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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF MARICOPA**

**CV2020-014553**

**ARIZONA REPUBLICAN PARTY,**

**Case No. \_\_\_\_\_**

**Plaintiff,**

**APPLICATION FOR  
ORDER TO SHOW CAUSE**

**vs.**

**(Elections Matter)**

**ADRIAN FONTES, as Maricopa County  
Recorder; and the MARICOPA COUNTY  
BOARD OF SUPERVISORS, by and through  
CLINT HICKMAN, JACK SELLERS,  
STEVE CHUCRI, BILL GATES, and  
STEVE GALLARDO,**

**(Expedited Relief Requested)**

**Defendants.**

Plaintiff Arizona Republican Party ("Plaintiff") asks the Court to issue an Order to Show Cause to Defendants as to why the relief prayed for in its Verified Complaint should not issue—namely, why it should not direct the Maricopa County Recorder to sample "precincts" (instead of "vote centers") when it conducts its forthcoming hand count of votes as required by A.R.S. § 16-602(B). Because that count is expected to begin "any day now" (as soon as the recorder finishes counting votes), expedited relief is being requested. This Application is

1 supported by the following Memorandum of Points and Authorities, as well as the Plaintiff's  
2 Verified Complaint in this matter; and a proposed Order to Show Cause is submitted herewith.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 The Maricopa County Recorder's Office is almost done with counting votes for the 2020  
5 General Election, as of this filing. When it finishes, it is statutorily required to hand-count a  
6 "sampling" of votes, as a form of quality control, in order "to assure that the machines are working  
7 properly and accurately counting votes."<sup>1</sup>

8 The statute which requires this "hand count," A.R.S. § 16-602, plainly requires that the  
9 sampling consist of "[a]t least two percent of the precincts in [the] county, or two precincts,  
10 whichever is greater." See A.R.S. § 16-602(B)(1). In the case of Maricopa County (which has 748  
11 precincts), this equates to a sampling of the votes from fifteen (15) precincts.<sup>2</sup> The statute provides  
12 that "[t]he hand count shall be conducted as prescribed by this section and in accordance with  
13 hand count procedures established by the secretary of state in the official instructions and  
14 procedures manual adopted pursuant to § 16-452." At issue in this case is a basic conflict between  
15 what the statute says, as compared to the latest version of the Secretary of State's manual.

16 Traditionally, voters are assigned a "polling place" in their precinct at which to vote.<sup>3</sup> But  
17 for the 2020 General Election, Maricopa County instead established a number of polling places  
18 across the county—called "vote centers"—at which voters from any precinct could vote.<sup>4</sup> The  
19 Arizona Secretary of State's manual provides that "[i]n counties that utilize vote centers, each vote  
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21  
22 <sup>1</sup> A.R.S. § 16-602, discussed *infra*; see also page 213 of the Arizona Secretary of State 2019  
23 Elections Procedures Manual,  
24 [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROV](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=227)  
[ED.pdf#page=227](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=227)

25 <sup>2</sup> Verified Complaint, ¶ 11.

25 <sup>3</sup> Verified Complaint, ¶ 12.

26 <sup>4</sup> *Id.*

1 center is considered to be a precinct/polling location and the officer in charge of elections must  
2 conduct a hand count of regular ballots from at least 2% of the vote centers, or 2 vote centers,  
3 whichever is greater.”<sup>5</sup> In other words, the manual provides that when vote centers are used, then  
4 the random sample will be two percent of “polling places”—instead of “precincts,” which is what  
5 the plain language of the statute says.

6 There is a fundamental difference in between sampling “polling centers” and “precincts”—  
7 there were only around 175 polling centers (or “vote centers”) this election, but there were 748  
8 precincts, potentially resulting in a more precise (or larger) sampling if precincts are used<sup>6</sup>—and  
9 in any event, in a different method of data analysis that is certain to produce different results.  
10 Further, if precincts are sampled instead of voting centers, then the data is much easier for Plaintiff  
11 and/or members of the public to cross-reference or cross-check with other voter registration data,  
12 since voter registration data is already “sortable” by precinct (but not by “vote center”). In other  
13 words, whatever hardship *vel non* it may cause to the county to sample precincts instead of vote  
14 centers, such hardship is vastly outweighed by the benefit to the public in being able to analyze  
15 and sort (and organize, process) the sampling data, thereby creating transparency to the public and  
16 confidence in the integrity of our elections, which is clearly the point to this statute to begin with  
17 (and which has clearly taken on a special and obvious importance in this election, which cannot  
18 be understated).

