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11 *Attorneys for Plaintiffs*
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13 IN THE UNITED STATES DISTRICT COURT

14 FOR THE DISTRICT OF ARIZONA

15 Tyler Bowyer, Michael John Burke, Nancy
16 Cottle, Jake Hoffman, Anthony Kern,
17 Christopher M. King, James R. Lamon, Sam
Moorhead, Robert Montgomery, Loraine
18 Pellegrino, Greg Safsten, Salvatore Luke
Scarmardo, Kelli Ward and Michael Ward;

19 Plaintiffs;

20 v.

21 Doug Ducey, in his official capacity as
22 Governor of the State of Arizona, and Katie
Hobbs, in her capacity as Secretary of State
of the State of Arizona;

23 Defendants;

24 Maricopa County Board of Supervisors;
25 and Adrian Fontes, in his official capacity
26 as Maricopa County Recorder;

27 Intervenors.

Case No.: 2:20-cv-02321-DJH

**OPPOSITION TO MARICOPA
COUNTY’S MOTION FOR
JUDICIAL NOTICE**

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

1 Plaintiffs, by and through undersigned counsel, hereby respond to Intervenor-
2 Defendant Maricopa County's ("Maricopa County") Motion for Judicial Notice.

3 In Maricopa County's Motion for Judicial Notice, it claims that *Aguilera v. Fontes*,
4 *CV2020-014562* was a challenge to the November 3, 2020 General Election results in
5 Maricopa County. However, undersigned counsel, Alexander Kolodin, was the lawyer for
6 [the different] Plaintiffs in that case and can aver that it was not an election challenge. This
7 is evidenced by the complaint in that matter, which explicitly stated, "Plaintiffs are not
8 alleging that the difficulties they experienced disproportionately impacted any given
9 candidate or party." See **Exhibit 1** at 2:17-18. Furthermore, Plaintiffs in *Aguilera v. Fontes*,
10 *CV2020-014562* did not seek decertification in that lawsuit. See *Id.* Finally, that action was
11 filed before the statutory challenge period. See A.R.S. § 16-673(A).

12 As Maricopa County was a Defendant in that matter, and was represented by the
13 same counsel, we are not sure how they made this error. However, we think it is important
14 to correct the record. The request for judicial notice should be denied as to Maricopa
15 County's characterizations. The Court may, of course, take judicial notice of the record
16 itself in those matters.

17 Respectfully submitted this 7th day of December, 2020

18
19 /s/Alexander Kolodin

20 Sidney Powell PC
21 Texas Bar No. 16209700

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22 2911 Turtle Creek Blvd, Suite 300
23 Dallas, Texas 75219

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24 *Application for admission pro hac vice
forthcoming

25 Of Counsel:
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1 *Application for admission pro hac vice Forthcoming

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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

Exhibit 1

CLERK OF THE
SUPERIOR COURT
RECEIVED CCC #3
NIGHT DEPOSITORY

2020 NOV 12 PM 7:21

2020 NOV 12

FILED
BY J. CARDENAS, DEP

PAID
\$333-P
R# 28018675

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17 *Attorneys for Plaintiffs*

18 **SUPERIOR COURT OF THE STATE OF ARIZONA**
19 **FOR THE COUNTY OF MARICOPA**

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

24 *Plaintiffs,*

25 v.

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

Defendants.

Case no.:

CV2020-014562

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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1 2.4. Does I-X are other individuals similarly impacted. When identified Plaintiffs will
2 seek leave to amend this Complaint to add their true names.

3 2.5. All “Arizona citizens and voters” have standing to challenge violations of election
4 law by public officials. *Ariz. Pub. Integrity All. v. Fontes*, No. CV-20-0253-AP/EL, 2020
5 Ariz. LEXIS 309, at *6-7 (Nov. 5, 2020).

6 2.6. Defendant Adrian Fontes is the Maricopa County Recorder. He is being sued in
7 his official capacity.

8 2.7. Defendants Clint Hickman, Jack Sellers, Steve Chucuri, Bill Gates, and Steve
9 Gallardo are the members of the Maricopa County Board of Supervisors. They are being
10 sued in their official capacity.

11 2.8. Maricopa County is a political subdivision of the State of Arizona.

12 2.9. All or substantially all of the acts and occurrences giving rise to this Complaint
13 occurred in Maricopa County, Arizona.

14 2.10. Pursuant to A.R.S. § 12-401(16) an action against public officers shall be brought
15 in the county in which the officer, or one of server officers holds office.

16 2.11. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the
17 Arizona Constitution, and A.R.S. §§ 12-1801, 12-1803, 12-1831, and 12-2021. Given the
18 looming canvassing, certification, and electoral college deadlines, Plaintiffs seek an order
19 to show cause.

20 2.12. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the
21 Arizona Constitution, and A.R.S. §§ 12-1801, 12-1803, 12-1831, and 12-2021.

22 **SECTION III**

23 **FACTS**

24 3.1. Plaintiffs incorporate by reference the preceding allegations.

