

1 Roopali H. Desai (024295)
2 D. Andrew Gaona (028414)
3 Kristen Yost (034052)
4 **COPPERSMITH BROCKELMAN PLC**
5 2800 North Central Avenue, Suite 1900
6 Phoenix, Arizona 85004
7 T: (602) 381-5478
8 rdesai@cblawyers.com
9 agaona@cblawyers.com
10 kyost@cblawyers.com

11 James E. Barton II (023888)
12 Jacqueline Mendez Soto (022597)
13 **BARTON MENDEZ SOTO PLLC**
14 401 W. Baseline Road, Suite 205
15 Tempe, Arizona 85253
16 T: (480) 550-5165
17 james@bartonmendezsoto.com
18 jacqueline@bartonmendezsoto.com

19 *Attorneys for Plaintiffs*

20 **ARIZONA SUPERIOR COURT**
21 **MARICOPA COUNTY**

22 ARIZONA DEMOCRATIC PARTY, an)
23 Arizona political party and political action)
24 committee; and STEVE GALLARDO, a)
25 qualified elector,)

26 Plaintiffs,)

v.)

27 KAREN FANN, in her official capacity as)
28 President of the Arizona Senate; WARREN)
29 PETERSEN, in his official capacity as)
30 Chairman of the Senate Judiciary Committee;)
31 KEN BENNETT, in his official capacity as)
32 the liaison of the Arizona Senate; and CYBER)
33 NINJAS, INC., a Florida corporation,)

34 Defendants.)

No.:

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

1 Plaintiffs Arizona Democratic Party (“ADP”) and Steve Gallardo (collectively,
2 “Plaintiffs”) allege as follows:

3 **PARTIES, JURISDICTION, AND VENUE**

4 1. Plaintiff ADP is a political party committee with a purpose of electing Democratic
5 Party candidates to public office in Arizona. ADP engages in important activities such as
6 supporting Democratic Party candidates, engaging in fundraising and organizing efforts, and
7 protecting the rights of Arizona voters. ADP has members and constituents throughout Arizona,
8 including many voters in Maricopa County.

9 2. Plaintiff Steve Gallardo is a registered Arizona voter residing in Maricopa County
10 and a member of the Maricopa County Board of Supervisors. Plaintiff Gallardo brings this action
11 in his individual capacity.

12 3. Defendant Karen Fann is a state senator and the President of the Arizona Senate.
13 President Fann is named in this action in her official capacity.

14 4. Defendant Warren Peterson is a state senator and the Chairman of the Arizona
15 Senate Judiciary Committee. Senator Peterson is named in this action in his official capacity.

16 5. Defendant Cyber Ninjas, Inc. (“CN”) is a Florida corporation and a cyber security
17 company hired by the Arizona Senate to conduct an “audit” of Arizona’s 2020 General Election
18 in Maricopa County (the “Audit”).

19 6. Defendant Ken Bennett is an Arizona resident and the Arizona Senate’s “liaison”
20 for the Audit.

21 7. This Court has jurisdiction pursuant to A.R.S. §§ 12-123, 12-1831 and the Arizona
22 Constitution.

23 8. Venue is proper pursuant to A.R.S. § 12-401.

24 **GENERAL ALLEGATIONS**

25 **The Legislative Subpoenas**

26 9. On January 12, 2021, President Fann and Senator Peterson, on behalf of the

1 Arizona Senate and the Senate Judiciary Committee, served legislative subpoenas on the
2 Maricopa County Board of Supervisors, the Maricopa County Recorder, and the Maricopa
3 County Treasurer (the “Subpoenas”). A true and correct copy of the Subpoenas is attached as
4 Exhibit 1.

5 10. The Subpoenas requested extensive materials, including physical voted ballots and
6 ballot envelopes, scanned images of voted ballots, voter registration records, ballot tabulation
7 equipment, and electronic voting systems.

8 11. The County and the Senators litigated the validity of the Subpoenas, and on
9 February 25, 2021, the Maricopa County Superior Court found that the Subpoenas were valid
10 legislative subpoenas. *See Maricopa County et al. v. Fann et al.*, Case No. CV2020-016840.

11 12. In making that finding, Judge Timothy Thomason specifically noted concerns
12 regarding ballot security and confidentiality: “This is not to say that the Court does not have
13 concern about the confidentiality of the subpoenaed ballot information. The Elections
14 Procedures Manual has carefully delineated provisions providing for the security of ballots. The
15 Manual, however, simply cannot be reasonably read to prevent production of subpoenaed
16 material to government officials, particularly State legislators who are constitutionally charged
17 with ensuring election integrity.” A true and correct copy of Judge Thomason’s order regarding
18 the legality of the Subpoenas is attached as Exhibit 2.

19 13. On or about February 26, 2021, the County informed the Senate that it was ready
20 to deliver the materials requested in the Subpoenas, including 2.1 million physical voted ballots,
21 hundreds of small tabulation machines, and large counting center tabulation machines and other
22 voting equipment.

23 14. The Senate responded by asking the County not to deliver the materials until the
24 Senate could arrange to receive them.

25 15. On information and belief, the County has already turned over large amount of
26 data and other information in response to the Subpoenas.

1 16. On March 3, 2021, Secretary of State Katie Hobbs sent a letter to President Fann
2 and Senator Peterson “to express [her] ongoing concern about the legislative subpoenas issued
3 to the Maricopa County Board of Supervisors for the production of election equipment and
4 ballots from the 2020 General Election and the unspecified audits you intend to conduct.” A true
5 and correct copy of Secretary Hobbs’ letter is attached as Exhibit 3.

6 17. As Secretary Hobbs explained, “Judge Thomason’s ruling makes clear that you
7 are obligated to maintain the security and confidentiality of the materials turned over to you. If
8 your goal is truly to rebuild public confidence in our democracy, it is imperative that you
9 establish and abide by clear procedures and parameters for the security and confidentiality of the
10 ballots and election equipment while in your custody and ensure independence and transparency
11 should you proceed with any further audit.” *Id.*

12 18. Secretary Hobbs – as Arizona’s chief elections officer – went on to provide a
13 number of suggestions to President Fann and Senator Petersen to ensure that any “audit”
14 complied with Arizona law. *Id.*

15 **Planning the Audit**

16 19. Rather than assume custody and control over the materials it demanded, the Senate
17 decided to allow private third parties to accept the materials.

18 20. On March 31, 2021, President Fann announced that the Senate selected a group of
19 private companies, led by CN, to conduct the Audit (the “Private Auditors”).

20 21. President Fann announced that the “audit will validate every area of the voting
21 process” and that it will be “done in a transparent manner with the cooperation of Maricopa
22 County.”

23 22. President Fann also announced that the Senators “will not be directly involved” in
24 the Audit.

25 23. Thus, on information and belief, the Senate plans to give CN full unsupervised
26 authority to conduct the Audit, the Senate will abdicate any responsibility or participation in the

1 Audit, and neither the Senate nor any other government official will participate in the audit to
2 ensure security and confidentiality of the ballots, voter registration files, or voting equipment.

3 24. On April 1, 2021, Secretary of State Katie Hobbs wrote to the County expressing
4 her concerns regarding the Audit, and in particular, the Senate’s selection of CN to conduct the
5 audit. A true and correct copy of Secretary Hobbs’ letter is attached as Exhibit 4.

6 25. As Secretary Hobbs wrote,

7 Unfortunately, yesterday’s announcement made it clear that the Senate has no
8 intention of conducting an independent audit or ensuring the ongoing security
9 and confidentiality of Maricopa County’s ballots and voting equipment. As you
10 know, the Senate has confirmed its hiring of Cyber Ninjas Inc. This firm’s CEO
11 not only harbors conspiratorial beliefs about the 2020 election, but has shared
12 conspiracies about Dominion election equipment, the exact equipment he has
13 been hired to audit. Moreover, Jovan Hutton Pulitzer confirmed yesterday that he
14 too would be involved in this audit. To be sure, Mr. Pulitzer is also a known,
15 and frequently debunked, conspiracy theorist (to say nothing of “failed treasure
16 hunter” or inventor of one of the “25 worst tech products of all time”). To
17 compound the concerning nature of these revelations, the Statement of Work
18 signed by the Senate indicates that these “auditors” plan to visit Maricopa County
19 voters at their home to inquire about their registration and voting history.⁸ And if
20 all that were not concerning enough, the Senate President’s press release states
21 that the Senate “leadership will not be directly involved [in the audit], and
22 members do not expect to comment on any of the processes of the audit until the
23 report is issued.” In other words, the Senate intends to give free reign to Cyber
24 Ninjas, Inc. and will abdicate any responsibility or engagement in the audit
25 process to ensure the security and confidentiality of the ballots and voting
26 equipment or the integrity of the process. In addition to being dangerous and
irresponsible, this abdication appears contrary to Judge Thomason’s assumption
that the Senate will ensure any third parties will handle the subpoenaed materials
appropriately.

26 26. In addition, the Senate engaged former Arizona Secretary of State Ken Bennett to
serve as the Senate’s “liaison” to the Private Auditors.

27 27. On information and belief, CN has never conducted an election audit.

28 28. On information and belief, Mr. Bennett has never conducted an election audit.

1 29. CN’s CEO, Doug Logan, is a proud supporter of the “Stop the Steal” movement
2 and has retweeted numerous posts on Twitter claiming that the 2020 General Election was rigged
3 against Donald Trump. *See, e.g.,* Jeremy Duda & Jim Small, *Arizona Senate hires a ‘Stop the*
4 *Steal’ advocate to lead 2020 election audit*, *Ariz. Mirror* (Mar. 31, 2021),
5 [https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-](https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/)
6 [2020-election-audit/](https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/).

7 30. Mr. Logan also “drafted a document for U.S. senators who planned to object to the
8 certification of the election results on Jan. 6 promoting various disproven or baseless conspiracy
9 theories about the election, including claims against the company whose ballot tabulation
10 machines he’ll [be] tasked with inspecting.” Jeremy Duda, *Election auditor wrote ‘election fraud*
11 *facts’ report for GOP senators who tried to overturn the 2020 election*, *Ariz. Mirror* (Apr. 9,
12 2021), [https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-](https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-claims-on-kraken-lawyers-website/)
13 [claims-on-kraken-lawyers-website/](https://www.azmirror.com/2021/04/09/arizona-audit-leader-doug-logan-wrote-fraud-claims-on-kraken-lawyers-website/).

14 31. On information and belief, Mr. Logan has never administered a post-election audit.

15 32. On April 1, 2021, Mr. Logan sent a list of questions to President Fann, which he
16 claimed CN “absolutely need[ed]” to conduct the audit. He also attached a long list of additional
17 questions, explaining that “the team did have a bunch more questions that would be very useful
18 to know.” A true and correct copy of Mr. Logan’s email is attached as Exhibit 5.

19 33. Indeed, the Senate and Mr. Logan apparently expected that Maricopa County
20 would allow the audit to be performed at their facilities with the assistance of Maricopa County’s
21 audit experts. In an email to Maricopa County dated April 2, 2021, President Fann stated: “I had
22 hoped we would be able to do this together in the spirit of transparency and the desire to answer
23 our constituents[’] questions about the election.” Ex. 5.

