

David A. Warrington*
Gary Lawkowski*
DHILLON LAW GROUP, INC.
2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314
703-574-1206
DWarrington@dhillonlaw.com
GLawkowski@dhillonlaw.com

**Pro hac vice forthcoming*

Timothy A La Sota, Ariz. Bar No. 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016
(602) 515-2649
tim@timlasota.com
Attorneys for Plaintiffs/Contestants

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, an individual; TED
BOYD, an individual; ABRAHAM
HAMADEH, an individual; and
REPUBLICAN NATIONAL COMMITTEE,
a federal political party committee

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

KATIE HOBBS, in her official capacity as the
Secretary of State; LARRY NOBLE, in his
official capacity as the Apache County
Recorder; APACHE COUNTY BOARD OF
SUPERVISORS, in their official capacity;
DAVID W. STEVENS, in his official capacity
as Cochise County Recorder; COCHISE

No. _____

**STATEMENT OF ELECTION
CONTEST**

*(Expedited Election Proceeding
Pursuant to A.R.S. §§ 16-672, et seq.)*

1 COUNTY BOARD OF SUPERVISORS, in
2 their official capacity; PATTY HANSEN, in
3 her official capacity as the Coconino County
4 Recorder; COCONINO COUNTY BOARD
5 OF SUPERVISORS, in their official capacity;
6 SADIE JO BINGHAM, in her official
7 capacity as Gila County Recorder; GILA
8 COUNTY BOARD OF SUPERVISORS, in
9 their official capacity; WENDY JOHN, in her
10 official capacity as Graham County Recorder;
11 GRAHAM COUNTY BOARD OF
12 SUPERVISORS, in their official capacity;
13 SHARIE MILHEIRO, in her official capacity
14 as Greenlee County Recorder; GREENLEE
15 COUNTY BOARD OF SUPERVISORS, in
16 their official capacity; RICHARD GARCIA,
17 in his capacity as the La Paz County Recorder;
18 LA PAZ COUNTY BOARD OF
19 SUPERVISORS, in their official capacity;
20 STEPHEN RICHER, in his official capacity as
21 the Maricopa County Recorder; MARICOPA
22 COUNTY BOARD OF SUPERVISORS, in
23 their official capacity; KRISTI BLAIR, in her
24 official capacity as the Mohave County
25 Recorder; MOHAVE COUNTY BOARD OF
26 SUPERVISORS, in their official capacity;
27 MICHAEL SAMPLE, in his official capacity
28 as Navajo County Recorder; NAVAJO
COUNTY BOARD OF SUPERVISORS, in
their official capacity; GABRIELLA
CAZARES-KELLY, in her official capacity
as the Pima County Recorder; PIMA
COUNTY BOARD OF SUPERVISORS, in
their official capacity; DANA LEWIS, in her
official capacity as the Pinal County Recorder;
PINAL COUNTY BOARD OF
SUPERVISORS, in their official capacity;
SUZANNE SAINZ, in her official capacity as
the Santa Cruz County Recorder; SANTA
CRUZ COUNTY BOARD OF
SUPERVISORS, in their official capacity;
MICHELLE M. BURCHILL, in her official
capacity as the Yavapai County Recorder;
YAVAPAI COUNTY BOARD OF

1 SUPERVISORS, in their official capacity;
2 RICHARD COLWELL, in his official
3 capacity as the Yuma County Recorder; and
4 YUMA COUNTY BOARD OF
SUPERVISORS, in their official capacity,

5 Defendants.

6
7 Plaintiffs hereby state and allege as follows:

8 **SUMMARY OF THE CASE**

9 1. The Plaintiffs are not, by this lawsuit, alleging any fraud, manipulation or
10 other intentional wrongdoing that would impugn the outcomes of the November 8, 2022,
11 general election. Plaintiffs bring this lawsuit to ensure that all lawfully cast votes are
12 properly counted and that unlawfully cast votes are not counted.

13 2. The November 8, 2022 General Election was afflicted with certain errors and
14 inaccuracies in the management of some polling place operations and in the processing and
15 tabulation of some ballots. The cumulative effect of these mistakes is material to the race
16 for Arizona Attorney General, where after the first canvass the candidates are separated by
17 just 511 votes out of more than 2.5 million ballots cast—a margin of two one-hundredths
18 of one percent (0.02%). A recount is underway.

19 3. When, as here, an accretion of erroneous ballot processing or tallying
20 determinations is potentially dispositive of an election for public office, Arizona law
21 permits any elector to initiate a contest proceeding to ensure that inaccuracies or illegalities
22 in the canvassed returns are judicially remedied, and the declared result conforms to the will
23 of the electorate. *See* A.R.S. §§ 16-672, *et seq.*

24 4. The Recorders and Boards of Supervisors of the fifteen counties (collectively,
25 the “County Defendants”) have, in at least seven respects, caused the unlawful denial of the
26 franchise to certain qualified electors, erroneously tallied certain ballots, and included for
27 tabulation in the canvass certain illegal votes in connection with the election for the office
28 of Arizona Attorney General. Specifically:

- a. The Maricopa County Defendants have improperly disqualified early ballots submitted by individuals who, as a direct and proximate result of poll worker error, were incorrectly designated in electronic pollbooks as having previously voted in the same election;
- b. Upon information and belief, the Maricopa County Defendants have improperly and unconstitutionally deprived individuals whose eligibility could not be confirmed of an opportunity to cast a provisional ballot;
- c. Upon information and belief, the County Defendants have erroneously transposed and improperly tabulated voters' indicated candidate selections when duplicating certain ballots that could not be electronically tabulated; and
- d. Upon information and belief, the County Defendants have erroneously determined and improperly tabulated voters' indicated candidate selections when adjudicating certain ballots that could not be electronically tabulated.
- e. Upon information and belief, the County Defendants improperly accepted for processing and tabulation certain early ballots that were accompanied by affidavits presenting a signature that did not match the signature on file in the putative voter's "registration record." A.R.S. § 16-550(A).
- f. Upon information and belief, the County Defendants 1. improperly tabulated voters' selections and erroneously counted votes as undervotes that could not be read by tabulators set to a 14% oval fill rate, and 2. which paper ballots were not made available to review by adjudication teams in instances where tabulators did pick up a faint mark in adjudication performed by Maricopa electronically.
- g. Upon information and belief, the County Defendants improperly administered their voter rolls resulting in a material number of voters not

having their provisional ballots counted because election officials claimed that they were not registered to vote.

