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Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

ARIZONA REPUBLICAN PARTY,

Plaintiff,

vs.

**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,**

Defendants.

Case No. _____

CV2020-014553

VERIFIED COMPLAINT

(Elections Matter)

(Expedited Relief Requested)

Plaintiff Arizona Republican Party ("Plaintiff"), for its Verified Complaint against the above-named Defendants, alleges as follows.

INTRODUCTION

1. Plaintiff seeks a court order declaring that a particular section of the Arizona Secretary of State's manual is in violation of state law, and directing Defendant Adrian Fontes to conduct a "sampling" of elections results in strict accordance with state law, A.R.S. § 16-602(B). Because the "sampling" is expected to begin soon, Plaintiff seeks expedited relief.

1 PARTIES, JURISDICTION AND VENUE

2 2. The Arizona Republican Party is a political party committee organized and operated
3 pursuant to Title 16, Chapter 5 of the Arizona Revised Statutes.

4 3. Adrian Fontes is named in his official capacity as the County Recorder for Maricopa
5 County, Arizona.

6 4. The Maricopa County Board of Supervisors is named in its official capacity, by and
7 through its members Clint Hickman, Jack Sellers, Steve Chucri, Bill Gates, and Steve Gallardo.
8 Pursuant to A.R.S. § 16-622, the Board of Supervisors has the ultimate responsibility of certifying
9 countywide voting results and issuing an official canvass of the election results; it is therefore
10 named as a real party in interest.

11 5. Jurisdiction and venue are appropriate.

12 GENERAL ALLEGATIONS

13 6. The foregoing allegations are reincorporated as if set forth herein.

14 7. As of the filing of this Verified Complaint, the Maricopa County Recorder's Office
15 is still in the process of counting votes and providing updated unofficial vote totals for the 2020
16 General Election; but it appears to be very nearly done.

17 8. A.R.S. § 16-602(B) provides that once the County Recorder has made the unofficial
18 vote total public, then it must hand-count a random sampling of "ballots cast in the polling places
19 and ballots from direct recording electronic machines," essentially as a kind of quality control.
20 The statute provides that "[t]he hand count shall be conducted as prescribed by this section and in
21 accordance with hand count procedures established by the secretary of state in the official
22 instructions and procedures manual adopted pursuant to § 16-452.

23 9. The Secretary of State's manual also contains the following explanation: "A limited
24 precinct hand count and early ballot hand count audit must be conducted after each [general
25 election] and compared against the results from the electronic tabulation system, unless applicable
26

1 exceptions apply. The purpose of the hand count audit is to compare the results of the machine
2 count to the hand count to assure that the machines are working properly and accurately counting
3 votes. If the results from the hand count audit are within the ‘designated margin’ of the electronic
4 results for selected ballots, the hand count is deemed to have confirmed the accuracy of the
5 electronic tabulation equipment, the hand count may cease, and the countywide electronic results
6 are deemed the official results of the election. If the results from the hand count audit are outside
7 of the designated margin, a second hand count of the same ballots is required, potentially followed
8 by an expanded hand count and one or more jurisdiction-wide hand counts depending on the
9 results. A.R.S. § 16-602(C)-(F).”¹

10 10. A.R.S. § 16-602(B)(1) specifies the initial scope of the sampling as “[a]t least two
11 percent of the precincts in that county, or two precincts, whichever is greater.”

12 11. Maricopa County contains seven hundred forty-eight (748) precincts, of which two
13 percent (2%) is fifteen (15) precincts. Therefore, in strict accordance with A.R.S. § 16-602(B)(1),
14 the initial scope of the sampling must be “at least” 15 “precincts” in Maricopa County.

15 12. For the 2020 General Election, Maricopa County used a “vote center” model of
16 voting. In the “vote center” model, a voter can vote at any polling place across the county (called
17 a “vote center”), instead of the more traditional model in which the voter is assigned a polling
18 place in their own precinct. There were approximately 175 vote centers for the 2020 General
19 Election.

20 13. The Arizona Secretary of State’s manual provides that “[i]n counties that utilize vote
21 centers, each vote center is considered to be a precinct/polling location and the officer in charge
22 of elections must conduct a hand count of regular ballots from at least 2% of the vote centers, or
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24
25 ¹ Page numbered 213 of the Arizona Secretary of State 2019 Elections Procedures Manual,
26 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=227

1 2 vote centers, whichever is greater.”² In other words, the manual provides that when vote centers
2 are used, the random sample will be at least two percent of “polling places,” instead of “precincts.”