24 34. Maricopa County confirmed they would not assist: “Maricopa County cannot be
25 involved in supporting your audit as to do so may expose it to liability for which it has no similar
26 legal protection. To avoid any confusion, I want to be clear that the audit is not a joint effort

1 between the County and the Senate Republican Caucus. Maricopa County will not communicate
2 with your vendors or interpret Arizona law for them.” Ex. 5.

3 35. On information and belief, unknown private right-wing groups and supporters of
4 former President Donald J. Trump have donated at least \$150,000 to fund the Audit.

5 36. On April 7, 2021, attorney Lin Wood – known for his support of the “Stop the
6 Steal” movement and adherence to the “QAnon” conspiracy theory – posted on Telegram
7 pledging a donation to fund the Audit and asked others to donate. He added: “When the fraud is
8 finally revealed in one state, just watch the other states fall like dominoes!” Lin Wood, Telegram
9 (Apr. 7, 2021), <https://t.me/linwoodspeakstruth/1400>.

10 37. On April 9, 2021, Christina Bobb, a host on far-right media outlet “One America
11 News”, tweeted about the Audit as follows: “Our goal is to fund \$150,000 to cover expenses of
12 the audit, which will ensure its complete scope of work. We’re \$10K away from our goal.”
13 Christina Bobb, Twitter (Apr. 9, 2021),
14 https://twitter.com/christina_bobb/status/1380562776918200320.

15 38. In a Telegram post that same day, Lin Wood announced that the \$150,000 goal
16 had been reached. He added: “I know the individual who is leading the Arizona audit team,” and
17 “He will reveal the truth. I did NOT make this happen. Nor did Christina. We merely showed
18 the way.” Lin Wood, Telegram (Apr. 9, 2021), <https://t.me/linwoodspeakstruth/1434>.

19 39. The Senate ultimately directed the County to deliver the materials requested in the
20 Subpoenas to the Arizona Veterans Memorial Coliseum, where the Private Auditors plan to
21 perform the Audit.

22 40. On April 21, 2021, the County delivered tabulators and central counting machines
23 to the Coliseum as requested by the Senate.

24 41. On April 22, 2021, the County is expected to deliver 2.1 million voted ballots to
25 the Coliseum as requested by the Senate.

26

1 42. On information and belief, there are not sufficient safeguards in place to ensure
2 proper security to prevent access to or tampering with the equipment or ballots at the Coliseum.

3 43. The Audit is scheduled to begin on April 23, 2021.

4 **The Audit Procedures**

5 44. On April 19, 2020, ADP's executive director and counsel conferred with
6 Defendant Bennett by telephone to ask about the planned procedures for conducting the Audit.

7 45. According to Defendant Bennett, the Private Auditors have hired staff to, among
8 other things, (1) review tabulation machines and other voting equipment; (2) machine-tabulate
9 2.1 million ballots and conduct a hand count of those same ballots; and (3) compare ballot
10 affidavit signatures with signatures in voters' registration records.

11 46. On information and belief, Defendants have no policies and procedures in place
12 for performing these tasks or for preserving the integrity of the process, including but not limited
13 to:

14 A. Policies and procedures for ensuring a secure and documented chain of
15 custody for the ballots and election equipment;

16 B. Policies and procedures for ensuring the physical security of the ballots and
17 physical, data, and cyber security of election equipment so that they are not tampered with,
18 stolen, or mishandled or compromised;

19 C. Policies and procedures for ensuring that markings on ballots are not altered
20 or added while in Defendants' custody;

21 D. Policies and procedures for ensuring that the handling, inspection, and
22 counting of ballots and equipment is performed by bipartisan teams including at least two
23 members of different political parties;

24 E. Policies and procedures for the security of hardware and other components
25 of electronic voting systems.

26

1 47. Defendants have not publicly disclosed any policies or training materials relating
2 to the Audit's procedures.

3 48. Defendants have not publicly disclosed any information about the staff who will
4 conduct the Audit, including the number of workers, their credentials, their political party
5 affiliations, or the training they have received.

6 49. On information and belief, the Audit workers who perform signature comparison
7 are planning to use voter registration records, including the voter's signature, date of birth,
8 address, political party affiliation and other personally identifying information.

9 50. On information and belief, the Audit workers who will perform signature
10 comparison are not trained in signature comparison or verification techniques.

11 51. Defendant Bennett has stated that observers will be allowed to observe the Audit,
12 but only for six-hour shifts at a time.

13 52. Defendant Bennett has rejected observation requests from various nonpartisan,
14 nonprofit organizations that exist to ensure open and transparent elections, including The
15 Elections Group.

16 53. According to Defendant Bennett, approximately 70% of individuals who have
17 applied for observation shifts are Republicans, and the remaining 30% are Libertarians,
18 Independents, or Democrats.

19 54. In addition, less than 24 hours before the Audit is set to begin, there are no clear
20 procedures in place for how media will be able to observe the Audit.

21 55. Indeed, over the past several days, Defendant Bennett has made a series of
22 conflicting and contradictory statements about media access at the Audit.

23 **COUNT I**

24 **(Declaratory Judgment)**

25 56. All previous allegations are re-alleged as if set forth herein.
26

1 57. Under Arizona law, certain components of a voter’s registration records, including
2 date of birth, signature, and country of birth, may not be viewed, accessed, reproduced, or
3 disclosed to a member of the public who is not an authorized government official. *See* A.R.S. §
4 16-168(F); Election Procedures Manual (“EPM”) Ch. 1 § X.C.I,
5 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPRO](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
6 [VED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

7 58. The EPM – promulgated by the Secretary of State and approved by the Governor
8 and Attorney General – has the force and effect of law. *Arizona Pub. Integrity All. v. Fontes*, 250
9 Ariz. 58 ¶ 16 (2020); A.R.S. § 16-452(C).

10 59. The Private Auditors and their agents are not authorized to review confidential
11 voter registration records.

12 60. Only election officials, postal workers, and certain family members and other
13 authorized individuals may “gain possession or control” of voted early ballots. A.R.S. § 16-
14 1005(H).

15 61. The Private Auditors and their agents are not authorized to gain possession or
16 control of voted early ballots.

17 62. Under Arizona law, “[a]ll persons taking part in the actual processing and counting
18 of ballots, including the employees of a jurisdiction conducting an election, must be appointed
19 in writing and take an oath provided by the Board of Supervisors (or designee) that they will
20 faithfully and impartially perform their duties. Any person who has not been appointed in writing
21 or taken the oath shall, under no circumstances, be permitted to touch any ballot, computer, or
22 counting device used in processing ballots.” EPM Ch. 10 § I.A.

23 63. The Private Auditors and their agents have not been appointed in writing or taken
24 an oath required under EPM Ch. 10 § I.A, and thus are not authorized to touch any ballot,
25 computer, or counting device.

26

1 64. Arizona law also requires “that staff performing the signature verification are
2 properly trained.” EPM Ch. 6 § II.C.

3 65. On information and belief, the Private Auditors and their agents are not properly
4 trained in signature verification.

5 66. Under Arizona law, election officers “must develop and implement a training plan
6 to ensure that elections staff (and any temporary workers) understand and comply with all
7 security procedures applicable to the electronic voting system.” EPM Ch. 4 § III.

8 67. Arizona law also requires that hardware components of the electronic voting
9 system are, among other things: (1) “stored in a locked, secured location that prevents
10 unauthorized access”; (2) “sealed with tamper-resistant or tamper-evident seals once
11 programmed”; (3) “safeguarded from unauthorized access when being moved, transferred,
12 serviced, programmed, or temporarily stored”, (4) “accessed by elections staff only to the extent
13 necessary to perform their authorized task”; and (5) “witnessed by two or more election staff
14 members (of different political parties if possible) when being moved or transferred, which
15 includes an inventory of the equipment and chain of custody before and after the move or
16 transfer.” EPM Ch. 4 § III.A.

17 68. Further, components of the electronic voting system “may not be connected to the
18 internet, any wireless communications device, or any external network (except for e-pollbooks),”
19 and “must be observed by the officer in charge of elections or a designee if the election program
20 (or any software or firmware) is updated or modified.” EPM Ch. 4 § III.B.

21 69. On information and belief, Defendants have not adopted or implemented training
22 plans or security measures required by EPM Ch. 4 § III.

23 70. Arizona law requires security of official ballots, including requirements that
24 ballots: (1) “may be accessed by elections staff only to the extent necessary to perform their
25 authorized task; (2) “must be stored in a locked, secured location that prevents unauthorized
26 access”; and (3) “must be witnessed by two or more election staff members (of different political

1 parties if possible) when being moved or transferred, which includes an inventory of the ballots
2 before and after the move or transfer.” EPM Ch. 8 § V.E. Election officials also “must implement
3 security procedures to ensure that official ballots are properly secured prior to distribution to
4 voting locations.” *Id.*

5 71. On information and belief, Defendants have not adopted or implemented security
6 procedures required by EPM Ch. 8 § V.E.

7 72. On information and belief, experienced election officials would confirm that the
8 safeguards and requirements set forth in Paragraphs 55-68 are necessary to perform a secure and
9 reliable audit, that Defendants’ planned Audit does not comply with these safeguards and
10 requirements, and Defendants’ planned Audit undermines the integrity and security of Arizona’s
11 elections and voter information.

12 73. An actual and justiciable controversy exists regarding the legality of the Audit
13 procedures scheduled to begin on April 23, 2021.

14 74. Plaintiffs request a declaration that Defendants or their agents are in violation of,
15 or have threatened to immediately violate, the statutory and EPM provisions set forth above.

16 **COUNT II**

17 **(Injunctive Relief)**

18 75. All previous allegations are re-alleged as if set forth herein.

19 76. For the reasons set forth above in Paragraphs 53-70, *supra*, Defendants and their
20 agents will proceed with the Audit in violation of various statutory and EPM provisions absent
21 the entry of an injunction.

22 77. Plaintiff ADP will suffer irreparable harm absent the entry of an injunction because
23 the private information of its members – including how they voted in the 2020 General Election
24 – will be placed into the hands of unknown, untrained agents of the Private Auditors without the
25 protections guaranteed by statute and the EPM.

26

1 78. The balance of hardships and public interest both favor Plaintiffs, who seek to
2 ensure that Arizona laws concerning privacy and confidentiality of the personal information of
3 voters and the sanctity of our system of secret ballots is preserved.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs respectfully request the following relief against Defendants and
6 their agents:

- 7 A. For declaratory judgment declaring that the Audit is unlawful and in
8 violation of statute and the EPM;
- 9 B. For a temporary restraining order and a preliminary and permanent
10 injunction preventing Defendants and any of their agents from proceeding with the Audit;
- 11 C. For an order awarding Plaintiffs their taxable costs under A.R.S. §§ 12-341
12 and 12-1840; and
- 13 D. For an order awarding Plaintiffs their attorneys' fees under any applicable
14 statute or equitable doctrine; and
- 15 E. For any other relief as may be appropriate.

16 RESPECTFULLY SUBMITTED this 22nd day of April, 2021.

17 **COPPERSMITH BROCKELMAN PLC**

18
19 By s/ Roopali H. Desai
20 Roopali H. Desai
21 D. Andrew Gaona
22 Kristen Yost

22 **BARTON MENDEZ SOTO PLLC**
23 James E. Barton II
24 Jacqueline Mendez

24 *Attorneys for Plaintiffs*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VERIFICATION

I, Steve Gallardo, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. Civ. P., as follows:

I have read the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief. I declare, under penalty of perjury, that the allegations found therein are true and correct, to the best of my knowledge and belief.