25 *Applicable Deadlines*

26 3.2. The Secretary of State (in the presence of the Governor, Attorney General, and
27 Chief Justice) canvasses and certifies results for state and federal offices on the fourth
28 Monday following the election, which is November 30, 2020. A.R.S. 16-642; 648; 650.

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1 3.3. The Governor of Arizona has until December 8 to appoint a slate of presidential
2 electors to the Electoral College. 3 U.S.C. § 5. Thus, the state has until December 8 to
3 resolve controversies over the appointment of electors. *See also*
4 www.archives.gov/electoral-college/state-officials/so-key-dates.

5 3.4. On December 14, the electors cast their votes in the meeting of the Electoral
6 College. 3 U.S.C. § 7.

7 3.5. On January 6, Congress receives and counts the votes from the Electoral College.
8 3 U.S.C. § 15.

9 3.6. Plaintiff Aguilera seeks to have her claim for injunctive relief to allow her vote to
10 be cured adjudicated (with time for appeal) by November 30, 2020. Plaintiffs also seek to
11 have their claim for injunctive relief for public observation of the electronic-adjudication
12 process decided as expeditiously as possible in case there is any recount utilizing this
13 process.

14 3.7. Plaintiffs ideally seek to have their claims for declaratory relief adjudicated (with
15 time for appeal) by the time that Congress receives and counts the votes from the
16 electoral college to allow for the Court’s findings to be considered by Congress.
17 However, if this is not possible, there is still value in deciding these matters in advance of
18 the next election.

19 *How Voter Credits Were Awarded*

20 3.8. In Maricopa County, when election-day voters showed up to the polls, they were
21 checked in by poll-workers on tablet-style devices and their names were then logged into
22 the county’s electronic pollbook.

23 3.9. A ballot was then printed for the voter.

24 3.10. Voters then completed their ballots and inserted their ballots into tabulation
25 machines on site.

26 3.11. When voters follow the instructions of elections officials, those tabulation
27 machines are supposed to automatically scan and tabulate the ballots of election-day
28 voters with perfect accuracy.

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1 3.12. However, upon information and belief, in Maricopa County there is no
2 information on the ballots printed for election-day voters that indicate that specific ballot
3 was given to that specific voter. **Ex. A. [Declaration of former Maricopa County**
4 **Recorder Helen Purcell].**

5 3.13. Upon information and belief, any information that Maricopa County has regarding
6 whose election-day ballots were accurately cast who had their votes “counted” is based
7 solely on the county’s record identifying which voters appeared in-person to vote on
8 election day. **Ex. A.**

9 3.14. Therefore, upon information and belief, in Maricopa County, it would be
10 impossible after election day to ascertain with any certainty whether a particular election-
11 day voter’s ballot was counted much less whether all votes contained on any given ballot
12 were tabulated. **Ex. A.**

13 *Violation of Plaintiff Aguilera’s Right to Vote*

14 3.15. Plaintiff Laurie Aguilera voted in person in Maricopa County on election day,
15 November 3, 2020 alongside her husband Damian Aguilera.

16 3.16. Neither Plaintiff Aguilera nor her husband are on the early voting list or received
17 ballots by mail. **Ex. B. [Aguilera family ballot status information].**

18 3.17. When election-day voters like Plaintiff Aguilera showed up to the polls, they were
19 checked in by poll-workers on tablet-style devices and their names were then logged into
20 the county’s electronic pollbook.

21 3.18. Plaintiff Aguilera and her husband were checked-in to the polls by a poll-worker.

22 3.19. Plaintiff Aguilera completed her ballot according to the instructions provided by
23 Defendants.

24 3.20. Plaintiff Aguilera and her husband attempted to feed their ballots into the tabulator
25 as instructed.

26 3.21. Upon information and belief, when a ballot is successfully read and inserted into a
27 tabulator, the tabulator displays a confirmation that the ballot has been accepted on a
28 small digital readout.

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1 3.22. However, while the tabulator seemingly accepted her husband’s ballot without
2 issue, the tabulator failed to display any such confirmation or, upon information and
3 belief, to properly register Plaintiff Aguilera’s ballot.

4 3.23. A poll worker monitoring the tabulator informed Plaintiff Aguilera that this was
5 strange and not part of the normal course of events.

6 3.24. A poll-worker then canceled Plaintiff Aguilera’s check-in on the touchpad at the
7 entrance to the polling-place. The cancel button on the check-in pad is not the same thing
8 as the “green button” at issue in *Trump v. Hobbs*.

9 3.25. Plaintiff Aguilera then requested a new ballot but, upon information and belief,
10 after consulting with the Maricopa County Recorder’s Office, poll workers refused to
11 provide her with one.

12 3.26. As of November 11, 2020, the County’s records indicate as follows with respect to
13 Damian Aguilera: “You voted on Election Day. Your ballot was counted.” However, the
14 County’s records contain no such statement for Plaintiff Aguilera. **Ex. B.**

15 *Violation of Plaintiff Drobina’s Right to Have His Vote Counted by a Perfectly Accurate*
16 *and Fully Automated Process*

17 3.27. Plaintiff Donovan Drobina voted in person in Maricopa County on election day,
18 November 3, 2020.