5. Immediate judicial intervention is necessary to secure the accuracy of the results of the November 8, 2022 general election, and to ensure that candidate who received the highest number of lawful votes is declared the next Arizona Attorney General.

JURISDICTION

6. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the Arizona Constitution, A.R.S. § 16-672(A)-(B), and Arizona Rule of Special Action Procedure 3.

7. Venue lies in Mohave County pursuant to A.R.S. § 16-672(B).

PARTIES

8. Plaintiff/Contestant Jeanne Kentch is a qualified elector of the State of Arizona and of Mohave County, and resides at 1004 Vista Dr., Lake Havasu, Mohave County, Arizona. Jeanne Kentch is the current Mohave County Assessor but she brings this Statement of Contest in her individual capacity.

9. Plaintiff/Contestant Ted Boyd is a qualified elector of the State of Arizona and of Mohave County, and resides at 1345 Angler Place, Lake Havasu, Mohave County, Arizona.

10. Plaintiff/Contestant Abraham Hamadeh is a qualified elector of the State of Arizona and of Maricopa County, and resides in Scottsdale, Maricopa County, Arizona.¹ Mr. Hamadeh is the Republican Party's nominee for the office of Arizona Attorney General in the November 8, 2022 general election.

11. Plaintiff Republican National Committee is a national political party committee that is responsible for the strategic and day-to-day operation of the Republican

¹ Mr. Hamadeh's full residential address location is protected from disclosure pursuant to A.R.S. § 16-153.

1 Party at the national level and for promoting the election of Republican candidates for office
2 in Arizona and across the United States.

3 12. Defendant/Contestee Kris Mayes is the Democratic Party's nominee for the
4 office of Arizona Attorney General in the November 8, 2022 general election.

5 13. Defendant Katie Hobbs is the Secretary of State of Arizona, and is named in
6 this action in her official capacity only. The Secretary of State is the public officer charged
7 by law with conducting the canvass of the returns for statewide offices and with declaring
8 the persons elected to such offices. *See* A.R.S. §§ 16-648, 16-650.

9 14. The county recorders in each of Apache County, Cochise County, Coconino
10 County, Gila County, Graham County, Greenlee County, La Paz County, Maricopa County,
11 Mohave County, Navajo County, Pima County, Pinal County, Santa Cruz County, Yavapai
12 County, and Yuma County are named in this action in their respective official capacities
13 only. The County Recorder is the principal elections officer of his or her county and is
14 responsible for overseeing and directing numerous components of election administration
15 within the jurisdiction, to include the processing, verification and tabulation of early ballots,
16 and the appointment and oversight of Ballot Duplication Boards and Electronic
17 Adjudication Boards. *See* A.R.S. §§ 16-541, -542, -543, -544, -550, -602, -621.

18 15. The boards of supervisors in each of Apache County, Cochise County,
19 Coconino County, Gila County, Graham County, Greenlee County, La Paz County,
20 Maricopa County, Mohave County, Navajo County, Pima County, Pinal County, Santa
21 Cruz County, Yavapai County, and Yuma County are named in this action in their
22 respective official capacities only. Each Board of Supervisors is charged by law with
23 conducting elections within its jurisdictional boundaries, to include appointing polling
24 location election boards, overseeing the operations of polling locations on Election Day,
25 and canvassing the returns of elections in the county. *See* A.R.S. §§ 11-251(3), 16-446, -
26 447(A), -511, -531, -642, -645, -646.

27 16. On November 29, 2022, the Superior Court of Arizona in and for Maricopa
28 County dismissed without prejudice a contest filed by Plaintiff. *See* Minute Entry,

1 *Hamadeh, et al. v. Mayes, et al.*, CV 2022-015455 (Nov. 9, 2022). In doing so, the court
2 stated “[t]hat does not mean Plaintiffs must wait to file suit until after a recount, which
3 everyone agrees will be needed for this race. Rather, A.R.S. § 16-667 contemplates that an
4 election contest might be filed despite a pending recount, and directs that ‘upon the initiation
5 of such a contest, a proceeding begun under this article shall abate.’” *Id.*

6 17. Upon information and belief, the fifteen Boards of Supervisors canvassed the
7 returns of the November 8, 2022 general election in their respective counties and delivered
8 the canvass results to the Secretary of State on or before December 5, 2022.

9 18. On December 5, 2022, the Secretary of State canvassed the returns of the
10 November 8, 2022 general election. *See* Petition for Automatic Recount at ¶ 2, Exhibit A,
11 *In the Matter of November 8, 2022, General Election For Attorney General; Superintendent*
12 *of Public Instruction; and State Representative for District 13*, No. CV2022-015915 (Dec.
13 5, 2022).

14 19. On December 5, 2022, the Superior Court of Arizona in and for Maricopa
15 County ordered a recount of votes cast in the November 8, 2022 General Election for the
16 Office of Attorney General and two other offices. *See* Order to Conduct Recount, *In the*
17 *Matter of November 8, 2022, General Election For Attorney General; Superintendent of*
18 *Public Instruction; and State Representative for District 13*, No. CV2022-015915 (Dec. 5,
19 2022).