3 14. However, A.R.S. §16-602(B)(1) requires that two percent of “precincts” be
4 sampled, not “polling places.”

5 15. The legislature could have chosen to use the language “two percent of the polling
6 places,” as evidenced by the fact that it did use that language to define the scope of the hand count
7 for presidential preference elections (i.e. presidential primary elections) in a separate subsection,
8 A.R.S. §16-602(B)(3).

9 16. Upon information and belief, Maricopa County intends to conduct the sampling in
10 accordance with the Secretary of State’s manual, i.e. it intends to sample 2% of polling places
11 (vote centers) and not 2% of precincts.

12 17. In cases of conflict between Title 16 and the Arizona Secretary of State’s manual,
13 Title 16 controls. *See* A.R.S. Const. Art. 5 § 1 (providing that Secretary of State “shall perform
14 such duties as are prescribed by the constitution and as may be provided by law”); *W. Devcor, Inc.*
15 *v. City of Scottsdale*, 168 Ariz. 426, 431, 814 P.2d 767, 772 (1991)(“our statutes do not authorize,
16 nor would our constitution permit” the Secretary of State’s office to pass judgment on the law,
17 because that is a “judicial function”; and a party cannot rely on the Secretary of State’s
18 documentation that contradicts the law “any more than they can rely on a statute that conflicts
19 with the constitution.”)

20 **COUNT ONE**

21 **(Declaratory Action, Special Action/Mandamus)**

22 18. The preceding allegations are reincorporated as if set forth herein.

23 _____
24
25 ² Page numbered 215 of the Manual, section “A”:

26 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf#page=229

1 19. There exists a real, justiciable and immediate controversy for the Court to resolve:
2 whether the sampling for the statutorily-required hand count must be at least 2% of vote centers
3 (polling places), as the Secretary of State’s manual contends; or 2% of precincts, in accordance
4 with the plain language of A.R.S. § 16-602(B)(1), as Plaintiff contends.

5 20. Mandamus is a remedy used to compel a public officer to perform a duty required
6 by law. *Yes on Prop 200 v. Napolitano*, 215 Ariz. 458, 464, ¶ 9, 160 P.3d 1216, 1222
7 (App.2007); *see also* A.R.S. § 12-2021.

8 21. There is not a plain, adequate and speed remedy at law, and therefore mandamus
9 relief is proper under A.R.S. § 12-2021.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests the following relief:

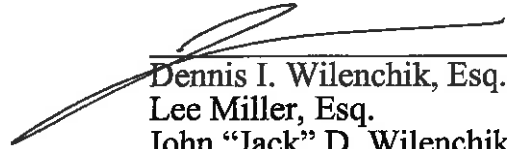
- 12 A. That the Court declare that the hand count sampling be of “precincts,” in accordance
13 with the plain language of the statute, and not of “vote centers.”
- 14 B. That the Court enter an order compelling Defendant Fontes to perform the hand
15 count of “precincts,” and not of vote centers.
- 16 C. For Plaintiff’s taxable costs under A.R.S. § 12-341, and attorneys’ fees under any
17 applicable authority.
- 18 D. For such other and further relief that the Court may deem proper in the
19 circumstances.

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RESPECTFULLY SUBMITTED this 12th day of November, 2020.

WILENCHIK & BARTNESS, P.C.

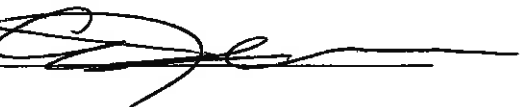

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ORIGINAL of the foregoing filed
this 12th day of November, 2020, with:

The Clerk of the Superior Court
Maricopa County Superior Court
201/101 West Jefferson Street
Phoenix, Arizona 85003

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By 

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VERIFICATION

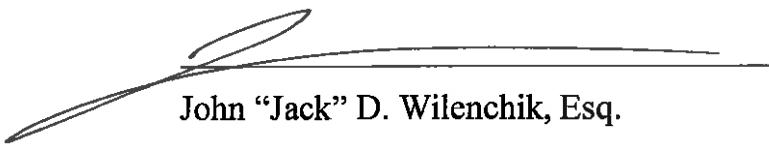
(Rule 80(i), Ariz.R.Civ.P.)

I, John "Jack" D. Wilenchik, declare as follows:

I have read the foregoing Verified Complaint, and the statements made therein are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of November, 2020.



John "Jack" D. Wilenchik, Esq.

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