19 3.28. Plaintiff Drobina was not on the early voting list and did not receive a ballot by
20 mail. **Ex. C. [Drobina ballot status information].**

21 3.29. Plaintiff Drobina was checked-in to the polls by a poll-worker. **Ex. C.**

22 3.30. Plaintiff Drobina completed his ballot according to the instructions provided by
23 Defendants. **Ex. D. [Drobina declaration].**

24 3.31. Plaintiff Drobina then attempted to insert his ballot into the slot at the top of the
25 tabulator and it was rejected. **Ex. D.**

26 3.32. A poll worker had Plaintiff Drobina attempt to put the ballot in the slot at the top
27 of the tabulator twice, and, after it failed to scan both times, the poll worker instructed
28 him to put the ballot in a slot lower down on the tabulator (the “Lower Slot”). **Ex. D.**

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1 3.33. Maricopa County’s records as of November 11, 2020, indicate as follows with
2 respect to Plaintiff Drobina: “You voted on Election Day. Your ballot was counted.” **Ex.**
3 **C.**

4 3.34. However, as discussed above, upon information and belief, this means only that
5 Plaintiff Drobina checked into the polls on election day and has no bearing on whether
6 Mr. Drobina’s vote was automatically read and tabulated with perfect accuracy by
7 Defendants’ tabulation machines.

8 3.35. Upon information and belief, the slot located on top of the tabulators reads and
9 tabulates a given voter’s ballot on site.

10 3.36. Upon information and belief, election-day ballots placed into the Lower Slot are
11 not read and tabulated on site.

12 3.37. Upon information and belief, election-day ballots placed into the Lower Slot are
13 sent to Defendants’ “MCTEC” facility.

14 3.38. Upon information and belief, once they reach the MCTEC facility some or all of
15 the ballots placed in the Lower Slot are subject to manual review by human beings to
16 determine voter intent (“Adjudication”).

17 3.39. Upon information and belief, Defendants’ position is that, after election-day
18 ballots placed into the Lower Slot are taken to the MCTEC facility: (1) another attempt is
19 first made there to run such ballots through tabulation machines, and (2) only those
20 ballots that the tabulation machines at MCTEC are unable to automatically read and
21 tabulate with perfect accuracy, in whole or in part, are subject to manual review by
22 human beings to determine voter intent (“Human Adjudication”).

23 3.40. Regardless of the truth of Defendants’ position, due to the lack of any information
24 on an election-day ballot that could tie that ballot back to a given voter, it is impossible
25 for any particular voter whose ballot has been placed in the Lower Slot to ever know
26 whether their particular ballot was subject, in whole or in part, to Human Adjudication.

27 3.41. Upon information and belief, Defendants’ electronic voting system was also
28 unable to both automatically and perfectly read and record the ballots of at least some

1 other election day voters who followed Defendants’ instructions. **Ex. E. [Additional**
2 **declarations].**

3 **SECTION IV**
4 **CAUSES OF ACTION**

5 4.1. Plaintiffs incorporate by reference the preceding allegations.

6 *FIRST CAUSE OF ACTION*

7 *(Failure to Maintain Statutorily Compliant Electronic Voting System)*

8 4.2. Maricopa County utilizes an “electronic voting system” within the meaning of
9 A.R.S. § 16-444(A)(4) wherein “votes are recorded on a paper ballot by means of
10 marking, and such votes are subsequently counted and tabulated by vote tabulating
11 equipment at one or more counting centers.”

12 4.3. “Vote tabulating equipment” means “apparatus necessary to *automatically*
13 examine and count votes as designated on ballots and tabulate the results.” A.R.S. § 16-
14 444(A)(7) (emphasis supplied).

15 4.4. By statute, the county’s electronic voting system must, “When properly operated,
16 record correctly and count accurately every vote cast.” A.R.S. § 16-446(B)(6).

17 4.5. In other words, voters have a right to know with certainty that, when they follow
18 the instructions of election officials, their votes will be counted both automatically and
19 perfectly. The acts of Defendants have deprived them of that right.

20 4.6. Plaintiffs¹ properly operated Defendants’ electronic voting system but, upon
21 information and belief, it failed to both automatically and perfectly read and record some
22 or all of their votes.

23 4.7. Even if Defendants could prove that the processes they followed ultimately
24 resulted in the selections on Plaintiff Drobina’s ballot being properly recorded, the law
25 requires not just that proper result, but that the proper process be followed to get there.

26
27
28 ¹ References to plaintiffs should also be taken to refer to those Maricopa County voters
who experienced similar issues.

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1 4.8. Human Adjudication is a safeguard to be employed when a voter has made a
2 mistake. A ballot cast by a voter who has followed Defendants’ instructions should never
3 be subject to human Adjudication.

4
5 WHEREFORE Plaintiffs pray:

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

11
12 *SECOND CAUSE OF ACTION*

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

15 4.9. By statute Arizona elections are to be conducted so as to ensure the maximum
16 degree of correctness, impartiality, and uniformity of procedures for voting and
17 tabulating ballots. *See e.g.* A.R.S. §§ 16-449(B), 16-452(A), *etc.*

18 4.10. Defendants conduct elections in Maricopa County.