Executed this 22nd day of April, 2021.



Steve Gallardo

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

VERIFICATION

I, Charles Fisher, do state and swear under penalty of perjury and as permitted by Rule 80(c), Ariz. R. Civ. P., as follows:

I am the Executive Director of the Arizona Democratic Party. I have read the foregoing Verified Complaint for Declaratory Judgment and Injunctive Relief. I declare, under penalty of perjury, that the allegations found therein are true and correct, to the best of my knowledge and belief.

Executed this 22nd day of 4/22/2021, 4/22/2021.

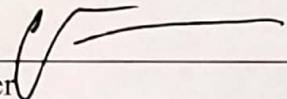
Charles Fisher 

Exhibit 1

Exhibit 1

ARIZONA SENATE

*Fifty-Fifth Arizona Legislature
First Regular Session*

Senate Judiciary Committee

SUBPOENA *DUCES TECUM*

TO: The Maricopa County Board of Supervisors

YOU ARE COMMANDED TO APPEAR at the time, date and place set forth below to provide testimony concerning the items set forth in Exhibit A attached hereto. You must designate one or more of your officers, agents or representatives who consent to testify on your behalf about the same.


Date & Time: January 13, 2021 at 9:00 a.m.

Place: Arizona Senate
Arizona State Capitol
1700 West Washington Street
Phoenix, Arizona 85007

You or your representative must also produce, and permit inspection, testing or sampling of the items set forth in Exhibit A at the date, time and location set forth above.

**FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE
LEGISLATURE, PURSUANT TO A.R.S. § 41-1153**

Executed this 12th day of January, 2021.


Karen Fann, President of the Arizona Senate


Warren Petersen, Chairman
Senate Judiciary Committee

EXHIBIT A

For the November 2020 general election in Maricopa County, Arizona:

1. The ballot tabulation and processing equipment from each polling place and tabulation center.
2. The software for the equipment described above and the election management system used.
3. Hardware and Forensic Images of Election Servers, Desktops, Removable Media (such as thumb drives, USB, memory cards, PCMCIA cards, Compact Flash, CD/DVD etc.) used to transfer ballots to tabulation centers from voting locations and to load software/programming.
4. Election Log Files, in XML, EML, JSON, DVD and XSLT formats, and any other election files and logs for the:
 - Tabulators
 - Result Pair Resolution
 - Result Files
 - Provisional Votes
 - RTMLogs
 - SQL Database Files
 - Signature Checking & Sorting Machine
5. Election Settings
 - Rejected Ballots Report by Reason Code
6. Accounts and Tokens
 - Username & Passwords (Applications, Operation Systems)
 - Encryption Passwords (Bitlocker, Veracrypt, Etc)
 - Security Tokens (iButton, Yubikey, SmartCard, Etc)
7. Windows Server & Desktop
 - Windows software log
 - Windows event log and Access logs
 - Network logs
 - FTP Transfer Points Log
 - Usernames & Passwords
 - Application specific usernames and passwords (Election Software, Database Access)
8. Dominion Equipment
 - The Administrator & Audit logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications.
9. Dominion Network

- Identity of each person accessing the domain name Admin.enr.dominionvoting.com and *. dominionvoting.com domains.
 - Windows security log of the server that is hosted at Admin.enr.dominionvoting.com
 - Internal admin.enr.dominionvoting.com logs
10. Election Systems & Software (ESS) Specific
 - The Administrator & Audit logs for the Electionware election management system, Ballot on Demand - BOD printing system, DS200 scanner and tabulator, DS450 scanner and tabulator, DS850 scanner and tabulator, and Voting Systems (ExpressPoll, ExpressVote, ExpressVote XL).
 11. Voter rolls
 - Database of voter rolls
 - Forensic image of computers/devices used to work with voter rolls
 - Copy of media device used to transfer voter rolls
 12. Daily and cumulative voter records for those who voted, with sufficient information to determine for each voter:
 - Name and voter registration address;
 - Mailing address
 - Date of birth;
 - Voter ID number;
 - Manner of voting (e.g., early by mail, early in-person, in-person on Election Day)
 - Voting location (if applicable)
 - Date voted
 - Political party affiliation (if applicable);
 - Early ballot request date (if applicable)
 - Early ballot sent date (if applicable)
 - Voted early ballot return or receipt date (if applicable)
 - Ballot canceled date (if applicable)
 - Image of ballot envelope or pollbook entry in .RAW, HTML, XHTML, SVG, or other format
 13. Access or control of ALL routers, tabulators or combinations thereof, used in connection with the administration of the 2020 election, and the public IP of the router.
 14. Voter Rally Paper Rolls, Test Ballots, Ballot Test Matrix.
 15. Access to all original, paper ballots (including but not limited to early ballots, Election Day ballots, and provisional ballots).
 16. Each original, unique native electronic image of each early ballot cast, with the original associated metadata (multiple ballot images may not be combined into a single file and no metadata associated the original electronic ballot image shall be deleted, removed or altered).

17. Each image of each early ballot cast in (a) TIFF format, (b) PDF format, and (c) JPG format (multiple ballot images may not be combined into a single file).

18. From the Dominion electronic election management system, each of the following must be provided as (a) an XML file, (b) a JSON file, and (c) a TXT file:

- Dominion Electronic Cast Vote Record
- Ballot Images – Raw Images
- Ballot Images – Ballot Audit and Review
- Early Ballot Report
- Provisional Ballot Report
- Conditional Voter Registration Ballot Report
- Cast Vote Record (raw data) – JSON
- ImageCast Central Logs
- Ballot Scanning/Tabulation Machine Logs
- Ballot Scanning/Tabulating Machine Tape

Any electronically stored information contained in this Exhibit A shall be electronically uploaded to one or more computer drives supplied by the Senate Judiciary Committee or its agents.

ARIZONA SENATE

*Fifty-Fifth Arizona Legislature
First Regular Session*

Senate Judiciary Committee

SUBPOENA DUCES TECUM

TO: Stephen Richer, Maricopa County Recorder

YOU ARE COMMANDED TO APPEAR at the time, date and place set forth below to provide testimony concerning the items set forth in Exhibit A attached hereto. You must designate one or more of your officers, agents or representatives who consent to testify on your behalf about the same.


Date & Time: January 13, 2021 at 9:00 a.m.

Place: Arizona Senate
Arizona State Capitol
1700 West Washington Street
Phoenix, Arizona 85007

You or your representative must also produce, and permit inspection, testing or sampling of the items set forth in Exhibit A at the date, time and location set forth above.

**FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE
LEGISLATURE, PURSUANT TO A.R.S. § 41-1153**

Executed this 12th day of January, 2021.


Karen Fann, President of the Arizona Senate


Warren Petersen, Chairman
Senate Judiciary Committee

EXHIBIT A

For the November 2020 general election in Maricopa County, Arizona:

1. The ballot tabulation and processing equipment from each polling place and tabulation center.
2. The software for the equipment described above and the election management system used.
3. Hardware and Forensic Images of Election Servers, Desktops, Removable Media (such as thumb drives, USB, memory cards, PCMCIA cards, Compact Flash, CD/DVD etc.) used to transfer ballots to tabulation centers from voting locations and to load software/programming.
4. Election Log Files, in XML, EML, JSON, DVD and XSLT formats, and any other election files and logs for the:
 - Tabulators
 - Result Pair Resolution
 - Result Files
 - Provisional Votes
 - RTMLogs
 - SQL Database Files
 - Signature Checking & Sorting Machine
5. Election Settings
 - Rejected Ballots Report by Reason Code
6. Accounts and Tokens
 - Username & Passwords (Applications, Operation Systems)
 - Encryption Passwords (Bitlocker, Veracrypt, Etc)
 - Security Tokens (iButton, Yubikey, SmartCard, Etc)
7. Windows Server & Desktop
 - Windows software log
 - Windows event log and Access logs
 - Network logs
 - FTP Transfer Points Log
 - Usernames & Passwords
 - Application specific usernames and passwords (Election Software, Database Access)
8. Dominion Equipment
 - The Administrator & Audit logs for the EMS Election Event Designer (EED) and EMS Results Tally & Reporting (RTR) Client Applications.
9. Dominion Network

- Identity of each person accessing the domain name Admin.enr.dominionvoting.com and *. dominionvoting.com domains.
 - Windows security log of the server that is hosted at Admin.enr.dominionvoting.com
 - Internal admin.enr.dominionvoting.com logs
10. Election Systems & Software (ESS) Specific
- The Administrator & Audit logs for the Electionware election management system, Ballot on Demand - BOD printing system, DS200 scanner and tabulator, DS450 scanner and tabulator, DS850 scanner and tabulator, and Voting Systems (ExpressPoll, ExpressVote, ExpressVote XL).
11. Voter rolls
- Database of voter rolls
 - Forensic image of computers/devices used to work with voter rolls
 - Copy of media device used to transfer voter rolls
12. Daily and cumulative voter records for those who voted, with sufficient information to determine for each voter:
- Name and voter registration address;
 - Mailing address
 - Date of birth;
 - Voter ID number;
 - Manner of voting (e.g., early by mail, early in-person, in-person on Election Day)
 - Voting location (if applicable)
 - Date voted
 - Political party affiliation (if applicable);
 - Early ballot request date (if applicable)
 - Early ballot sent date (if applicable)
 - Voted early ballot return or receipt date (if applicable)
 - Ballot canceled date (if applicable)
 - Image of ballot envelope or pollbook entry in .RAW, HTML, XHTML, SVG, or other format
13. Access or control of ALL routers, tabulators or combinations thereof, used in connection with the administration of the 2020 election, and the public IP of the router.
14. Voter Rally Paper Rolls, Test Ballots, Ballot Test Matrix.
15. Access to all original, paper ballots (including but not limited to early ballots, Election Day ballots, and provisional ballots).
16. Each original, unique native electronic image of each early ballot cast, with the original associated metadata (multiple ballot images may not be combined into a single file and no metadata associated the original electronic ballot image shall be deleted, removed or altered).

17. Each image of each early ballot cast in (a) TIFF format, (b) PDF format, and (c) JPG format (multiple ballot images may not be combined into a single file).

18. From the Dominion electronic election management system, each of the following must be provided as (a) an XML file, (b) a JSON file, and (c) a TXT file:

- Dominion Electronic Cast Vote Record
- Ballot Images – Raw Images
- Ballot Images – Ballot Audit and Review
- Early Ballot Report
- Provisional Ballot Report
- Conditional Voter Registration Ballot Report
- Cast Vote Record (raw data) – JSON
- ImageCast Central Logs
- Ballot Scanning/Tabulation Machine Logs
- Ballot Scanning/Tabulating Machine Tape

Any electronically stored information contained in this Exhibit A shall be electronically uploaded to one or more computer drives supplied by the Senate Judiciary Committee or its agents.