20 20. Thus, at this point, the canvass is complete, the Secretary of State has certified
21 it, and the only thing that remains to be done is conduct the recount, the conduct of which
22 does not preclude the filing and adjudication of an election contest.

23 21. For the reasons set forth herein, the December 5 canvass and its constituent
24 county canvasses are afflicted by election board misconduct, the tallying of unlawful
25 ballots, the failure to count lawful ballots, and the erroneous counting of votes, within the
26 meaning of A.R.S. § 16-672(A)(1), (A)(4), and (A)(5). Upon information and belief, a
27 complete and correct tabulation of all lawful ballots will establish that Contestant Hamadeh
28

1 received the highest number of votes for the office of Arizona Attorney General in the
2 November 8, 2022 general election.

3 **GENERAL ALLEGATIONS**

4 **Erroneous Vote Counts Due to Pervasive Poll Worker Error in Maricopa County**

5 22. Broadly speaking, the voting process in Arizona is bifurcated; qualified
6 electors may cast either an “early ballot” or an Election Day ballot.

7 23. A qualified elector may cast an “early ballot” at any time during the 27 days
8 preceding the election. Early ballots may be obtained and returned via mail. Alternatively,
9 early ballots may be cast in-person at designated early voting locations, dropped off at
10 official drop box locations during the early voting period, or dropped off at polling locations
11 on Election Day. In-person early voting concludes on the Friday preceding the election,
12 although voters confronting unforeseen exigencies that would prevent them from voting in-
13 person on Election Day may cast a ballot at an “emergency” early voting location during
14 the ensuing three-day period. *See* A.R.S. § 16-542.

15 24. As an alternative to early voting, voters may obtain and cast a ballot in-person
16 at a polling location on Election Day.

17 25. Every polling location is staffed by an election board consisting of an
18 inspector, marshal, and two judges. The inspector is the chairman of the election board. *See*
19 A.R.S. §§ 16-531, -534(A).

20 26. Maricopa County utilized a “vote center” model in the November 8, 2022
21 general election. Under this framework, a qualified elector of Maricopa County may appear
22 at any designated vote center site within the county, regardless of whether the vote center
23 is located within the precinct in which the voter resides. Once the voter’s identity is verified
24 and s/he “checks in” by signing the electronic pollbook (e-pollbook), the poll workers cause
25 a ballot on demand printer to print a customized ballot that includes all candidate races and
26 ballot propositions for which the elector is eligible to vote. E-pollbooks reflect in real-time
27 an elector’s status as having voted or not voted and are electronically synchronized across
28 all polling locations countywide.

1 27. After marking their ballots at the vote center, voters feed them into the on site
2 tabulation machine, which instantaneously processes and tabulates all properly indicated
3 selections on the ballot.

4 28. Shortly after voting hours commenced at 6:00 a.m. on Election Day, the ballot
5 tabulation devices stationed at approximately 70 vote centers in Maricopa County (*i.e.*,
6 roughly one third of all vote centers in Maricopa County) began to malfunction.
7 Specifically, the tabulators regularly rejected or otherwise failed to process ballots that, on
8 their face, had been properly and sufficiently completed.

9 29. These extensive and significant disruptions to Election Day operations in
10 Maricopa County have been widely reported by national and local news media outlets. *See*,
11 *e.g.*, Caitlin McFall, *Maricopa County, Arizona, Officials Say 20% of Voting Locations*
12 *Experiencing ‘Hiccups’ with Tabulators*, FOX NEWS, Nov. 8, 2022, *available at*
13 [https://www.foxnews.com/politics/maricopa-county-arizona-officials-say-20-voting-](https://www.foxnews.com/politics/maricopa-county-arizona-officials-say-20-voting-locations-experiencing-hiccups-tabulators)
14 [locations-experiencing-hiccups-tabulators](https://www.foxnews.com/politics/maricopa-county-arizona-officials-say-20-voting-locations-experiencing-hiccups-tabulators); Sasha Hupka, *Early Glitches with Maricopa*
15 *County Election Machines Frustrate Voters*, ARIZ. REPUBLIC, Nov. 9, 2022, *available at*
16 [https://www.azcentral.com/story/news/politics/elections/2022/11/08/arizona-election-](https://www.azcentral.com/story/news/politics/elections/2022/11/08/arizona-election-problems-maricopa-county-tabulator-issues/8302133001/)
17 [problems-maricopa-county-tabulator-issues/8302133001/](https://www.azcentral.com/story/news/politics/elections/2022/11/08/arizona-election-problems-maricopa-county-tabulator-issues/8302133001/); Tweet of Brahm Resnick, Nov.
18 8, 2022 at 1:37 p.m., *available at*
19 <https://twitter.com/brahmresnik/status/1590081166295859200> (reporting that “about 60
20 vote centers were hit with tabulator problems”).

21 30. Voters whose ballots could not be read by a malfunctioning tabulator were
22 confronted with five possible options.

- 23 a. First, the voter could choose simply to wait until the tabulator was
24 restored to working order—an uncertain contingency that could take
25 hours.
- 26 b. Second, the voter could deposit the voted ballot into a receptacle (known
27 as “Door 3”) for later tabulation at the Central Counting Center, although
28

1 the voters selecting this option would be unable to visually and personally
2 confirm the tabulation of their ballots.

- 3 c. Third, the voter could request to utilize an accessible voting device
4 (which is designed primarily for persons with disabilities), upon which
5 they could complete and cast a ballot electronically. *See* A.R.S. § 16-447.
6 Upon information and belief, however, most or all vote centers in
7 Maricopa County maintained only one accessible voting device on site
8 and many locations lacked supplies necessary for the proper operation of
9 such devices. Maricopa County did not instruct voters of this option.
- 10 d. Fourth, the voter could spoil his or her initial ballot, “check out” of the
11 vote center, and present at another vote center, where s/he could check-
12 in and vote a full regular ballot.
- 13 e. Fifth, if the voter had previously obtained an early ballot, he or she could
14 “check out” of the vote center, vote that early ballot, execute the
15 accompanying early ballot affidavit, and deposit it at the vote center or in
16 a ballot drop box for later processing and tabulation at the Central
17 Counting Center. *See* A.R.S. §§ 16-547, -548.