19 \_\_\_\_\_  
20  
21 <sup>5</sup> Page numbered 215 of the Manual, section “A”:  
22 [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf#page=229](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=229)

23 <sup>6</sup> Two percent of vote centers would be 3-4 vote centers; and two percent of precincts would be  
24 15 precincts. The number of actual voters in any given precinct varies wildly among precincts,  
25 and the number of actual voters at each vote center is not known to Plaintiff at this time.  
26 Nevertheless, it is statistically probable that sampling precincts will be more accurate than  
sampling vote centers, if for no other reason than the greater “round-off” error that is caused by  
sampling only 4 discrete parts of 175, instead of 15 of 748.

1 Further, as a matter of statutory interpretation: when the legislature wrote “two percent of  
2 the precincts” instead of “two percent of the polling places,” it made a deliberate choice. This is  
3 made evident by a later section in the same statute, A.R.S. § 16-602(B)(3), which specifies that  
4 “[f]or the presidential preference election” (i.e. for the presidential primary election), a sampling  
5 of “two percent of the polling places” is to be used. In other words, another subsection of the same  
6 statute deliberately uses the phrase “two percent of the polling places” instead of “two percent of  
7 the precincts,” which is the language applicable here. “In interpreting statutes, we look to the plain  
8 language as the most reliable indicator of meaning.” *Comm. for Pres. of Established*  
9 *Neighborhoods v. Riffel*, 213 Ariz. 247, 249, 141 P.3d 422, 424 (Ct. App. 2006). “Accordingly, we  
10 assume that when the legislature uses different language within a statutory scheme, it does so with  
11 the intent of ascribing different meanings and consequences to that language. *Id.*, 213 Ariz. at  
12 249–50, 141 P.3d at 424–25; *see also Hughes v. Jorgenson*, 203 Ariz. 71, 73, ¶ 11, 50 P.3d 821,  
13 823 (2002)(“assuming that the legislature has said what it means”). Finally, “where the language  
14 of a statute is clear and unambiguous, courts are not warranted in reading into the law words the  
15 legislature did not choose to include.” *Comm. for Pres. of Established Neighborhoods v. Riffel*,  
16 213 Ariz. 247, 249, 141 P.3d 422, 424 (Ct. App. 2006); *Home Builders Ass'n v. City of Scottsdale*,  
17 187 Ariz. 479, 483, 930 P.2d 993, 997 (1997); *see also Lamie v. U.S. Trustee*, 540 U.S. 526, 538  
18 (2004)(rejecting an interpretation that “would have [the Court] read an absent word into the  
19 statute” because such an interpretation “would result not [in] a construction of [the] statute, but,  
20 in effect, an enlargement of it by the court”). The interpretation given to this statute by the  
21 Secretary of State’s Office would literally have the Court insert “polling place” (or to quote the  
22 manual, “precinct/polling location”) into subsection (B)(1), when those words simply are not  
23 there.

24 Finally, where the Secretary of State’s manual conflicts with a statute, then clearly the  
25 statute must control. *See* A.R.S. Const. Art. 5 § 1 (providing that Secretary of State “shall perform  
26

1 such duties as are prescribed by the constitution and as may be provided by law”); *W. Devcor, Inc.*  
 2 *v. City of Scottsdale*, 168 Ariz. 426, 431, 814 P.2d 767, 772 (1991)(“our statutes do not authorize,  
 3 nor would our constitution permit” the Secretary of State’s office to pass judgment on the law,  
 4 because that is a “judicial function”; and a party cannot rely on documentation produced by the  
 5 Secretary of State which contradicts the law, “any more than they can rely on a statute that  
 6 conflicts with the constitution.”)

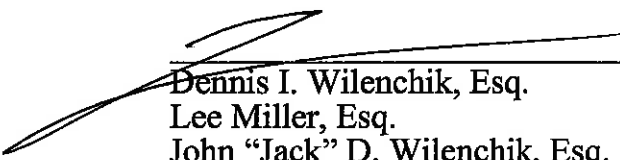
7 Therefore, this case presents a straightforward request for relief – Plaintiff asks the Court  
 8 to order the Maricopa County Recorder to conduct a sampling of “precincts” in strict accordance  
 9 with the statute, A.R.S. § 16-602(B). Because Plaintiff seeks an order compelling a public officer  
 10 to perform a duty required by law—and there is no other plain, adequate and speed remedy—then  
 11 mandamus relief is proper. *See Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 464, ¶ 9, 160 P.3d  
 12 1216, 1222 (App.2007); *see also* A.R.S. § 12–2021.

13 **CONCLUSION**

14 For the foregoing reasons, Plaintiff asks the Court to issue an Order to Show Cause as to  
 15 why it should not grant the relief prayed for in the Verified Complaint; namely, why it should not  
 16 order the Maricopa County Recorder to conduct a sampling of “precincts” instead of vote centers.

17 **RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day November, 2020.

18 **WILENCHIK & BARTNESS, P.C.**

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1 ORIGINAL of the foregoing filed  
this 12<sup>th</sup> day of November, 2020, with:

2 The Clerk of the Superior Court  
3 Maricopa County Superior Court  
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