ARIZONA SENATE

*Fifty-Fifth Arizona Legislature
First Regular Session*

Senate Judiciary Committee

SUBPOENA *DUCES TECUM*

TO: John M. Allen, Maricopa County Treasurer

YOU ARE COMMANDED TO APPEAR at the time, date and place set forth below to provide testimony concerning the items set forth in Exhibit A attached hereto. You must designate one or more of your officers, agents or representatives who consent to testify on your behalf about the same.

Date & Time: January 13, 2021 at 9:00 a.m.

Place: Arizona Senate
Arizona State Capitol
1700 West Washington Street
Phoenix, Arizona 85007

You or your representative must also produce, and permit inspection, testing or sampling of the items set forth in Exhibit A at the date, time and location set forth above.

**FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE
LEGISLATURE, PURSUANT TO A.R.S. § 41-1153**

Executed this 12th day of January, 2021.


Karen Fann, President of the Arizona Senate



Warren Petersen, Chairman
Senate Judiciary Committee

EXHIBIT A

For the November 2020 general election in Maricopa County, Arizona:

1. All ballots (including but not limited to early ballots, Election Day ballots, and provisional ballots).
2. Each original, unique native electronic image of each early ballot cast, with the original associated metadata (multiple ballot images may not be combined into a single file and no metadata associated the original electronic ballot image shall be deleted, removed or altered).
3. Each image of each early ballot cast in (a) TIFF format, (b) PDF format, and (c) JPG format (multiple ballot images may not be combined into a single file).

Any electronically stored information contained in this Exhibit A shall be electronically uploaded to one or more computer drives supplied by the Senate Judiciary Committee or its agents.

Exhibit 2

Exhibit 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

HONORABLE TIMOTHY J. THOMASON

CLERK OF THE COURT
N. Johnson
Deputy

MARICOPA COUNTY, et al.

STEPHEN W TULLY

v.

KAREN FANN, et al.

THOMAS J. BASILE

JAMES E BARTON II
JOHN A DORAN
THOMAS PURCELL LIDDY
JOSEPH EUGENE LA RUE
JOSEPH J BRANCO
EMILY M CRAIGER
KORY A LANGHOFER
JACQUELINE MENDEZ SOTO
GREGREY G JERNIGAN
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE THOMASON

MINUTE ENTRY

East Court Building – Courtroom 713

9:03 a.m. This is the time set for Oral Argument on Plaintiffs' Motion for Summary Judgment, filed February 22, 2021, President Fann and Senate Judiciary Committee Chairman Petersen's Motion for Judgment on the Pleadings, filed February 22, 2021, and Democratic Senators' Motion for Summary Judgment, filed February 22, 2021 via Court Connect. All appearances are virtual and are as follows:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

- Counsel, Stephen W. Tully, John A. Doran, Thomas P. Liddy, Joseph J. Branco, Joseph E. LaRue, and Emily Craiger are present on behalf of Plaintiffs/Defendants-in-Counterclaim Maricopa County; Clint Hickman, in his official capacity as Chairman of the Maricopa County Board of Supervisors; and Jack Sellers, Steve Chucri, Bill Gates, and Steve Gallardo, in their official capacities as Members of the Maricopa County Board of Supervisors, who are not present.
- Counsel, Thomas Basile and Kory Langhofer are present on behalf of Defendants/Plaintiffs-in-Counterclaim Arizona Senate President Karen Fann, who is present, and Senate Judiciary Committee Chairman Eddie Farnsworth, who is not present. General counsel for Arizona State Senate, Gregrey G. Jernigan, is also present.
- Counsel, James Barton, II, and Jacqueline Mendez Soto are present on behalf of Defendants Lupe Contreras, Andrea Dalessandro and Martin Quezada, in their official capacities as Members of the Arizona Senate Judiciary Committee, who are not present.

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

The Court outlines the pleadings reviewed in preparation for this hearing.

Oral argument is presented.

For the reasons stated on the record,

IT IS ORDERED taking this matter under advisement.

9:28 a.m. Matter concludes.

The Arizona Constitution requires the Arizona Commission on Judicial Performance Review to conduct performance evaluations of superior court judges. The Commission is asking for your help to evaluate Maricopa County Superior Court judges currently undergoing performance review. After your hearing, if the judge you are in front of is undergoing review, a survey will be emailed to you and you can take the survey online. The survey is conducted by the Docking Institute of Public Affairs at Fort Hays State University and is anonymous and confidential. Your participation in the review process is important! More information on Judicial Performance Review can be found at www.azjudges.info.

La Constitución de Arizona exige que la Comisión de la Evaluación del Desempeño Judicial realice evaluaciones de desempeño de los jueces de los tribunales superiores. La comisión pide su ayuda para evaluar a los jueces del Tribunal Superior del Condado de Maricopa a quienes

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

actualmente se les está evaluando su desempeño. Después de su audiencia, si el juez ante el cual comparece está sometido a una evaluación se le enviará por correo electrónico una encuesta que usted podrá tomar por Internet. La encuesta es realizada por el Docking Institute of Public Affairs de la Fort Hays State University y se mantiene anónima y confidencial. ¡Su participación en el proceso de la evaluación es importante! Para obtener más información sobre la evaluación del desempeño judicial, diríjase a www.azjudges.info.

LATER:

BACKGROUND

Maricopa County and the Maricopa County Board of Supervisors, in their official capacities (at times referred to collectively as the “County”), filed suit in CV2020-016840 asking the Court to declare that two legislative subpoenas issued to the Maricopa County Board of Supervisors (the “2020 subpoenas”) were illegal and unenforceable. The 2020 subpoenas required production of numerous documents and electronic materials dealing with the November 2020 election.

Karen Fann (“Fann”), as President of the Arizona Senate, and Eddie Farnsworth (“Farnsworth”), as Chairman of the Arizona Senate Judiciary Committee, filed a Counterclaim seeking enforcement of the 2020 subpoenas. Fann and Farnsworth filed a Motion for Preliminary Injunction, asking the Court to enforce the 2020 subpoenas. After the Motion was filed, a notice of substitution was filed under Arizona Rule of Civil Procedure 25(d), stating that Warren Petersen (“Petersen”), the incoming Chairman of the Senate Judiciary Committee, was substituting for Farnsworth, who no longer held that position. (Fann and Petersen are, at times, referred to as the “Senators”).

The Court considered the Motion for Injunctive Relief, the Response and the Reply, along with the arguments of counsel. The Court also considered the Amicus brief from the Attorney General of the State of Arizona and the Amicus brief filed by certain Republican Chairmen and House members. At a hearing held on January 13, 2021, the Court found that the dispute before the Court was moot, in light of the fact that the 2020 subpoenas were no longer enforceable.

The day before the January 13 hearing, Fann and Peterson issued two new subpoenas to the Board of Supervisors. Subpoenas were also issued to the Maricopa County Recorder and the Maricopa County Treasurer. (The subpoenas issued on January 12 are collectively referred to as the “Subpoenas.”) The County filed CV2021-002092, asking the Court to declare that the Subpoenas were illegal and unenforceable.¹ Nonetheless, in response to the Subpoenas, the County

¹ CV2020-016840 and CV2021-002092 have been consolidated.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

“quickly produced some 11.32 gigabytes of data” and commissioned two separate examinations of its tabulation machines, to ensure that they functioned properly during the November 2020 election.

The Subpoenas were served on the afternoon of January 12. The Subpoenas commanded appearances the next day, January 13, 202, at 9:00 a.m. The Chairman of the Board of Supervisors, Jack Sellers, Maricopa County Recorder Stephen Richer, and Maricopa County Treasurer John Allen appeared at the Senate at 9 a.m. They were ostensibly prepared to testify and to notify the Senators that they could not possibly produced all of the subpoenaed material in the time frame provided. The Subpoenas commanded production of some 2.1 million voted paper ballots, nine large Central Count Tabulators, 350 smaller Precinct Based Tabulators and other hardware and electronically stored information (“ESI”). There was no Senate hearing on January 13 and no testimony was taken. Despite the production of 11.32 gigabytes of data, the County has not provided all of the materials that were subpoenaed. Among other things, the County has not provided the Senators the ballots from the election.

The County later filed a request for injunctive relief. The County was concerned that the Arizona State Senate was going to hold County officials in contempt and possibly have them arrested. The Senate vote to hold the County officials in contempt failed by one vote, and the request for injunctive relief was withdrawn.

The Court has now been asked to issue an expedited ruling on the merits of the dispute. The County wants the Court to declare that the Subpoenas are illegal and unenforceable. The Senators ask the Court to rule that the Subpoenas are legal and enforceable. Specifically, the County has filed a Motion for Summary Judgment, and the Senators have filed a Motion for Judgment on the Pleadings. The Democratic Members of the Senate Judiciary Committee have also filed a Motion for Summary Judgment.² (The Democrat Members of the Senate Judiciary Committee are referred to as “Democrat Senators.”) The parties agreed that there would be no responses. The Court has considered these various Motions and the arguments of counsel.

² The Court questions the standing of the Democrat Senators. It is not clear why they were named as defendants. As minority members, the Democrat Senators have no authority to issue subpoenas under A.R.S. § 41-1151, which provides that subpoenas can be issue by “the presiding officer of either house or the chairman of any committee.” The Democrat Senators are not the target of the Subpoenas, so their standing to object is suspect. Nonetheless, the Court has considered the Motion filed by the Democrat Senators.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

SCOPE OF THE RULING

The courts should generally be hesitant to enter the fray of political disputes between two other branches of government. The controversy between the Senators and the County is a highly charged political dispute.³ Serious accusations have been made and emotions are raw.

The Senators believe that the County has snubbed the clear authority of the Senators to issue the Subpoenas. The County believes, on the other hand, that the Subpoenas are the result of continuing claims by supporters of former President Trump that the election was “stolen” and that this entire matter is a waste of time. The County firmly maintains that the Senators are abusing their powers and refusing to show proper deference to another branch of government.

This Court has no interest in the political dispute between these parties. This is a Court of law, not a Court of politics.

It is, however, an appropriate function for the Court to issue declaratory rulings on limited legal issues. As such, the Court will issue declaratory rulings on whether the Subpoenas are valid and have a proper legislative purpose, whether the Subpoenas violate separation of powers and whether the Subpoenas improperly seek production of materials protected by confidentiality statutes. Issuing such rulings is a proper and necessary exercise of the jurisdiction given to the Court in the Uniform Declaratory Judgment Act, A.R.S. § 12-1831 *et seq.*

It is, of course, not the Court’s place to address the wisdom of the Subpoenas. The statutes of this State give the Senators the right to issue subpoenas and to enforce those subpoenas. This Court must follow the law.

It is regrettable that this matter has resulted in a highly bitter dispute between two branches of our government. The members of the County Board of Supervisors and the Senators are all dedicated public servants. This Court has urged these public servants to devote their time and energies to finding a mutually agreeable solution to this problem. They apparently have not done so. Our governmental officials should not be spending valuable resources on lawyers, “fighting” with another branch of government over what materials can be provided to another branch of government under a subpoena. Rather, the citizens expect their governmental officials to work cooperatively for the common good. It is highly unfortunate that that has not happened here. When government officials resort to “name calling” and threats, something has gone terribly wrong.