18 31. Importantly, however, the fourth and fifth options required poll workers at the
19 initial polling location to “check out” the voter—*i.e.*, indicate in the e-pollbook that the
20 voter left the polling location without casting a ballot. If the voter is not checked out, he or
21 she is recorded in the e-pollbook as having already voted. Consequently, if the voter
22 subsequently presents at a different polling location, she or he will be permitted to cast only
23 a provisional ballot, which Maricopa County will **not** tabulate. *See* A.R.S. § 16-584(D).
24 Similarly, if the voter is not “checked out” and then deposits a completed early ballot, that
25 early ballot will be voided.

26 32. Poll workers at some polling locations were unaware of the process for
27 checking a voter out of the polling location. Upon information and belief, Maricopa County
28

1 poll workers received no training (or, alternatively, inadequate training) on the process for
2 checking voters out of a polling place.

3 33. Across Maricopa County, numerous qualified electors “checked in” at a vote
4 center but did not either “check out” or cast a ballot.

5 34. Upon information and belief, poll workers failed to properly “check out”
6 numerous Maricopa County voters who chose to spoil their ballots and vote by alternative
7 means. This pervasive and systematic error directly and proximately resulted in three
8 recurring scenarios in which qualified electors were unlawfully and unconstitutionally
9 disenfranchised.

10 a. Upon information and belief, at least 126 voters who were not properly
11 “checked out” at their initial polling location and who later presented at
12 a different polling location were required to vote using provisional
13 ballots, which were not counted because the elector was erroneously
14 recorded in the e-pollbook as having already voted.

15 b. Upon information and belief, at least 269 voters who were not properly
16 “checked out” at their initial polling location and who later deposited a
17 completed early ballot at the same or a different vote center had their
18 early ballots voided and not tabulated because the elector was
19 erroneously recorded in the e-pollbook as having already voted.

20 c. Upon information and belief, a material number of voters who were not
21 properly “checked out” at their initial polling location and who later
22 presented at a different polling location were denied an opportunity to
23 cast a provisional ballot at all, in violation of Arizona law. A.R.S. § 16-
24 584.

25 35. At 8:01 a.m. on Election Day, as the disorder in Maricopa County vote centers
26 was escalating quickly, Chairman of the Maricopa County Board of Supervisors Bill Gates
27 tweeted the following statement:
28

1 If you're at a polling place experiencing an issue with a
2 tabulator, you have three options & your vote will be counted
3 in each. 1) stay where you are and wait for tabulator to come
4 online 2) drop your ballot in the secure slot (door 3) on tabulator
3) go to a nearby vote center.

5 *See Exhibit A.*

6 36. Chairman Gates's tweet was incomplete because it omitted two of the
7 solutions available to affected voters (namely, using the accessible voting device, and
8 dropping off a mail-in ballot). It was materially misleading because it stated that the voters
9 could simply "go to a nearby vote center" without specifying that voters must check out of
10 a polling location before traveling to a second location. And it was objectively false in
11 assuring voters that their "vote will be counted in each" contingency when, as described
12 above, Chairman Gates's instructions foreseeably resulted in the disenfranchisement of a
13 significant number of qualified electors who followed his instructions.

14 37. The Republican National Committee and several candidates for statewide
15 office initiated emergency proceedings to extend polling hours to mitigate the effects of the
16 confusion and delays engendered by the compounded effects of tabulator malfunctions and
17 poll worker error, but the requested relief was vociferously opposed by Maricopa County
18 Defendants and denied. *See Republican National Committee v. Richer*, Maricopa County
19 Civil Action No. CV2022-014827.

20 38. By inducing voters to leave polling locations and then denying—through a
21 consistent and erroneous practice of failing to properly implement "check-out"
22 procedures—these qualified electors lost their right to duly cast a ballot for tabulation and
23 the Maricopa County Defendants engaged (through their election boards) in cognizable
24 "misconduct" and wrongfully excluded valid and legally sufficient votes from the canvass
25 in the race for Arizona Attorney General. *See A.R.S. § 16-672(A)(1), (A)(5).*
26
27
28

Ballot Duplication Errors

39. Occasionally, voted ballots are received in a damaged or defective form—for example, tears, wrinkles, or perforations in the ballot paper, or stains from spilled beverages or other foreign substances—that renders them unreadable by electronic tabulation devices.

40. To process such ballots, the County Recorder must establish a Ballot Duplication Board that consists of at least two individuals who are not members of the same political party. The Ballot Duplication Board must transpose the voter’s indicated electoral selections from the damaged or defective ballot onto a new duplicate ballot. Both the original and duplicate ballots are assigned a shared unique serial number; the duplicate ballot is labeled as such and then fed to the tabulator for electronic tabulation. *See* A.R.S. § 16-621(A); Ariz. Sec’y of State, 2019 ELECTIONS PROCEDURES MANUAL (rev. Dec. 2019) [“EPM”] at p. 201.

41. In the 2020 general election for presidential electors, Ballot Duplication Boards in Maricopa County erroneously transposed at least 0.37% of ballots designated for duplication.

42. Upon information and belief, a substantially similar or greater proportion of ballots designated for duplication in the November 8, 2022 general election have been erroneously transposed, thereby resulting in the unlawful mistabulation of ballots lawfully cast by qualified electors.