19 4.11. The ballots of at least some election-day voters who had properly followed
20 Defendants’ instructions, like Plaintiff Aguilera, were rejected by Defendants’ on-site
21 tabulators and not counted, while other election-day voters did not experience this issue.

22 4.12. Upon information and belief, unlike Plaintiff Aguilera, some election-day voters
23 whose ballots were rejected by Defendants’ on-site tabulators were given new ballots by
24 Defendants’ poll-workers.

25 4.13. The ballots of at least some election-day voters who had properly followed
26 Defendants’ instructions, like Plaintiff Drobina, were rejected by Defendants’ on-site
27 tabulators, and instead taken to MCTEC for further processing while other election-day
28 voters did not experience this issue.

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1 4.14. Human beings are by nature fallible and imperfect.

2 4.15. Every human being has biases, conscious or unconscious.

3 4.16. Upon information and belief, the ballots of at least some election-day voters who

4 had properly followed Defendants’ instructions, like Plaintiff Drobina, were rejected by

5 Defendants’ on-site tabulators, and instead subject to Human Adjudication, while other

6 election-day voters did not experience this issue.

7 4.17. Some, but not all, election-day voters were provided by Defendants with devices

8 for marking their ballots that bleed through the ballot paper. Upon information and belief,

9 this is responsible for at least some of the difficulties described above.

10 4.18. Some, but not all, election-day voters were provided by Defendants with wide-

11 tipped devices for marking their ballots, while other election day voters were provided

12 with narrow-tipped marking devices. Upon information and belief, this is responsible for

13 at least some of the difficulties described above.

14 4.19. Defendants could have avoided the issues described above by, among other things,

15 maintaining a statutorily compliant electronic voting system and providing Plaintiff

16 Aguilera with a new ballot.

17 4.20. Accordingly, Defendants, in conducting the 2020 general election, did not ensure

18 the maximum degree of correctness, impartiality, and uniformity of procedures for voting

19 and tabulating ballots.

20

21 WHEREFORE Plaintiffs pray:

22 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable

23 law: That the conduct of Defendants complained of herein constitutes a

24 violation of Defendants’ obligation under Arizona law to ensure the maximum

25 degree of correctness, impartiality, and uniformity of procedures for voting and

26 tabulating ballots.

27

28

1 *THIRD CAUSE OF ACTION*

2 *(A.R.S. Const. Art. II, § 21)*

3 4.21. A.R.S. Const. Art. II, § 21 provides that “no power, civil or military, shall at any
4 time interfere to prevent the free exercise of the right of suffrage.”

5 4.22. Upon information and belief, Defendants interfered with and prevented Plaintiff
6 Aguilera’s free exercise of her right of suffrage in that they forced her to use an
7 electronic voting system in which, through no fault of her own, Plaintiff’s ballot was
8 rendered unreadable by the voting system Defendants purchased and utilized.

9 4.23. Upon information and belief, Defendants interfered with and prevented Plaintiff’s
10 free exercise of her right of suffrage in that after Plaintiff opted to spoil her ballot
11 following its rejection by the scanning tabulator, election workers refused to give
12 Plaintiff a second ballot to mark, thereby denying her the opportunity to cure her ballot
13 and denying her the right to vote.

14 4.24. In addition, Arizonans possess a right to a “free and equal election” under our state
15 constitution. A.R.S. Const. Art. II, § 21. This right is “implicated when votes are not
16 properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320, 214 P.3d 397, 408 (App. 2009)
17 (citing A.R.S. § 16-446(B)(6)).

18 4.25. Plaintiff Aguilera was entitled to have her vote counted.

19 4.26. Upon information and belief, Plaintiff Aguilera’s vote was not counted when it
20 should have been.

21 4.27. Therefore, upon information and belief, Plaintiff Aguilera’s vote was not properly
22 counted.

23 4.28. Both Plaintiff Aguilera and Plaintiff Drobina were entitled to have their votes both
24 automatically and perfectly read and recorded.

25 4.29. Proper counting of their votes would have required that Plaintiffs’ votes be read
26 and recorded in an automated fashion by a perfectly accurate machine.

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1 4.30. Upon information and belief, neither Plaintiff Aguilera’s vote nor Plaintiff
2 Drobina’s vote were read and recorded in an automated fashion by a perfectly accurate
3 machine.

4
5 WHEREFORE Plaintiffs pray:

- 6 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
- 7 law: That the conduct of Defendants complained of herein constitutes
- 8 violations of the rights to suffrage and the proper counting of votes protected
- 9 by *A.R.S. Const. Art. II, § 21*.
- 10 B. For injunctive relief allowing Plaintiff Aguilera to cast a new ballot prior to the
- 11 certification deadline of November 30, 2020.

12
13 *FOURTH CAUSE OF ACTION*
14 *(A.R.S. Const. Art. II, § 13)*

15 4.31. A.R.S. Const. Art. II, § 21 provides that “No law shall be enacted granting to any
16 citizen, class of citizens, or corporation other than municipal, privileges or immunities
17 which, upon the same terms, shall not equally belong to all citizens or corporations.”