³ The political dispute initially arose out of the allegations by former President Trump and his allies that there was widespread fraud in the 2020 presidential election. The County accused the Senators of taking part in the purported effort of President Trump and his allies to “overturn” the 2020 election. President Biden is now in office and there clearly will be no “overturning” of the 2020 election.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

This ruling decides only very narrow legal issues. This Court is not enforcing the Subpoenas. This Court has serious concerns about whether it has jurisdiction to enforce the Subpoenas and the Senators have not asked the Court to issue an order enforcing the Subpoenas. As such, this Court's ruling is a narrowly focused declaratory ruling.

VALIDITY OF THE SUBPOENAS

A.R.S. § 41-1151 authorizes “the presiding officer of either house or the chairman of any committee” to issue a subpoena. A.R.S. § 41-1151 *et seq.* provides a mechanism for the legislature to enforce the subpoenas and provides that a person who does not comply is guilty of a misdemeanor. A.R.S. §§ 41-1153, -1154. The statutes also authorize the Senate to find that a person who does not comply with a subpoena to be held in contempt. Moreover, a person who does not comply can be arrested by the sergeant-at-arms. A.R.S. § 41-1153.

Statutory Requirements

The Court first briefly addresses the County's argument that the Subpoenas do not comply with statutory requirements. The County argues that the Subpoenas are invalid because there was no actual hearing conducted on January 13.

The County claims that legislative subpoenas “must be tethered to a hearing.” There is nothing in A.R.S. § 41-1151, however, that requires a hearing. Rather, the statute refers only to requiring “the attendance of the witness at a certain time and place.” The Subpoenas did command that witnesses appear at a specific time and place. The fact that no actual hearing occurred did not invalidate the Subpoenas.⁴ The fact that the Senators did not force the witnesses who appeared to testify did not render the Subpoenas a nullity. The County's argument that the Subpoenas are invalid because there was no hearing is inconsistent with the statute that authorized the issuance of the Subpoenas.

A.R.S. § 41-1154 requires that a witness produce material “upon reasonable notice.” The Subpoenas were served less than 24 hours before the due date. The County, however, knew about the 2020 subpoenas and, therefore, knew for several weeks what materials the Senate was seeking. Moreover, the County has now had weeks to comply, and has, in fact, produced many of the requested materials. As such, while a “reasonable notice” objection might have been valid at the time, it is hardly valid now. Moreover, it appears as if the County is refusing to produce certain information, irrespective of whether it had reasonable notice. A party cannot use the lack of

⁴ The Democrat Senators acknowledge that the legislature is authorized to issue subpoenas for documents, without requiring attendance of witnesses at a hearing. Democrat Senators' Motion at 4. As they point out in their Motion, A.R.S. § 41-1152 refers to “[t]estimony or evidence produced pursuant to this article,” supporting the notion that evidence other than witness testimony can be the target of a legislative subpoena.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

reasonable notice as a defense if it intends to not comply, irrespective of the notice provided. *See United States v. Bryan*, 339 U.S. 323, 333-34 (1950).

The County's argument that the Senate cannot subpoena electronically stored information ("ESI") or tangible objects, such as voting "machines", is also meritless. A.R.S. § 41-1154 addresses enforcement of legislative subpoenas. The County cites the portion of the statute that refers to production of "relevant books, papers or documents," and argues that ESI and machines are not books, papers or documents. The County ignores, however, the same portion of the statute, which refers to production of "any material." Clearly, ESI and machines constitute "material."

A.R.S. § 41-1154 clearly reflects the legislative intent that legislative subpoenas can demand production of "any material," in addition to "books, papers or documents." Moreover, the statute does not somehow immunize information from being subpoenaed simply because the information is electronically stored. In modern parlance, "documents" include electronically stored information. Indeed, when parties in litigation are producing "documents," they understand that documents include ESI. It is absurd to think that information that happens to be electronically stored and not kept on a piece of paper is not a "document" that can be subpoenaed.

Necessity of a Resolution

The County argues that the issuance of a legislative subpoena is dependent on an active investigation established by resolution. No Arizona authority so holds. Indeed, such a conclusion is contrary to the operative statute.

The Arizona legislature granted the authority to the presiding officer and committee chairmen in each chamber of the legislature to issue subpoenas. A.R.S. § 41-1151. This grant of authority to these officials is diametrically opposed to the County's position that there must be some resolution passed before a subpoena can be properly issued.⁵ There is nothing in the statute

⁵ The Arizona statute has no similar counterpart in federal law. It is true that Congress' constitutional subpoena power is vested in the body as a whole and delegation of that power to a committee must entail an authorizing resolution. *See, e.g., Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020); *Comm. on the Judiciary, U.S. House of Representatives v. Miers*, 558 F. Supp. 2d 53, 70-71 (D.D.C. 2008). Arizona legislative subpoenas, however, are not governed by the federal standards and rules for issuing congressional subpoenas. Arizona legislative subpoenas are not issued by the body as a whole and, therefore, require no "resolution." Indeed, the presiding officer of the Senate, the president, does not chair any committee. Yet, the statute gives that official the authority to issue a subpoena. This clearly indicates that no committee resolution is necessary.

Although *Buell v. Superior Court* involved a legislative investigation pursuant to a resolution, the Arizona Supreme Court did not hold that a resolution was required before a legislative subpoena could be issued. *Buell v. Superior Court*, 96 Ariz. 62 (1964). *Buell* concerned the power of the legislature to hold a lawyer in contempt for failing to comply with a legislative subpoena. It did not specifically address the requirements for issuance of such a subpoena. It certainly did not hold that a resolution was required before a subpoena could issue.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

that requires an open formal investigation or a resolution, as a necessary precursor to the issuance of a subpoena.

The County further argues that the power to issue subpoenas is only held by the Senate as a corporate body, not by individual Senators. The argument again ignores the plain language of the statute, which expressly authorizes “the presiding officer of either house or the chairman of any committee” to issue subpoenas. A.R.S. § 41-1151.⁶

Accordingly, the Senators themselves, in their capacities as Senate president and committee chair, had the statutory power to issue subpoenas.⁷ As long as the Subpoenas were issued for a proper legislative purpose and do not violate Constitutional protections, the Subpoenas are valid and enforceable.

It is not the Court’s function to ascertain the wisdom of the Senators’ decision to issue the Subpoenas or to determine if any attendant investigation is “justified.” *See Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 20-21 (D.D.C. 1994) (“[T]his Court may only inquire as to whether the documents sought by the subpoena are ‘not plainly incompetent or irrelevant to any lawful purpose [of the Subcommittee] in the discharge of [its] duties.’”) (citations omitted). Similarly, the Court is not in a position to determine whether some or all of the information being subpoenaed is “immaterial” to the inquiry being undertaken by the Senators. Indeed, materiality is arguably framed by the scope of the Subpoenas themselves.

Proper Legislative Purpose

The Arizona Supreme Court has held that “[i]t is within the powers of legislative committees to conduct investigations...and to issue subpoenas and to summon witnesses generally and punish them for contempt if they refuse to answer relevant questions or produce records.” *Buell*, 96 Ariz. at 66.⁸ A legislative subpoena is issued for a proper legislative purpose if “the

The cases cited by the County from California and other states are not persuasive because they do not address the specific requirements of Arizona’s legislative subpoena statutes. For example, in *Connecticut Indem. Co. v. Superior Court*, 3 P.3d 868, 810 (Cal. 2000), cited by the County, the statute in question, Cal. Gov. Code § 37104, states that subpoenas can be issued by “[t]he legislative body.” A.R.S. § 41-1151 does not authorize the “legislative body” to issue subpoenas; only the presiding officers and committee chairs may do so. As such, California law is completely irrelevant.

⁶ There is nothing in the record suggesting the Senators were acting outside their official capacities.

⁷ Judge Warner did not rule that the Senators are not authorized, individually, to issue legislative subpoenas, as the County claims. The issue decided by Judge Warner was whether mandamus was a proper means of enforcing a legislative subpoena. *Fann v. Maricopa County*, No. CV2020-016904, Decision Order (Dec. 23, 2020). In fact, Judge Warner expressly stated that “A.R.S. § 41-1151 authorizes the presiding officer or a committee chair of either house of the Arizona Legislature to issue subpoenas.” *Id.* at 1.

⁸ During oral argument, the County admitted that the legislature has “broad powers of inquiry.”

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

subject was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit.” *McGrain v. Daugherty*, 273 U.S. 135, 177 (1927). If there is a conceivable legislative purpose, the court will presume that the purpose of the subpoena is proper. *Id.* at 178. So long as the subpoena can be construed to relate to a subject upon which legislation might be had, the subpoena is valid. *Id.* at 180.

The Subpoenas seek numerous pieces of data and information dealing with the November 2020 election. For purposes of this ruling, the Court finds that the Subpoenas were issued for a valid legislative purpose.

The Arizona Constitution entrusts the legislature with the power to enact “laws to secure the purity of elections and guard against abuses of the elective franchise.” Ariz. Const. art. VII, § 12. The United States Constitution empowers the legislatures of the states to set the time, place and manner of elections. U. S. Const. art. 1, § 4, cl. 1. The states also determine the manner in which electors are chosen. U.S. Const. art. II, § 1, cl. 2.

The Senators state that they intend to use the data gathered under the Subpoenas to evaluate the accuracy and efficacy of existing vote tabulation systems and competence of county officials in performing their election duties, with an eye to introducing possible reform proposals. This is a valid legislative purpose. Granted, there was no specific legislation pending before, or even being examined by, the Senate at the time the Subpoenas were issued. There does not, however, have to be actual legislation pending in order for a legislative subpoena to be issued for a proper purpose. A.R.S. § 41-1151 does not require pending legislation, or even a formal “investigation,” before a presiding officer or committee chair can issue a subpoena.

Wilkinson v. United States, 365 U.S. 399 (1961), cited by the County, stated only that the existence of pending legislation was a factor to be considered in determining whether the subpoena was issued for a proper purpose. Further, in the absence of pending legislation, legislative investigations can appropriately determine whether other governmental agencies are properly performing their functions. *See McGrain*, 273 U.S. at 177-78 (Congressional investigation into whether the Attorney General and his assistants were performing or neglecting their duties).

The County contends that the Subpoenas were not issued for a proper legislative purpose because the Senators are allegedly seeking to re-adjudicate the presidential election. Indeed, the County argues that “Fann is attempting to perform a private recount⁹ of the election” and that the Senators have no authority to “audit” elections. The County asks the Court to examine statements

⁹ The Court does not know what the County means when it refers to a “private recount.” A “private recount,” whatever that is, would have no legal significance. The fact that the Senators might conduct a “private recount” does not negate the notion that there was a proper legislative purpose—investigating the need for election reform and examining possible legislation attendant thereto.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

made by Senator Fann in order to ascertain the “true” purpose of the Subpoenas. Granted, Senator Fann has made public comments about concerns of “many voters” regarding the accuracy of the presidential election and the need to “audit” the election.¹⁰ These comments, however, do not mean that the Subpoenas were not issued for a proper legislative purpose.¹¹

If there is a conceivable proper purpose, the Court must construe the Subpoenas as valid. *Id.* at 180. There clearly is a proper legislative purpose here. Assessing electoral integrity is a proper legislative purpose. Examining potential legislative reforms to the electoral process is certainly a proper function of the State legislature.