Electronic Adjudication Errors

43. Voters sometime mark their ballots in a manner that precludes an accurate electronic tabulation. Two frequent causes of impeded electronic tabulation are (a) apparent “over-votes,” in which the tabulator detects that a voter may have marked more than the permissible number of selections for a given office or ballot measure, and (b) ballots that the tabulator has identified as either blank or containing unclear markings. When the first of these circumstances is present, an impage the ballot is referred for electronic adjudication. Upon information and belief, in the second circumstance, if the unclear mark fills less than 14% of the oval for that race, the ballot is counted as an ‘undervote’ and the

1 contest is not sent for electronic adjudication, and in instances where the mark does fill 14%
2 or more of the oval, an image of the ballot is referred for electronic adjudication.

3 44. Electronic adjudications are carried out on a secure computer application and
4 are conducted by an Electronic Adjudication Board that is appointed by the County
5 Recorder and consists of one inspector and two judges who are members of different
6 political parties. *See* A.R.S. § 16-621(B)(2).

7 45. The Electronic Adjudication Board examines a digital image of the ballot and
8 assesses voter selections that the tabulator was unable to definitively ascertain. If the voter's
9 intent is "clear," the Electronic Adjudication Board ensures that the voter's intended
10 selections are properly indicated and tabulated. If the voter's intent cannot be sufficiently
11 verified, the ambiguous selections are not tabulated. *See id.*; Ariz. Sec'y of State,
12 ELECTRONIC ADJUDICATION ADDENDUM TO THE 2019 ELECTIONS PROCEDURES MANUAL
13 (Feb. 2020) at pp. 2–3, available at
14 [https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Ele](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf)
15 [ctions_Procedures_Manual.pdf](https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf).

16 46. Actual "over-votes" are invalid and may not be counted. *See* A.R.S. § 16-610.

17 47. Upon information and belief, one or more selections in up to 15% of all ballots
18 cast in the November 8, 2022 general election in Maricopa County have been referred to
19 electronic adjudication in connection with at least one candidate contest, judicial retention
20 or ballot proposition appearing on the ballot. The Maricopa County Elections Department
21 reported 50,246 undervotes in the official county canvass of the contest for Attorney
22 General.

23 48. By statute, the County Recorder must conduct a hand count audit of selected
24 candidate races across a randomly generated sample of (a) 5,000 of early ballots and (b)
25 ballots cast at 2% of vote centers in the county. *See* A.R.S. § 16-602(B), (F). The purpose
26 of the hand count is to verify the accuracy of tallies generated by tabulator devices and
27 determinations by various ballot processing boards.

1 49. The hand count audit following the November 8, 2022 general election
2 revealed at least one instance in which the Maricopa County Electronic Adjudication Board
3 incorrectly characterized the voter's ostensible intent. Specifically, the Electronic
4 Adjudication Board had tabulated the disputed ballot as a vote for gubernatorial candidate
5 Katie Hobbs. As the hand count audit found, however, the ballot contained both an indicated
6 preference for Hobbs and an accompanying write-in vote for a different candidate, Kari
7 Lake. The Electronic Adjudication Board was required by law to designate the gubernatorial
8 contest as over-voted and not to tabulate a vote for any candidate in that race. *See Exhibit*
9 *B p. 32.*

10 50. The Attorney General contest was not among the races randomly selected for
11 inclusion in Maricopa County's hand count audit but, upon information and belief, a similar
12 and proportionate rate of erroneous determinations afflict the broader corpus of all ballots
13 that underwent electronic adjudication, thereby resulting in the unlawful mistabulation of
14 certain votes cast in connection with the election for Arizona Attorney General.

15 51. Additionally, an observer of the ballot adjudication process has reported that
16 tabulation and electronic adjudication equipment have been unable to clearly capture the
17 ballot markings made by some voters who did not use the writing implements recommended
18 by elections officials. Although it is likely that such markings can be assessed and correctly
19 tabulated by a manual inspection of the affected ballots, elections officials have not
20 undertaken a manual inspection of such ballots and therefore have failed to correctly
21 tabulate the votes marked on such ballots, and instead tabulating them as undervotes.

22 52. Furthermore, an observer in Navajo County is currently observing the
23 Recount of votes. On December 7, 2022, Navajo County re-tabulated 3% of the county's
24 ballots. On election day, a large portion of the ballots processed were tabulated using the
25 central count tabulator. However, during this recount, the county is using the smaller
26 precinct tabulators. These small precinct tabulators identified two ballots that should have
27 been sent to adjudication. It appears that the faster central count tabulators were not
28

1 functioning or set up entirely properly and that they failed to flag ballots for adjudication
2 that might not contain a valid vote for the Attorney General race.

3 **Unverified Early Ballot Affidavit Signatures**

4 53. An elector who chooses to cast an early ballot must enclose the ballot in an
5 envelope containing a sworn affidavit, signed by the voter, that certifies the voter's
6 qualifications and personal signature affixation, and affirms his or her understanding of the
7 criminal prohibition against casting multiple ballots in the same election. *See* A.R.S. § 16-
8 547(A).

9 54. Upon receipt of a returned early ballot envelope, the County Recorder or the
10 Recorder's designee must "compare the signatures thereon with the signature of the elector
11 on the elector's registration record." A.R.S. § 16-550(A). If "the signatures correspond,"
12 the early ballot is processed and tabulated. *Id.* If "the signature is inconsistent with the
13 elector's signature on the elector's registration record," then the early ballot is invalid and
14 cannot be tabulated, unless the putative voter cures the signature discrepancy within five
15 business days of an election or federal office (or the third business day after any other
16 election). *Id.*

17 55. Upon information and belief, a material number of early ballots were
18 accompanied by an affidavit containing a signature that the County Recorder or his/her
19 designee concluded was inconsistent with the signature presented on the voter's
20 "registration record." These early ballots were processed and accepted for tabulation,
21 however, because the County Recorder or Recorder's designee determined that the affidavit
22 signature matched a signature on a *different* document that was *not* the voter's "registration
23 record"—such as an early ballot affidavit submitted in connection with a previous election
24 or a pollbook signature roster. *See* EPM at p. 68.