18 4.32. Accordingly, every election-day voter who fills out a ballot according to
19 Defendants’ instructions is entitled to have that ballot treated in the same way.

20 4.33. Because of the official acts of Defendants concerning the administration of the
21 2020 general election complained of herein, some voters, like Plaintiff Aguilera, did not
22 have their ballots counted at all. Meanwhile, some voters, like Plaintiff Drobina, were
23 deprived of the opportunity, afforded to other voters, to have their votes counted via a
24 fully automated and perfect process.

25
26 WHEREFORE Plaintiffs pray:

- 27 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
- 28 law: That the conduct of Defendants complained of herein constitutes

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3443 North Central Avenue Suite 1009
Phoenix, Arizona 85012
Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

1 violations of the rights to have their ballots treated the same as other, similarly
2 situated, voters pursuant to *A.R.S. Const. Art. II, § 13*.

3
4 *FIFTH CAUSE OF ACTION*

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

7 4.34. By statute Arizona elections are to be conducted pursuant to the Election
8 Procedures Manual (“EPM”) which has the force of law. A.R.S. § 16-452.²

9 4.35. Pursuant to the EPM, the ballots and marking devices provided to voters must:
10 “Allow the voter to vote for the candidate or ballot measure of choice, allow the
11 voter to vote for or against as many candidates or ballot measures for which they are
12 entitled to vote, and inform the voter if the number of vote choices exceeds the permitted
13 amount or prevent the voter from selecting more than the permitted number of vote
14 choices[.]” EPM Chapter 4(I)(A)(2)(b)(i)(3) at 79.

15 4.36. Upon information and belief, the ballot and marking device provided to Plaintiff
16 Aguilera did not allow her to vote for or against any candidates or ballot measures.

17 4.37. Upon information and belief, the ballot and marking device provided to Plaintiff
18 Drobina did not reveal to him that the tabulation equipment would read overvotes on
19 some or all of the races on his completed ballot.

20 4.38. Pursuant to the EPM, the ballots and marking devices provided to voters must:
21 “Provide the voter with an opportunity (in a private, secret, and independent manner) to
22 correct any error before the ballot is cast and counted or cast a replacement ballot if the
23 previous ballot is spoiled or unable to be changed or corrected.” EPM Chapter
24 4(I)(A)(2)(b)(i)(3) at 80.

25 4.39. Plaintiff Aguilera was not provided with the opportunity to cast a replacement
26 ballot after her previous ballot was spoiled.

27
28 ²[https://azsos.gov/sites/default/files/2019 ELECTIONS PROCEDURES MANUAL A
PPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)

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Phoenix, Arizona 85012
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1 4.40. Upon information and belief, the ballot and marking device provided to Plaintiff
2 Drobina did not reveal to him upon visual inspection that stray marks would cause one or
3 more races on his ballot to be misread by the tabulation equipment. Hence, he was not
4 afforded the opportunity to correct these errors nor was he afforded the opportunity to
5 cast a replacement ballot that would have allowed his voters to be automatically read and
6 tabulated on site.

7

8 WHEREFORE Plaintiffs pray:

9 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other applicable
10 law: That the conduct of Defendants complained of herein and by Plaintiffs
11 constitutes a violation of their obligation under Arizona law to comply with
12 Chapter 4(I)(A)(2)(b)(i)(3) of the EPM.

13

14 *SIXTH CAUSE OF ACTION*

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

17 4.41. In February of 2019, an Electronic Adjudication Addendum (the “Addendum”)
18 was added to the EPM.³

19 4.42. The Addendum provides in pertinent part as follows: “The electronic adjudication
20 of votes must be performed in a secure location, preferably in the same location as the
21 EMS system, but open to public viewing.” Addendum(D)(1) at 3.

22 4.43. Defendants failed to open the location where electronic adjudication occurs to the
23 public.

24

25 WHEREFORE Plaintiffs pray:

26 A. For a declaration pursuant to A.R.S. §§ 12-1831, 41-1034, and other
27 applicable law: That the conduct of Defendants complained of herein and

28 ³[https://azsos.gov/sites/default/files/Electronic Adjudication Addendum to the 2019 E
lections Procedures Manual.pdf](https://azsos.gov/sites/default/files/Electronic%20Adjudication%20Addendum%20to%20the%202019%20Elections%20Procedures%20Manual.pdf)

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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
Kolodin Law Group PLLC
3443 N. Central Ave. Ste. 1009
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

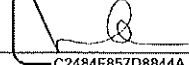
VERIFICATION

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

KOLODIN LAW GROUP PLLC
3443 North Central Avenue Suite 1009
Phoenix, Arizona 85012
Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

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Exhibit A

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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.

