administration of the election, that this Court and/or a special master will take appropriate action, such as by ordering voting centers and/or precincts to remain open later than their scheduled closing time, invalidating election results, ordering a new election, or any other appropriate orders to correct the Defendants' failures in administering the election.
- T. An award of reasonable attorneys' fees and costs under A.R.S. §§ 12-341, -348, -2030, the private attorney general doctrine, and other applicable law.
- U. For such other relief as the Court deems just and proper

1	RESPECTFULLY SUBMITTED this 6th of February, 2024.
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