This Court is not in a position to determine if the “real” purpose of the Subpoenas is to try to “overturn” the result of the election.¹² Even if one of the original purposes of the 2020 subpoenas was to see if the election could somehow be challenged, there still is a perfectly valid legislative purpose for the Subpoenas.¹³ Accordingly, the Court finds that there was a proper legislative purpose.

SEPARATION OF POWERS

The County suggests that the Subpoenas could “usurp” the administration of elections and duties of County officials and the Secretary of State. Therefore, according to the County, the Subpoenas present separation of powers problems. The entire electoral infrastructure, however, is a legislative creation. The functions of County officials and the Secretary of State were the result of delegations by the legislature.¹⁴

Powers held by the counties are those delegated to the counties by the legislature. Ariz. Const. art XII, § 4; *see Assoc. Dairy Prods. Co. v. Page*, 68 Ariz. 393, 395-96 (1949) (“The boards

¹⁰ The County’s contention that the Senators are acting improperly in looking at the integrity of the 2020 election is somewhat ironic in light of the fact that the County itself just completed a “forensic audit” of the election.

¹¹ The Democrat Senators acknowledge that it is a proper purpose to use a legislative subpoena to “investigate election administration in general.” The Democrat Senators insist, however, that it is not proper for the legislature to issue subpoenas to investigate the November 2020 election. An investigation of the 2020 election, however, clearly could be of assistance in investigating election administration and possible reforms.

¹² In light of the fact that the Electoral College has voted, Congress has confirmed the election, and President Biden has been sworn in, any purported attempt to “overturn” the result of the election now would clearly be futile.

¹³ Indeed, the Senators acknowledge that one purpose of the 2020 subpoenas was to determine if the result of the Arizona election was correct and to see if there was a further basis to challenge the election outcome. Even though that might have been one purpose of the 2020 subpoenas, the goal of studying the result and trying to determine if legislation should be passed to improve the election process is still a valid purpose, sufficient to uphold the Subpoenas.

¹⁴ The Arizona Constitution gives the legislature authority to define the powers and duties of the Secretary of State. Ariz. Const. art. V, § 9. The duties of the Secretary of State are set out by in A.R.S. § 41-121, which duties include certifying election results. A.R.S. § 41-121(A)(6).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

of supervisors of the various counties of the state have only such powers as have been expressly or by necessary implication, delegated to them by the state legislature.”); *State v. Payne*, 223 Ariz. 555, 561, ¶ 15 (App. 2009).¹⁵ Since the legislature delegated powers to the counties, it can certainly investigate modifying or improving those delegated powers.¹⁶ It also has the power to investigate whether the County is properly discharging its delegated functions. *See McGrain*, 273 U.S. at 177-78.

The County’s characterization of the Senators’ argument as “bizarre” is premised on the notion that the real purpose of the Subpoenas is to “overturn” or “challenge” the election. A subpoena, however, cannot “overturn” an election. A subpoena simply demands production of information. Responding to the Subpoenas could hardly result in the “overturning” of the presidential election in Arizona.

If one assumes, as the Court must, that the Subpoenas were issued to examine potential election reforms, then it is evident the Subpoenas were not an attempt to “usurp” powers of the County and the Secretary of State. Subpoenaing materials from the County is not a usurpation of the County’s powers. Rather, it is simply gathering of information.

Accordingly, the Subpoenas do not violate the separation of powers. As noted above, the counties have only such powers as delegated to them by the legislature. It is axiomatic that the legislature can take action, so long as it is acting within the scope of its legislative authority. Separation of powers issues are raised when one branch of government tries to usurp a power it has delegated to another branch. No such attempt has been made here.

CONFIDENTIALITY

The County also contends that the Subpoenas might threaten the “right to a secret ballot” and violate certain state statutes on confidentiality. The statute governing confidential voter information, however, permits access by any “authorized government official in the scope of the official’s duties.” A.R.S. § 16-168(F).

¹⁵ The statutes governing counties are set out in Title 11 of Arizona Revised Statutes. Chapter 2, Article 4 of Title 11 describes the powers and duties of the county boards of supervisors, which include the power to “[e]stablish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.” A.R.S. § 11-251(3).

¹⁶ The County argues that “the Legislature gave the Executive Branch” authority to canvass and proclaim the results of the election. That is true. That does not prevent, however, the legislature from considering or passing legislation addressing the voting process or potentially revoking some of the authority delegated to the County or the Secretary of State. Indeed, the Arizona Constitution charges the legislature with the responsibility of ensuring the “purity” of elections and guarding against abuse. *See* Ariz. Const. art. VII, § 12.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

Confidentiality statutes do not prevent ballots and associated materials from being provided to government officials. Rather, these statutes are intended to prevent disclosure of information to the public. All government officials are obligated to follow the law and comply with confidentiality statutes. This, of course, includes the Senators.

The County cites the Arizona Constitutional right to a “secret” ballot. Ariz. Const. art. VII, § 1. Absent unusual circumstances, however, it is impossible to tie any given ballot to the voter who completed the ballot. Moreover, producing information to government officials clearly does not deprive a voter of his or her right to a secret ballot. All government officials, including the Senators, clearly have a corresponding duty to maintain the secrecy of ballots that are provided to them.

The County even cites A.R.S. § 16-1018(4), which makes it unlawful to “[s]how[] another voter’s ballot to any person after it is prepared for voting in such a manner as to reveal the contents[.]” This provision, however, obviously does not prohibit the showing of the ballot to government officials. Indeed, if that were the case, it would be illegal for any County official to “see” any ballot after it was prepared for voting. It is apparent that the word “person,” as used in this statute, does not refer to government officials.¹⁷

When interpreting confidentiality statutes, the Court must “‘apply constructions that make practical sense’ rather than those that ‘frustrate legislative intent’” *State v. Zeitner (Zeitner I)*, 244 Ariz. 217, 224, ¶ 27 (App. 2018), *aff’d* 246 Ariz. 161 (2018) (*Zeitner II*). The clear intent of the legislature in enacting these confidentiality statutes was to protect voters’ rights to cast secret ballots. The legislature did not intend for these statutes to prevent it from having access to the materials it deemed necessary to fulfill its duty to oversee the election process.

¹⁷ The County cites a number of other statutes that clearly have no application to the question of production of balloting materials to the legislature. For example, the County argues that A.R.S. § 16-1005(H) makes it “illegal to possess voted ballots even when it is unknown who cast them,” Section 16-1005(H) prohibits the practice of “ballot harvesting.” That statute was held unconstitutional by the Ninth Circuit in *Democratic National Committee v. Hobbs*, 948 F.3d 989 (9th Cir. 2020), *cert. granted*, 141 S. Ct. 222 (Mem) (Oct. 2, 2020). In any event, the ballot harvesting prohibition was not intended to prevent the legislature or other governmental bodies and officials from examining ballots and related materials. If that were the case, the County and its officials would not be permitted to possess and examine ballots.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

Statutes such as §§ 16-624 and 625, operate as restrictions on access by the general public.¹⁸ The statutes do not prohibit disclosure of voting information to another part of the government.¹⁹

During oral argument, counsel for the County focused on A.R.S. § 16-624 and argued that compliance with the Subpoenas would require the County to violate the law. The Court disagrees.²⁰

Section 16-624(A) requires the “officer in charge of elections” to deposit the package containing ballots in a secure facility, managed by the County Treasurer, to be kept “unopened and unaltered” for a period of twenty-four months for federal elections. This statute, which imposes obligations on the “officer in charge of elections” and the County Treasurer, does not immunize the ballots from being subpoenaed, let alone from being subpoenaed by the legislature, acting in

¹⁸ The County argued that, under A.R.S. § 16-624, once paper ballots are sealed after a canvass, ballots can only be unsealed by court order for purposes of a court-ordered “recount.” (County’s Motion at pp. 3, 13.) The County seems to suggest that this is the only situation where the ballots can be unsealed. This is clearly not the case. Subsection of A of the statute states that, after a canvass is completed, the County Treasurer must keep the ballots for 24 months for federal elections. Subsection B provides that “irregular ballots” must be preserved for six months and “may be opened and the contents examined only upon on order of the court.” Subsection D states that, in the case of a recount within six months, “the county treasurer may be ordered by the court” to deliver the ballots to the court. The County’s argument suggesting that ballots can be opened only under situations specifically addressed in the statute is clearly wrong. The statute only specifically refers to a court order providing for opening the ballots in the narrow circumstances dealing with “irregular ballots” (subsection B). While the power of the Court to open ballots in recount situations under subsection D may be implied, the statute does not directly provide such authorization. In any event, it is clear that the Court has the inherent authority to order the opening of ballots in other situations. *See* discussion below in fn. 21. Similarly, the Senate, as a co-equal branch of government with broad subpoena powers, can subpoena ballots in situations not provided for in the statute itself.

¹⁹ *Garner v. Cherberg*, 765 P.2d 1284 (Wash. 1988), is not controlling, nor is it persuasive. In *Garner*, the Washington Supreme Court quashed a legislative subpoena, which sought confidential records from the commission on judicial conduct pertaining to a particular judge. The court did not hold that the confidentiality rules precluded all legislative oversight, as indicated at the end of the decision where the court “invite[d] the Majority Leader of the Senate and the Speaker of the House of Representatives to join the Chief Justice of the Supreme Court to conduct such an in camera inspection of the Commission's investigation files on Judge Little to satisfy themselves of the objectivity of the report.” *Id.* at 1290. In addition, that case did not involve the oversight of elections, which the Arizona legislature is Constitutionally empowered to oversee.

²⁰ The Court understands that, in addition to ballots, the County has also not produced various voting machinery and hardware. The confidentiality statutes cited by the County clearly provide no justification for withholding those materials.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

its Constitutional role to ensure the “purity” of elections.²¹ This statute simply does not create a privilege, justifying non-disclosure.²²

In fact, the statutory requirement that ballots be maintained for twenty-four months itself suggests these materials may be responsive to, and subject to, compulsory process long after an election has been certified and any contest period has lapsed. The County certainly provides no other explanation as to why ballots are required to be maintained for such a long period of time. Common sense suggests that they are maintained because they may be relevant to a legislative investigation, or perhaps a lawsuit, and that they might be subpoenaed. *See Zeitner I*, 244 Ariz. at 224, ¶ 27. There is simply no suggestion from the statute itself, or from common sense, that the statute means that no one is entitled to see the ballots, let alone Senators who are considering ways to improve the electoral process.²³

The County’s argument could lead to absurd results. According to the County, any statute that imposes obligations on a person to do specific things with documents or information immunizes those documents or information from being subpoenaed. For example, a state statute could require state chartered financial institutions to keep certain information confidential and “under lock and key.” By further way of example, a state statute could require companies who do business with the State to keep certain information safely stored and confidential. Such statutes cannot, and do not, prevent the “confidential” material from being subject to subpoena.