25 56. To the extent the EPM purports to authorize the County Recorder to use for
26 the verification of early ballot affidavits signature specimens that are not contained in a
27 voter's "registration record," it is unlawful and unenforceable. *See Leach v. Hobbs*, 250
28

1 Ariz. 572, 576, ¶ 21 (2021) (“[A]n EPM regulation that exceeds the scope of its statutory
2 authorization or contravenes an election statute’s purpose does not have the force of law.”).

3 57. Early ballots accompanied by uncured affidavit signatures that do not match
4 the signature on the putative voter’s “registration record” are legally insufficient and cannot
5 be tabulated.

6 **Registration Errors**

7 58. Based upon information and belief, a material number of voters showed up
8 at the polls on election day and they were told by election workers that they were not
9 registered to vote. These voters were required to vote a provisional ballot because election
10 workers informed them that they were not registered to vote.

11 59. In Maricopa County alone, approximately 1,942 provisional voters did not
12 have their provisional ballot counted because it was determined that the voter was not
13 registered to vote. A material number of these voters who had their ballots rejected had
14 voted in past Arizona election and had done nothing to invalidate their registration.

15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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
- 27
- 28

Erroneous Count of Votes and Election Board Misconduct: Wrongful Disqualification of Provisional and Early Ballots

60. The Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

62. The Arizona Constitution guarantees “the right of suffrage” and mandates that “[a]ll elections shall be free and equal.” Ariz. Const. art. II, § 21.

64. Pursuant to these constitutional precepts, all qualified electors who have properly verified their identity and otherwise are eligible to vote in an election are entitled to cast a regular ballot that will be duly processed and tabulated. *See* Ariz. Const. art. II, §§ 13, 21; A.R.S. §§ 16-579, -580(B).

66. After checking in, obtaining, and properly completing a ballot, numerous voters across Maricopa County had their ballots rejected by malfunctioning electronic tabulation devices. Certain of these voters chose to spoil their ballots and to either (a) leave the vote center and present at a different polling location with functioning tabulators or (b) cast a previously issued early ballot instead.

67. Under Arizona law and Maricopa County’s official policies, poll workers were required to “check out” these voters, which would enable them to obtain and cast a

1 regular ballot at a different polling location elsewhere in Maricopa County or to cast a
2 previously issued early ballot.

3 68. Upon information and belief, various poll workers across Maricopa County
4 refused or failed to “check out” some or all of these voters. As a result of that systematic
5 error, the e-pollbooks inaccurately designated these individuals as having previously voted
6 in this election.

7 69. When subsequently presenting at a different vote center, at least 126 of these
8 voters were incorrectly informed that they had already voted and were permitted to
9 complete and submit only a provisional ballot. Upon information and belief, the Maricopa
10 County Defendants failed to tabulate these valid provisional ballots for inclusion in the
11 canvass.

12 70. In addition, at least 269 voters whom poll workers failed to properly “check
13 out” instead chose to complete and submit a previously issued early ballot. Upon
14 information and belief, because these individuals are inaccurately recorded in the e-
15 pollbook as having previously voted, however, the Maricopa County Defendants failed to
16 tabulate these valid early ballots for inclusion in the canvass.

17 71. These pervasive poll worker errors have denied numerous qualified electors
18 of Maricopa County, including supporters of the Contestant, their right to vote under
19 Arizona law.

20 72. By failing to properly “check out” these voters and restore their ability to vote
21 a regular ballot for tabulation, the Maricopa County Defendants (through their election
22 boards) engaged in “misconduct” within the meaning of A.R.S. § 16-672(A)(1), acted in
23 excess of their legal authority, failed to discharge a non-discretionary duty prescribed by
24 law, and caused an erroneous count of votes in the election for Arizona Attorney General.

25 73. Upon information and belief, votes included on provisional and early ballots
26 that the Maricopa County Defendants improperly failed to tabulate are material to, and
27 potentially dispositive of, the outcome of the election for the office of Arizona Attorney
28 General.

74. Accordingly, the Plaintiffs are entitled to an order (including, if necessary, a writ of mandamus) requiring the Maricopa County Defendants to tabulate for inclusion in the canvass all provisional ballots and early ballots submitted by qualified electors who had “checked in” at a vote center but did not cast a regular ballot in the November 8, 2022 general election.

COUNT II
[Maricopa County Only]
Erroneous Count of Votes and Election Board Misconduct: Wrongful Exclusion of
Provisional Voters
(A.R.S. §§ 16-584, 12-2021, 16-672(A)(1), (A)(5))

75. The Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

76. If poll workers are unable to verify a putative voter's identity or eligibility to vote, but the individual affirms that he or she is eligible to vote, he or she is entitled to receive, complete and submit a provisional ballot. *See* A.R.S. § 16-584. This right is also enshrined in federal law. *See* 52 U.S.C. § 21082(a)(1).

77. Upon information and belief, certain poll workers at various polling locations across Maricopa County refused to furnish provisional ballots to certain voters, on the grounds that they had previously cast a ballot at another polling location earlier in the day.

78. Upon information and belief, in many instances the affected voters had, in fact, ***not*** cast a ballot at another polling location, but rather had voluntarily spoiled their ballot and left the first polling location without obtaining or casting a replacement ballot.

79. In any event, any individual whom the e-pollbook has recorded as having already voted is entitled to receive, complete and submit a provisional ballot upon affirming his or her eligibility. *See* A.R.S. § 16-584.