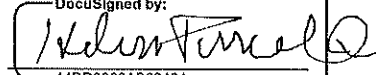
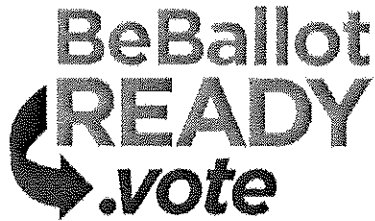
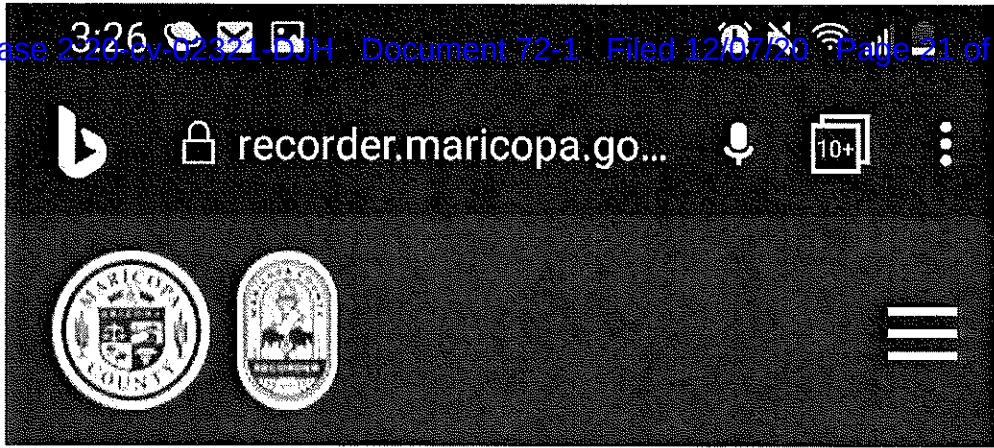
By 
DocuSigned by:
44DD9829A868431...
Helen Purcell

Exhibit B



 Voter Registration Status:

REGISTERED

[Get My Digital Voter ID Card](#)

 Name:

DAMIAN W AGUILERA

[Change My Name](#)

 Residential Address:

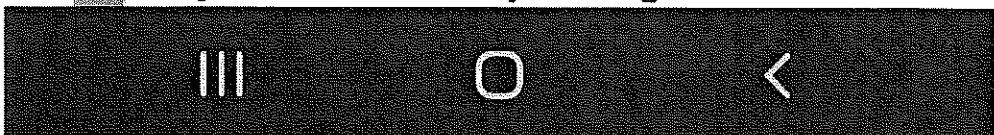
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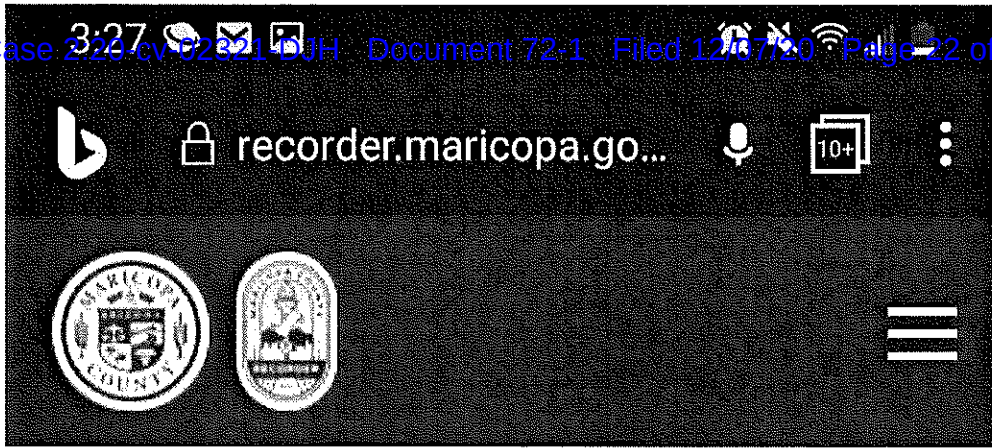
PHOENIX

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

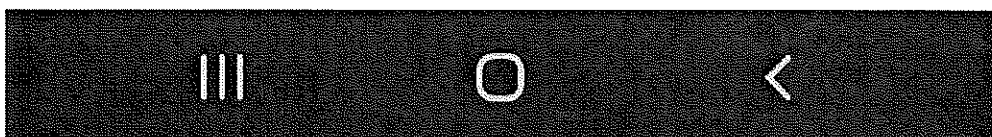
[Change My Political Party](#)

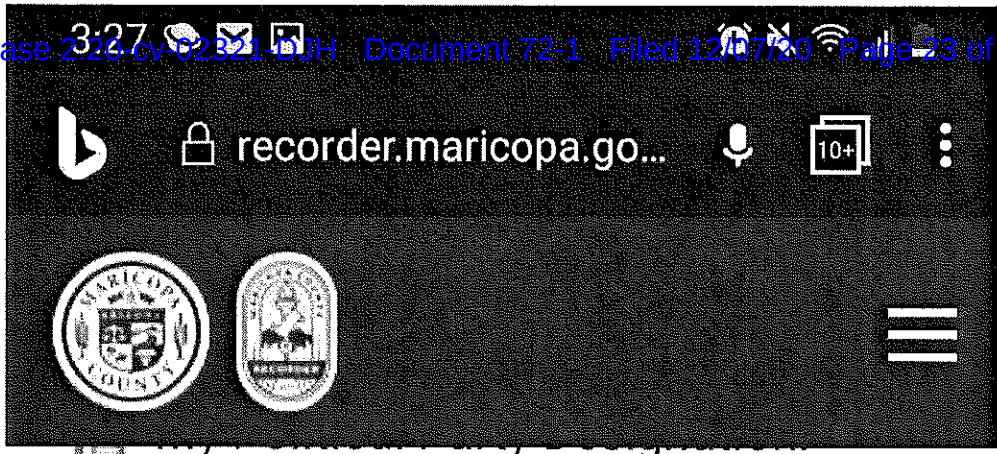


Permanent Early Voting List:

NO

[Change My Early Voting Status](#)





REPUBLICAN

[Change My Political Party](#)



Permanent Early Voting List:

NO

[Change My Early Voting Status](#)

Upcoming Elections

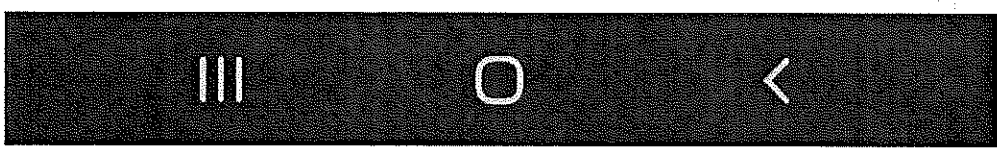
Upcoming Elections

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](#)

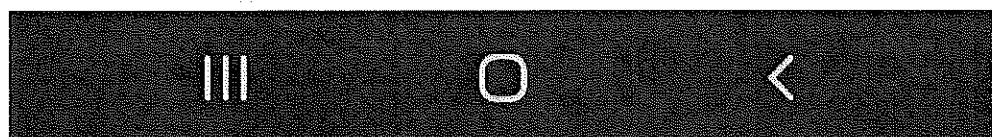
My Ballot Status

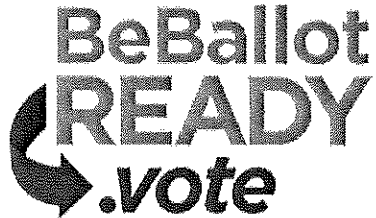
11/3/2020

**You voted on Election Day. Your ballot
was counted.**

You're not signed up to vote by mail.

[Request a Ballot](#)





 Voter Registration Status:

REGISTERED

[Get My Digital Voter ID Card](#)

 Name:

LAURIE CHRISTINE AGUILERA

[Change My Name](#)

 Residential Address:

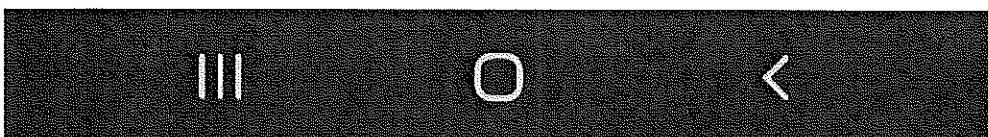
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PHOENIX

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

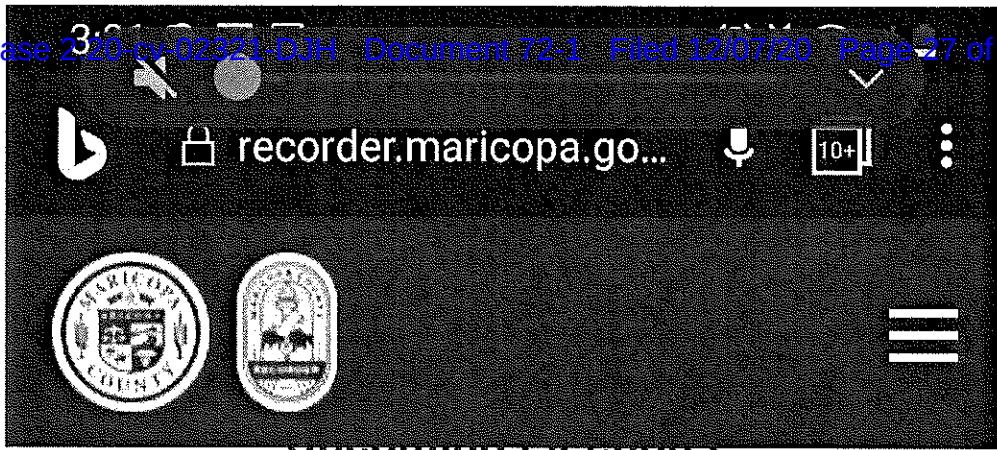
[See Elections Calendar](#)

[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.