If the County’s argument is correct, that providing ballot materials would violate the law, then the County is itself violating the law presently. The County admits that it has not stored the ballots as provided for in § 16-624 because the ballots are still “under the custody and control of the Board of Supervisors.” (County’s Statement of Fact ¶ 88.) The County claims it has not stored the ballots with the County Treasurer as required “because of ongoing litigation.” The County states that it will deposit the ballots in the Treasurer’s vault, “as the law requires,” only after litigation concludes. It is unclear why the County feels justified in violating the law simply because

²¹ *See Democratic Party of Pima County v. Ford*, 228 Ariz. 545 (App. 2012) (noting that trial court had entered an order granting political party’s public records request to gain access to ballot records required to be kept confidential under A.R.S. § 16-624). The public record request in *Ford*, which was approved by the court, certainly demonstrates that ballots may be subject to disclosure in circumstances other than those specifically identified in § 16-624(B) and (D), contrary to the County’s assertion otherwise.

²² Indeed, during oral argument, the County admitted that the relevant statutes do not render the material in question the confidential or privileged material of the County.

²³ The County’s argument that the Senate’s attempt to pass legislation specifically providing that ballot materials can be subpoenaed constitutes an admission that the current law does not provide for subpoenaing such materials is unconvincing. The Senators have firmly maintained that they have the power to subpoena these materials. A legislative attempt to clarify what could be seen as an ambiguity in the current law is hardly an admission by the Senators.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

litigation is pending, but claims that it cannot violate the law by complying with the Subpoenas.²⁴ Complying with the Subpoenas would not violate the law.

The Senators had the power to issue the Subpoenas and have the statutory power to enforce those Subpoenas in the manner set forth in the statutes. The Subpoenas are, in essence, the equivalent of a Court order, requiring production of certain information. The County cannot avoid a subpoena based on statutes that require that the material being subpoenaed be kept confidential.

While a claim of privilege might, under certain circumstances, constitute a defense to a legislative subpoena, a claim of confidentiality does not.²⁵ The Senators, of course, are obligated maintain confidentiality of the materials turned over to them. Confidentiality, however, is not a basis for quashing the Subpoenas.²⁶

CONCLUSION

The Court finds that that Subpoenas are legal and enforceable. There is no question that the Senators have the power to issue legislative subpoenas. The Subpoenas comply with the statutory requirements for legislative subpoenas. The Senate also has broad constitutional power to oversee elections. The Arizona legislature clearly has the power to investigate and examine election reform matters. Accordingly, the Senators have the power to subpoena material as part of an inquiry into election reform measures. As such, the Subpoenas have a proper legislative purpose.²⁷ The Subpoenas also do not violate separation of powers principles. Production of the subpoenaed materials would not violate confidentiality laws.

²⁴ The ballot material could have been stored by the County Treasurer and retrieved, if it were determined that the materials were properly subject to subpoena.

²⁵ See *Zeitner II*, 246 Ariz. at 168, ¶ 28 (Arizona Supreme Court stated that the statutory physician-patient privilege “must yield to the State’s interest in combatting fraud.”); *Buell*, 96 Ariz. at 68-69 (finding claim of attorney-client privilege was defeated by legislature’s need for subpoenaed materials in investigation of the Arizona Corporation Commission).

²⁶ This is not to say that the Court does not have concern about the confidentiality of the subpoenaed ballot information. The Elections Procedures Manual has carefully delineated provisions providing for the security of ballots. The Manual, however, simply cannot be reasonably read to prevent production of subpoenaed material to government officials, particularly State legislators who are constitutionally charged with ensuring election integrity. For example, Congress often investigates topics that involve highly confidential and sensitive information and subpoenas confidential and sensitive information. Congress, of course, is obligated to maintain the confidentiality of such materials. Similarly, the Senators certainly are obligated to maintain confidentiality of the subpoenaed materials here.

²⁷ The County has also argued that the Subpoenas are overly broad and unduly burdensome. The Court’s function, however, is to simply determine if the Subpoenas were valid and had a proper legislative purpose. The Senators have broad discretion in determining what information is needed. The Court is in no position to determine if specific requests are unduly burdensome. Disagreements about the breadth and burdensomeness of the Subpoenas should be worked out between the Senators and the County and their counsel.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-016840

02/25/2021

The County's Motion for Summary Judgment is denied. The Senators' Motion for Judgment on the Pleadings is granted, to the extent consistent with this Order. The Democrat Senators' Motion for Summary Judgment is granted in part and denied in part, consistent with this Order.

The Court expressly finds that there is no just reason for delay and expressly directs entry of this Order as final partial judgment under Rule 54(b) of the Arizona Rules of Civil Procedure.

/s/ HON. TIMOTHY THOMASON

HONORABLE TIMOTHY THOMASON
JUDICIAL OFFICER OF THE SUPERIOR COURT

Exhibit 3

Exhibit 3



KATIE HOBBS
SECRETARY OF STATE

March 3, 2021

VIA EMAIL ONLY

Senate President Karen Fann
Senator Warren Petersen
1700 W. Washington
Phoenix, AZ 85007
kfann@azleg.gov
wpetersen@azleg.gov

President Fann and Senator Petersen,

I write to express my ongoing concern about the legislative subpoenas issued to the Maricopa County Board of Supervisors for the production of election equipment and ballots from the 2020 General Election and the unspecified audits you intend to conduct. As you know, there is no credible evidence for any of the conspiracy theories that have abounded about the 2020 General Election, including those made by associates of Allied Systems Operations Group. Indeed, officials in Maricopa County, in particular, have gone above and beyond what is required by law to demonstrate the security and accuracy of the election they conducted. I again urge you not to waste taxpayer resources chasing false claims of fraud that will only further erode public confidence in our election processes and elected officials.

In any case, in light of Judge Thomason's recent ruling clearing the way for you to receive Maricopa County's ballots and election equipment, I implore you to treat your responsibility for the custody, security, and integrity of those items with the same level of vigilance that election officials across this State treat that responsibility. Indeed, Judge Thomason's ruling makes clear that you are obligated to maintain the security and confidentiality of the materials turned over to you. If your goal is truly to rebuild public confidence in our democracy, it is imperative that you establish and abide by clear procedures and parameters for the security and confidentiality of the

ballots and election equipment while in your custody and ensure independence and transparency should you proceed with any further audit.

At minimum, before you assume custody of Maricopa County's ballots and election equipment, I urge you to:

- Develop and implement procedures to ensure a secure and documented chain of custody for the ballots and election equipment, including retention of thorough logs and sign-in sheets for persons accessing ballots and election equipment;¹
- Develop and implement procedures to ensure the physical security of the ballots² and physical, data, and cyber security of election equipment,³ so that they are not tampered with, stolen, or otherwise mishandled or compromised;
- Develop and implement procedures to ensure markings on ballots are not altered or added while in your custody, including, for example, restricting writing instruments to only red pens in the room where ballots are handled, inspected, or counted;
- Ensure that the handling, inspection, and counting of ballots is performed by bipartisan teams including at least two members of different political parties⁴ and only conducted under camera with a live video feed and that the video footage is retained for 24 months;⁵
- Develop and implement procedures to ensure that election equipment is not connected to the internet, that write blocker devices are used when connecting any media to election equipment, that any memory stick or device used to transfer data to or from election equipment are from reputable sources and are only used once and then disposed of, that no extraneous or malicious hardware or software are installed or connected to the election equipment; and that any third-party access to the source code for the election equipment is approved and observed by the system vendor;
- Develop and make available to election officials and the public the procedures and criteria, including as to qualifications and independence, you will use to select the firms and/or individuals who will be charged with conducting any further audits or otherwise handling the ballots and election equipment;

¹ See Elections Procedures Manual ch. 8, § V(E); ch. 4, § III; and statutory provisions cited therein.

² See Elections Procedures Manual ch. 8, § VE and statutory provisions cited therein.

³ See Elections Procedures Manual ch. 4, § III and statutory provisions cited therein.

⁴ See Elections Procedures Manual ch. 10 and statutory provisions cited therein.

⁵ See Elections Procedures Manual ch. 10, § I(B) and statutory provisions cited therein. The video footage should be retained for 24 months.

- Make available to election officials and the public the standards and procedures that will be followed in conducting any audit, as well as the objectives of the audit and ultimate results and supporting documentation;
- Permit the Secretary of State's Office, the Governor's Office, the Attorney General's Office, Maricopa County officials, and political party designees to observe every step of any audit and any handling, inspection, or counting of ballots; and
- Provide for the greatest practicable level of public observation of any audit process and any handling, inspection, or counting of ballots, just as Arizona's election officials are required to permit observation of logic and accuracy testing of election equipment before and after the election, polling places, ballot processing, ballot tabulation, and post-election audits.⁶

You have stated previously that you believe a further audit by the Senate is critical for the people of Arizona to be able to move forward and trust the 2020 General Election results. I respectfully disagree. But I believe we can agree that proceeding without clear procedures for the security of the ballots and election equipment when they are in your custody, and clear procedures to ensure the integrity, independence, and transparency of the audit itself and the auditors selected, will only open the door to more conspiracy theories and further erosion of voters' confidence in Arizona's elections processes.

If the Senate chooses to proceed with an audit of the Maricopa County ballots, I urge you to seriously consider conducting a risk-limiting audit with the assistance of reputable, nonpartisan national experts. The attached white paper, *Risk-Limiting Audits in Arizona*, by Elizabeth Howard, Paul Rosenzweig, and Turquoise Baker⁷ contains more information about risk-limiting audits and how they can be implemented in Arizona to increase confidence in the accuracy of our election results. My Office has been in communication with post-election audit experts at the nonpartisan organizations Voting Works (<https://voting.works>) and the Brennan Center (<https://www.brennancenter.org>), who stand ready to travel to Arizona to assist the Senate in conducting a secure, transparent, and statistically-sound risk-limiting audit of the 2020 General Election in Maricopa County. My Office would be happy to assist in coordinating that effort or connect you directly to our points of contact at those organizations as well as other experts in post-election audits.

⁶ See Elections Procedures Manual ch. 8, § III; ch. 4, § II(C); and statutory provisions cited therein.

⁷ Available at <https://www.brennancenter.org/our-work/research-reports/risk-limiting-audits-arizona> (last visited March 3, 2021).

Thank you for your attention to this important matter, and I hope to hear from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'KH', with a long horizontal flourish extending to the right.

Katie Hobbs
Arizona Secretary of State

cc:

Senate Minority Leader Rebecca Rios: rrios@azleg.gov

Senator Martin Quezada, Ranking Member, Judiciary: mquezada@azleg.gov

Maricopa County Board of Supervisors:

Jack Sellers, District 1, Chair: Jack.Sellers@maricopa.gov

Steve Chucri, District 2: Steve.Chucri@maricopa.gov

Bill Gates, District 3: Bill.Gates@maricopa.gov

Clint Hickman, District 4: Clint.Hickman@maricopa.gov

Steve Gallardo, District 5: Steve.Gallardo@maricopa.gov

Scott Jarrett, Director of Election Day and Emergency Voting,

Maricopa County Elections Department: sjarrett@risc.maricopa.gov

Exhibit 4

Exhibit 4



KATIE HOBBS
SECRETARY OF STATE

April 1, 2021

VIA EMAIL ONLY

Maricopa County Board of Supervisors
Chairman Jack Sellers, District 1
Jack.Sellers@maricopa.gov
Supervisor Steve Chucri, District 2
Steve.Chucri@maricopa.gov
Supervisor Bill Gates, District 3
Bill.Gates@maricopa.gov
Supervisor Clint Hickman, District 4
Clint.Hickman@maricopa.gov
Supervisor Steve Gallardo, District 5
Steve.Gallardo@maricopa.gov

RE: SENATE AUDIT

Supervisors,

As Arizona's Chief Elections Officer, I've always understood that elections are about partnerships—partnerships between the State and Counties, partnerships between Boards of Supervisors and Recorders, and partnerships between election officials and voters. The mutual respect and trust that is developed through each of these partnerships is foundational to the integrity of our elections. It is in this spirit that I write today—as a partner—to express my concerns about recent events.