80. By denying these individuals a provisional ballot and failing to tabulate any such valid provisional ballots in the canvass, the Maricopa County Defendants (through their election boards) engaged in “misconduct” within the meaning of A.R.S. § 16-672(A)(1), acted in excess of their legal authority, failed to discharge a non-discretionary

1 duty prescribed by law, and caused an erroneous count of votes in the election for Arizona
2 Attorney General.

3 81. Upon information and belief, the Maricopa County Defendants' unlawful
4 denial of certain electors' right to cast a provisional ballot was material to, and potentially
5 dispositive of, the outcome of the election for the office of Arizona Attorney General.

6 82. Accordingly, the Plaintiffs are entitled to an order (including, if necessary, a
7 writ of mandamus) requiring the Maricopa County Defendants to afford to all individuals
8 who were refused a provisional ballot a reasonable opportunity to cast in the November 8,
9 2022 general election a provisional ballot, which must be duly processed and included in
10 the canvass in conformance with applicable law.

11 **COUNT III**
Erroneous Count of Votes: Inaccurate Ballot Duplications
12 **(A.R.S. §§ 16-621, 16-672(A)(5))**

13 83. The Plaintiffs incorporate by reference the foregoing allegations as if fully set
14 forth herein.

15 84. When a submitted ballot is damaged or defective such that it cannot be read
16 by an electronic tabulator, the ballot is transmitted to a Ballot Duplication Board that
17 operates under the auspices of the County Recorder and that transposes the voter's indicated
18 selections to a duplicate ballot, which in turn is electronically tabulated. *See* A.R.S. § 16-
19 621(A); EPM at p. 201.

20 85. Upon information and belief, the counties' Ballot Duplication Boards have
21 incorrectly transcribed a material number of voter selections in the race for Arizona
22 Attorney General in the November 8, 2022 general election, thereby resulting in the
23 unlawful mistabulation of a ballot lawfully cast by a qualified elector.

24 86. Upon information and belief, by not correctly duplicating certain ballots, the
25 County Defendants (through their Ballot Duplication Boards) have caused an erroneous
26 count of votes for the office of Arizona Attorney General. *See* A.R.S. § 16-672(A)(5).
27
28

87. Upon information and belief, votes included on improperly duplicated ballots are material to, and potentially dispositive of, the outcome of the election for the office of Arizona Attorney General.

88. Accordingly, the Plaintiffs are entitled to an order (including, if necessary, a writ of mandamus) requiring the County Defendants to amend the canvass results for the office of Arizona Attorney General to correct erroneous tabulations associated with the inaccurate duplication of ballots.

COUNT IV
Illegal Votes and Erroneous Count of Votes: Improper Ballot Adjudications
(A.R.S. §§ 16-621, 16-672(A)(4), (A)(5))

89. The Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

90. When a submitted ballot is determined by a tabulator device to contain an apparent over-vote, or to include ambiguous markings, the ballot is designated for review by an Electronic Adjudication Board that operates under the auspices of the County Recorder. If the voter's clear intent can be ascertained, the Electronic Adjudication Board must ensure that such intent is appropriately designated on the ballot for tabulation. If the voter's clear intent cannot be determined, no vote is tabulated in the affected race(s) on that ballot. *See* A.R.S. § 16-621(B); EPM Electronic Adjudication Addendum, *supra*. Upon information and belief, the counties' Electronic Adjudication Boards counted a material number of ballots that it should have sent to adjudication in the race for Arizona Attorney General in the November 8, 2022 general election, thereby resulting in the unlawful tabulation of ballots that should not have been tabulated.

91. Upon information and belief, the counties' Electronic Adjudication Boards have incorrectly recorded a material number of voter selections in the race for Arizona Attorney General in the November 8, 2022 general election, thereby resulting in the unlawful mistabulation of a ballot lawfully cast by a qualified elector.

92. Upon information and belief, by erroneously tabulating votes that should be disqualified as invalid over-votes, the County Defendants (through their agents) have

1 caused illegal votes to be included in the canvassed returns for the office of Arizona
2 Attorney General. *See* A.R.S. § 16-672(A)(4). Upon information and belief, by erroneously
3 designating or mischaracterizing voter's manifested intent as undervotes, the County
4 Defendants (through their agents) have caused an erroneous count of votes for the office of
5 Arizona Attorney General.

6 93. Upon information and belief, by erroneously designating or mischaracterizing
7 voters' manifested intent on certain electronically adjudicated ballots, the County
8 Defendants (through their agents) have caused an erroneous count of votes for the office of
9 Arizona Attorney General. *See* A.R.S. § 16-672(A)(5).

10 94. Upon information and belief, votes included on improperly adjudicated
11 ballots are material to, and potentially dispositive of, the outcome of the election for the
12 office of Arizona Attorney General.

13 95. Accordingly, the Plaintiffs are entitled to an order (including, if necessary, a
14 writ of mandamus) requiring the County Defendants to amend the canvass results for the
15 office of Arizona Attorney General to correct erroneous tabulations associated with the
16 inaccurate adjudication and tabulation of ballots.

17 **COUNT V**
18 **Illegal Votes: Unverified Early Ballots**
19 **(A.R.S. §§ 16-550(A), 16-672(A)(4))**

20 96. The Plaintiffs incorporate by reference the foregoing allegations as if fully set
21 forth herein.

22 97. An early ballot is lawful and eligible for tabulation if—and only if—the
23 signature on the affidavit accompanying the ballot matches the signature featured on the
24 elector's "registration record." A.R.S. § 16-550(A).

25 98. Upon information and belief, a material number of early ballots cast in the
26 November 8, 2022 general election were transmitted in envelopes containing an affidavit
27 signature that the County Recorder or the Recorder's designee determined did not
28 correspond to the signature in the putative voter's "registration record." The County

1 Recorder, however, nevertheless accepted the early ballot for processing and tabulation
2 because the affidavit signature ostensibly matched a signature on an election-related
3 document that was **not** the voter's "registration record," such as a prior early ballot affidavit
4 or early ballot request form.