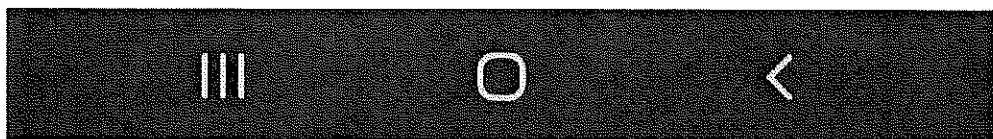


[View All Voting Locations](#)

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

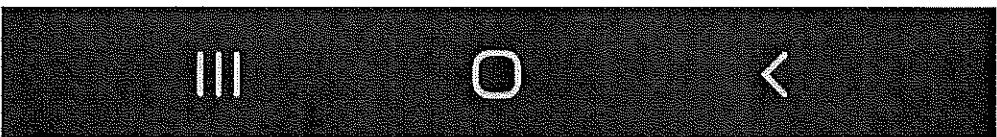
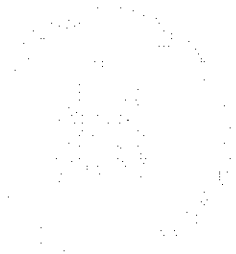


Exhibit C



https://recorder.maricopa.gov



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

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I declare and state as follows:

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

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

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

DocuSigned by:



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Exhibit E

DECLARATION

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I declare and state as follows:

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

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

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

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

DocuSigned by:
Joshua Banko
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KOLODIN LAW GROUP PLLC
3443 North Central Avenue Suite 1009
Phoenix, Arizona 85012
Telephone: (602) 730-2985 / Facsimile: (602) 801-2539

DECLARATION

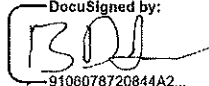
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I declare and state as follows:

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

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

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

DocuSigned by:

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DECLARATION

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I declare and state as follows:

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

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

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

DocuSigned by:
Courtney Childers
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DECLARATION

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I declare and state as follows:

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

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

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

DocuSigned by:
Jennifer Cline
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DECLARATION

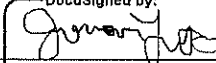
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I declare and state as follows:

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: [] 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:

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DECLARATION

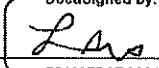
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I declare and state as follows:

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

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

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

DocuSigned by:

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DECLARATION

I declare and state as follows:

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

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

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

DocuSigned by:
Michael Long

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DECLARATION

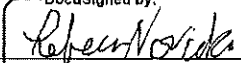
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I declare and state as follows:

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

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

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

DocuSigned by:

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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: 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:

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DECLARATION

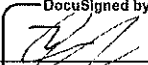
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I declare and state as follows:

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

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

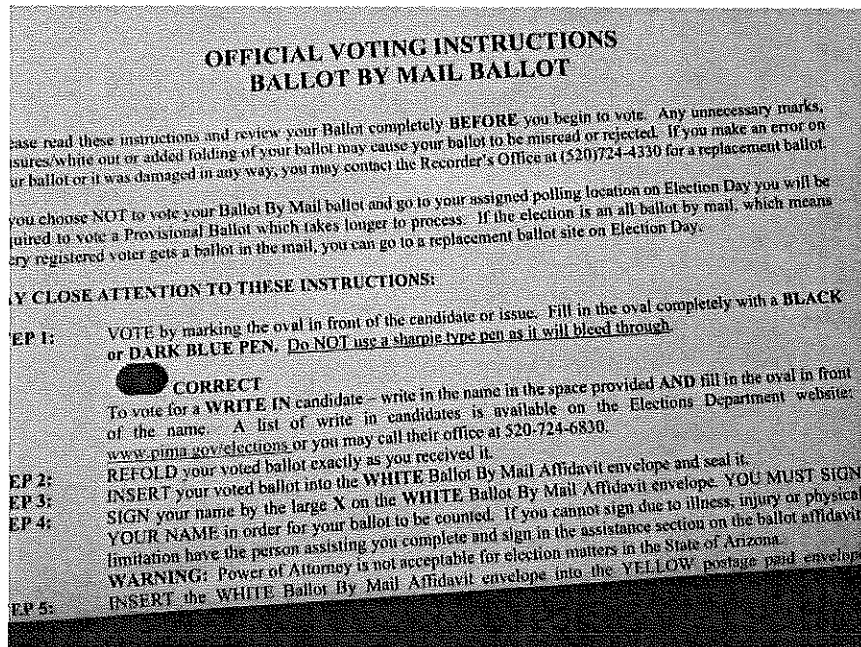
Executed on 11/5/2020, in Tempe (city), Arizona.

DocuSigned by:

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DECLARATION

I declare and state as follows:

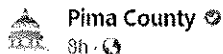
1. My name is Allyson Miller. I am over eighteen years of age and am competent to testify regarding the matters stated herein. I have personal knowledge of the facts set forth herein.
2. I am a duly elected member of the Pima County Board of Supervisors.
3. Although the Pima County Recorder has a great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



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



The felt-tip pen ballot controversy burning through social media is false. Don't get caught up in it. Arizona ballot tabulating machines can read ballots marked with a felt tip pen. Felt pens are discouraged because the ink can bleed through. If it does bleed through, the ballot will most likely get sent for duplication so it can be read by the scanner. The image with this post is the text from the Arizona Secretary of State's Elections Manual, Chapter 10, Section D, subsection 3.

All ballots in which voter intent can be discerned will be counted. That's also in the manual. No ballots will be discarded because of the method used to color in the ovals.

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

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

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

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

DocuSigned by:
Allyson Miller
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