Yesterday, the State Senate announced that it selected a group of firms to perform an "audit" of Maricopa County's 2020 General Election.¹ As you'll recall, this is the second time that the Senate has made such an announcement. Following their first announcement, it was believed at the time that the Senate had chosen Allied Security Operations Group, a firm known to have close ties to the Trump campaign and to have previously claimed, without evidence,

¹ Arizona State Senate, "Arizona Senate hires auditor to review 2020 election in Maricopa County." March 31, 2021. Available at <https://www.azsenaterepublicans.com/post/arizona-senate-hires-auditor-to-review-2020-election-in-maricopa-county>

that the 2020 election was rigged against the former President.² Indeed, some of you rightfully expressed outrage that the Senate had hired a “known, and frequently debunked, conspiracy theorist” to help perform the audit.³ Senate President Fann later moved away from that firm, given its clear lack of independence.

Unfortunately, yesterday’s announcement made it clear that the Senate has no intention of conducting an independent audit or ensuring the ongoing security and confidentiality of Maricopa County’s ballots and voting equipment. As you know, the Senate has confirmed its hiring of Cyber Ninjas Inc.⁴ This firm’s CEO not only harbors conspiratorial beliefs about the 2020 election, but has shared conspiracies about Dominion election equipment, the exact equipment he has been hired to audit.⁵ Moreover, Jovan Hutton Pulitzer confirmed yesterday that he too would be involved in this audit.⁶ To be sure, Mr. Pulitzer is also a known, and frequently debunked, conspiracy theorist (to say nothing of “failed treasure hunter” or inventor of one of the “25 worst tech products of all time”).⁷ To compound the concerning nature of these revelations, the Statement of Work signed by the Senate indicates that these “auditors” plan to visit Maricopa County voters at their home to inquire about their registration and voting history.⁸ And if all that were not concerning enough, the Senate President’s press release states that the Senate “leadership will not be directly involved [in the audit], and members do not expect to comment on any of the processes of the audit until the report is issued.”⁹ In other words, the Senate intends to give free reign to Cyber Ninjas, Inc. and will abdicate any responsibility or engagement in the audit process to ensure the security and confidentiality of the ballots and voting equipment or the integrity of the process. In addition to being dangerous and irresponsible, this abdication appears contrary to Judge Thomason’s assumption that the Senate will ensure any third parties will handle the subpoenaed materials appropriately.

² Jeremy Duda (2021, February 05). Fann picks Trump-allied firm with history of false election statements to AUDIT Maricopa election. Retrieved April 01, 2021, from http://www.tucson sentinel.com/local/report/020421_senate_audit_trump_firm/fann-picks-trump-allied-firm-with-history-false-election-statements-audit-maricopa-election/

³ Statement from Supervisor Gates on Arizona Senate Contempt Resolution. February 3rd, 2021. Available at <https://twitter.com/billgatesaz/status/1357102959042039809>.

⁴ Arizona State Senate, Supra Note 1.

⁵ Jeremy Duda, A. (2021, April 01). Arizona Senate hires a 'stop The steal' advocate to lead 2020 election audit. Retrieved April 01, 2021, from <https://www.azmirror.com/2021/03/31/arizona-senate-hires-a-stop-the-steal-advocate-to-lead-2020-election-audit/>

⁶ Statement of Jovan Hutton Pulitzer. March 31, 2021. Available at <https://twitter.com/JovanHPulitzer/status/1377352654406443009>.

⁷ Georgia Secretary of State Brad “FACT CHECK: GEORGIA SENATE MASQUERADES FAILED TREASURE HUNTER AS HACKER AND ELECTION SECURITY EXPERT.” Available at <https://sos.ga.gov/index.php/elections/fact-check-georgia-senate-masquerades-failed-treasure-hunter-as-hacker-and-election-security-expert>

⁸ See *Statement of Work*. Available at <https://www.documentcloud.org/documents/20536503-cyber-ninjas-sow-executed-33121>.

⁹ Arizona State Senate, “Arizona Senate hires auditor to review 2020 election in Maricopa County,” at 2, March 31, 2021. Available at <https://www.azsenaterepublicans.com/post/arizona-senate-hires-auditor-to-review-2020-election-in-maricopa-county>

As election officials, it's our duty to preserve and build the trust of our partners in elections: the voters. Even if some previously harbored hope that this audit would build voter confidence, it should be clear now that the Senate has chosen another path. They've prioritized conspiracy over confidence, partisanship over partnership. As such, this morning I asked Attorney General Brnovich's Office to advise me of any legal options the Secretary of State may have to protect the integrity of our system and our voters' confidence in it. But the County's options in this regard are undoubtedly clearer than my Office's. As you meet today, I ask that you carefully consider every option, and do what is necessary to protect our voters and our democracy.

Sincerely,

A handwritten signature in black ink, appearing to be 'KH' followed by a long horizontal flourish.

Katie Hobbs
Arizona Secretary of State

cc:

Stephen Richer, Maricopa County Recorder
sricher@risc.maricopa.gov

Scott Jarrett, Director of Election Day and Emergency Voting,
Maricopa County Elections Department
sjarrett@risc.maricopa.gov

Exhibit 5

Exhibit 5

From: [Bridgette Hernandez \(BOS\)](#)
To: [Fields Moseley \(COC\)](#); [Michelle Hindman \(GVA\)](#)
Cc: [Richard Bohan \(BOS\)](#)
Subject: FW: Questions for Maricopa County
Date: Monday, April 5, 2021 8:15:39 AM

FYI

From: Jack Sellers (BOS)
Sent: Monday, April 5, 2021 8:15 AM
To: Karen Fann <KFann@azleg.gov>
Cc: Richard Bohan (BOS) <Richard.Bohan@Maricopa.Gov>
Subject: RE: Questions for Maricopa County

President Fann,

I am responding to your email from April 2nd. As you know, Maricopa County performed the audits of the election required and permitted by law. As required by law they were bipartisan and transparent. There has been no suggestion that those audits were in any way deficient. The County then properly authorized two further forensic examinations of its machines that it was permitted to perform as possessor of the machines. The process of selecting the vendors, which were both properly certified to perform their examinations, was open. The examination of the machines was transparent. Your office sent a representative to observe the process.

The statutes that the Legislature enacted and the Governor signed into law do not authorize nor permit the County to perform a recount of the vote or an audit of the election, which is essentially an election contest. While the superior court's ruling found that the subpoenas were valid, and so the County must provide you the items requested in it, Maricopa County cannot be involved in supporting your audit as to do so may expose it to liability for which it has no similar legal protection.

To avoid any confusion, I want to be clear that the audit is not a joint effort between the County and the Senate Republican Caucus. Maricopa County will not communicate with your vendors or interpret Arizona law for them. Many of your auditors' questions can be answered by reviewing the Election Procedures Manual, the early vote and election day plans, as well as the power points from the hearing that occurred last year before the Senate Judiciary Committee. We suggest the Cyber Ninjas begin by reviewing those items, watching the hearing, and reviewing the Arizona statutes governing elections. We ask that any future communications be made officially from the Senate to limit any potential disputes. Accordingly, going forward, please direct your communications to our counsel, Joe LaRue at the Maricopa County Attorney's Office, and he will respond directly.

Jack Sellers
Chairman, Maricopa County Board of Supervisors

From: Karen Fann <KFann@azleg.gov>
Sent: Friday, April 2, 2021 4:45 PM
To: Jack Sellers (BOS) <Jack.Sellers@Maricopa.Gov>; Jack Sellers (BOS) <Jack.Sellers@Maricopa.Gov>; Steve Tully <stully@hinshawlaw.com>; Kory Langhofer <kory@statecraftlaw.com>; John Allen <[REDACTED]>; Ken Bennett <kbazos@gmail.com>
Cc: Clint Hickman (BOS) <Clint.Hickman@Maricopa.Gov>; Bill Gates (BOS) <Bill.Gates@Maricopa.Gov>; Steve Chucri (BOS) <Steve.Chucri@Maricopa.Gov>; Greg Jernigan <Gjernigan@azleg.gov>; Wendy Baldo <wbaldo@azleg.gov>; Warren Petersen <wpetersen@azleg.gov>
Subject: Fwd: Questions for Maricopa County

Chairman Sellers: I am disappointed the County has decided to not allow the audit to be performed at the Maricopa County facilities. I had hoped we would be able to do this together in the spirit of transparency and the desire to answer our constituents questions about the election. We are arranging for alternative secure facilities to perform the audit and will advise as soon as possible where and when we can take delivery of the subpoenaed items. In the interim, our vendor has a number of questions to help prepare for the audit. He was informed all questions needed to be submitted by me or our designated representative, Ken Bennett.

Could you please give us instructions as to who we should submit any questions to and in what form?

Below is the email we received from him asking for information. It would be appreciated if you could assist us with the needed answers.

Thanking you in advance,
Senate President Karen Fann

Sent from my iPad

Begin forwarded message:

From: Douglas Logan <dlogan@cyberninjas.com>
Date: April 1, 2021 at 5:45:11 PM MST
To: Karen Fann <kfann@azleg.gov>
Cc: [REDACTED]
Subject: Questions for Maricopa County

Senator Fann,

Mark reached out to the County attorney to pass the following questions over, but the attorney stated that all questions needed to go through you.

Would it be possible to ask the following questions? What we absolutely need for the audit is listed below; but the team did have a bunch more questions that would be very useful to know. Those additional questions are in the attached document.

1. Who is the main point-of-contact that we should be utilizing throughout the audit?
2. What facility / location will be utilized for the counting, and the forensic imaging of the voting machines?
3. Can you please clarify how the adjudicated ballots are currently stored? This is for all the ballots that went through Dominion's Adjudication, anything that might have been adjudicated by hand, and those that went through NOVUS (Even if you don't call that adjudication).
 - a. Is there a printed copy of how the ballot was determined? I believe Dominion calls this the AuditMark image, I do not know what NOVUS calls it, I believe it might be called a "duplicate ballot".
 - b. Are the original ballots stored with the adjudicated version of the ballot, or are they separate?
 - c. Are the ballots associated with all of this in their own box, or mixed in with all of the other non-adjudicated ballots?
4. Can you please provide a sample ballot of all ballot types that were valid during the election?
5. Can you please provide details on the various papers and the paper sources utilized for official and valid ballots? We will need a complete list.
 - a. A sample ballot on the paper, or at least a paper sample; would greatly be preferred, if possible.
6. Can you please provide a copy of the chain of custody documentation for all ballots from November 3rd to the point where we will be coming in contact with the ballots?

We're also happy to do a Zoom call tomorrow to answer any questions that they may have; and if it works with everyone's schedules I can plan on being in Arizona on Monday; or any other day early next week that works for everyone.

Thanks,
Doug Logan
Chief Executive Officer
Cyber Ninjas
(o) (941)-3-NINJAS