5 99. To the extent the Elections Procedures Manual purports to authorize the
6 validation of early ballot affidavit signatures by reference to a signature specimen that is
7 not found in the voter's "registration record," it is contrary to the plain language of A.R.S.
8 § 16-550(A), and hence unenforceable.

9 100. An early ballot that is accompanied by an uncured affidavit signature that
10 does not match the signature contained in the putative voter's registration record is an
11 "illegal vote" within the meaning of A.R.S. § 16-672(A)(4).

12 101. Upon information and belief, the number of tabulated early ballots associated
13 with an uncured affidavit signature that does not match the signature in the corresponding
14 registration record is material to, and potentially dispositive of, the outcome of the election
15 for the office of Arizona Attorney General.

16 102. Accordingly, the Plaintiffs are entitled to an order (including, if necessary, a
17 writ of mandamus) proportionately reducing the tabulated returns of early ballots to exclude
18 early ballots that were accompanied by an uncured affidavit signature that is inconsistent
19 with the signature on file in the putative voter's registration record. *See generally Grounds*
20 *v. Lawe*, 67 Ariz. 176, 183–85 (1948).

21 **DEMAND FOR RELIEF**

22 WHEREFORE, the Plaintiffs demand relief in the following forms:

- 23 a. An order abating the recount of votes cast in the November 8, 2022
24 General Election for the Office of Attorney General pursuant to A.R.S.
25 § 16-667.
- 26 b. An order requiring the Maricopa County Defendants to process and
27 tabulate all provisional ballots and early ballots submitted by qualified
28 electors who had "checked in" at a vote center but did not cast a regular

1 ballot in the November 8, 2022 general election, and to amend the
2 canvass results for the office of Arizona Attorney General accordingly.

3 c. An order requiring the Maricopa County Defendants to afford to all
4 individuals who were refused a provisional ballot a reasonable
5 opportunity to cast in the November 8, 2022 general election a
6 provisional ballot, which will be duly processed and tabulated in
7 conformance with applicable law, and to amend the canvass results for
8 the office of Arizona Attorney General accordingly.

9 d. An order requiring the County Defendants to amend the canvass results
10 for the office of Arizona Attorney General to correct erroneous
11 tabulations associated with the inaccurate duplication of ballots.

12 e. An order requiring the County Defendants to amend the canvass results
13 for the office of Arizona Attorney General to correct erroneous
14 tabulations associated with the inaccurate adjudication of ballots.

15 f. An order requiring the County Defendants to make available for physical
16 inspection all ballots containing an undervote in the contest for Arizona
17 Attorney General, and to duly process and tabulate all ballots wherein a
18 mark was made indicating the voter intent to cast a vote in said contest,
19 and to amend the canvass results for the office of Arizona Attorney
20 General accordingly.

21 g. An order proportionately reducing the tabulated returns of early ballots
22 to exclude early ballots that were accompanied by an uncured affidavit
23 signature that is inconsistent with the signature on file in the putative
24 voter's registration record.

25 h. An order requiring the Secretary of State to amend the canvass of
26 statewide returns to reflect amendments to county-level canvass results
27 made by one or more of the County Defendants.
28

- 1 i. An injunction or other order pursuant to A.R.S. §§ 16-650 and 16-676(C)
2 prohibiting the Secretary of State from declaring the Contestee elected to
3 the office of Arizona Attorney General or from issuing to Contestee a
4 certificate of election.
- 5 j. An injunction or other order pursuant to A.R.S. § 16-676(C) nullifying
6 and setting aside any certificate of election issued by the Secretary of
7 State to the Contestee for the office of Arizona Attorney General.
- 8 k. An injunction or other order pursuant to A.R.S. §§ 16-650 and 16-676(C)
9 requiring the Secretary of State to declare Contestant Abraham Hamadeh
10 elected to the office of Arizona Attorney General and to issue to
11 Contestant a certificate of election.
- 12 l. Such other relief as the Court deems necessary, equitable, proper, and
13 just.

14 DATED this 9th day of December, 2022.

15
16
17 By: _____
18 Timothy A La Sota, SBN # 020539
19 **TIMOTHY A. LA SOTA, PLC**
20 2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016

21 David A. Warrington*
22 Gary Lawkowski*
23 **DHILLON LAW GROUP, INC.**
24 2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314

25 **Pro hac vice forthcoming*

26
27 *Attorneys for Plaintiffs/Contestants*
28

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
27
28

VERIFICATION

Pursuant to A.R.S. § 16-673(B), I, Abraham Hamadeh, hereby verify that the allegations contained in the foregoing Statement of Election Contest are true and correct to the best of my knowledge.

Executed under penalty of perjury, this 9th day of December, 2022.

Abraham Hamadeh

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
27
28

VERIFICATION

Pursuant to A.R.S. § 16-673(B), I, Ted Boyd, hereby verify that the allegations contained in the foregoing Statement of Election Contest are true and correct to the best of my knowledge.

Executed under penalty of perjury, this 9th day of December, 2022.

Ted Boyd

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
27
28

VERIFICATION

Pursuant to A.R.S. § 16-673(B), I, Drew Sexton, for, and in my capacity as Regional Political Director of, the Republican National Committee, hereby verify that the allegations contained in the foregoing Statement of Election Contest are true and correct to the best of my knowledge.

Executed under penalty of perjury, this 9th day of December, 2022.

Republican National Committee
By
Drew Sexton
Regional Political Director

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
27
28

VERIFICATION

Pursuant to A.R.S. § 16-673(B), I, Jeanne Kentch hereby verify that the allegations contained in the foregoing Statement of Election Contest are true and correct to the best of my knowledge.

Executed under penalty of perjury, this 9th day of December, 2022.

Jeanne Kentch