EXHIBIT A

Feldman et al. v. Arizona Secretary of State's Office, et al.,
No. CV-16-1065-PHX-DLR

Plaintiffs' Claims and Reasons for Dismissal

Plaintiffs' Claim	Issue	Targeted Official(s)	Subject to Dismissal
I: Voting Rights Act, Sect. 2	Polling places, out-of-precinct, and H.B. 2023	Sec'y of State and County Defendants	**Lack Art. III standing** (polling places, out-of-precinct) **Moot** (polling places) **Prudential Ripeness** (polling places) **Laches** (polling places, out-of-precinct) **Rule 12(b)(6)** (all issues)
II: Equal Protection (alleged severe burden)	Polling places, out-of-precinct, and H.B. 2023	Sec'y of State and County Defendants	**Lack Art. III standing** (polling places, out-of-precinct) **Moot** (polling places) **Prudential Ripeness** (polling places, out-of-precinct) **Laches** (polling places, out-of-precinct) **Rule 12(b)(6)** (all issues)
III: Equal Protection (alleged disparate treatment)	Out-of-precinct	Sec'y of State and County Defendants	**Lack Art. III standing** **Laches** **Rule 12(b)(6)**
IV: Freedom of Association	H.B. 2023	Attorney General Brnovich	**Lack Art. III standing** **Rule 12(b)(6)**
V: Equal Protection (H.B. 2023)	H.B. 2023	Attorney General Brnovich	**Lack Art. III standing** **Rule 12(b)(6)**

EXHIBIT B

Michael K. Jeanes, Clerk of Court
*** Filed ***
04/28/2016 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-002889

04/27/2016

HONORABLE DAVID B. GASS

CLERK OF THE COURT
L. Stogsdill
Deputy

JOHN BRAKEY

MICHAEL KIELSKY

v.

MICHELE REAGAN, et al.

JAMES DRISCOLL-MACEACHRON

KENNETH A ANGLE
R GLENN BUCKELEW
COLLEEN CONNOR
JEFFERSON R DALTON
BRITT W HANSON
DANIEL JURKOWITZ
CHRISTOPHER C KELLER
WILLIAM J KEREKES
CHARLENE A LAPLANTE
JASON MOORE
DEREK D RAPIER
THOMAS M STOXEN
ROBERT A TAYLOR
ROSE WINKELER
JOSEPH YOUNG

RULING

This case arises out of plaintiff's challenge to the official canvass of Arizona's 2016 Presidential Preference Election (PPE) held on March 22, 2016. Plaintiff timely filed the challenge to the official canvass of the PPE. Arizona law requires that plaintiff file the action within five days of the official canvass of the election. *See* A.R.S. § 16-673.A. The filing deadline is jurisdictional and requires strict compliance. *See Bd. of Sup'rs of Maricopa County v.*

Superior Court, Maricopa County, 103 Ariz. 502, 504, 446 P.2d 231, 233 (1968). The deadline to file was April 8, 2016. Plaintiff met that deadline.

1. Merits

At the close of plaintiff's case, the Court granted oral motions for judgment as a matter law on the merits in favor of the Secretary of State, the Pima County defendants, and the Santa Cruz defendants.

At the close of the Maricopa County defendants' case, the Court granted judgment as a matter law on the merits in favor of the Maricopa County defendants.

On the Court's own motion, the Court grants judgment as a matter of law in favor of all remaining defendants.

A. Plaintiff bears the burden of proof

Plaintiff alleges that the results from the official canvass were either the product of fraud, the product of improper procedures, or the product of illegal votes. Plaintiff bears the burden of proof. *See Moore v. City of Page*, 148 Ariz. 151, 159, 713 P.2d 813, 821 (App. 1986). The Court must draw all reasonable presumptions in favor of validity of an election. *See id.* Plaintiff must prove fraud or that if proper procedures had been used, the result would have been different. *See id.*

In an election challenge, the challenger must prove fraud by clear and convincing evidence. *See Buzard v. Griffin*, 89 Ariz. 42, 50 (1960). Plaintiff cannot rely on speculation or conjecture. *See id.* Long standing precedent establishes that the Court must not infer fraud in an election from slight irregularities, unconnected with incriminating circumstances. *See Hunt v. Campbell*, 19 Ariz. 254, 264 (1917). Mere suspicion is insufficient. *See id.* The Court will not "destroy the credit of the official returns [absent] positive and unequivocal evidence of the fraud, and if the circumstances of a case can be explained upon the hypothesis of good faith, that explanation will prevail." *Id.* at 276.

With regard to allegations of illegal votes, plaintiff bears some additional burdens. First, to establish an illegal vote, the challenger must prove that the vote was cast by a person who was not eligible to vote in the election. *See Babnew v. Linneman*, 154 Ariz. 90, 94, 740 P.2d 511, 515 (App. 1987). Second, "[w]here an election is contested on the grounds of illegal voting, the contestant has the burden of showing that sufficient illegal votes were cast to change the result, and of showing for whom or for what they were cast." *See Clay v. Town of Gilbert*, 160 Ariz. 335, 338, 773 P.2d 233, 236 (App. 1989) (quoting *Moore v. City of Page*, 148 Ariz. 151, 156, 713 P.2d 813, 818 (App. 1986). *See also Morgan v. Board of Supervisors*, 67 Ariz. 133, 143, 192

P.2d 236, 243 (1948); *Millet v. Board of Supervisors,* 6 Ariz. App. 16, 19, 429 P.2d 508, 511 (1967). If the challenger cannot show for whom the illegal votes were cast, the Arizona Supreme Court has established the challenger's burden as follows:

> [Illegal votes] are to be deducted from the whole vote of the election division, and not from the candidate having the largest number. Of course, in the application of this rule such illegal votes would be deducted proportionately from both candidates, according to the entire vote returned for each.

Grounds v. Lawe, 67 Ariz. 176, 183–85, 193 P.2d 447, 451–53 (1948). *See also Clay v. Town of Gilbert*, 160 Ariz. 335, 338-39, 773 P.2d 233, 236-37 (App. 1989).

B. Plaintiff did not establish fraud and did not establish misconduct by any election board member or by any officer making or participating in the canvass

With regard to election board workers, plaintiff was able to point to a few issues that occurred to one election poll worker who served as a clerk. There was no evidence that the issues the poll worker identified were widespread. One voter identified a polling place issue when she went to vote early; her issue was resolved within 30 minutes and she voted a regular ballot. With regard to voters who alleged problems with their voter registration on election day, the county elections departments in Maricopa County and Pima County were able to show the trail of the registration changes. Moreover, most of the witnesses ultimately had their votes counted.

In addition, the credibility of at least several of the witnesses was impeached by the registration trail maintained by the Maricopa County Elections Department (MCED).

- One witness recounted his registration history as a Democrat and a short period as no party designated. He ultimately had to concede his voter registration showed a very different history, including a majority of the time being registered as a Republican. To the extent the witness complained that the Arizona Department of Transportation delayed in processing his voter registration change, he offered no evidence of the timing of his request beyond his own testimony and offered no evidence that if there was a delay in transmitting the information, it was the fault of any election official. His ballot was not counted. This witness expressed concern that the poll worker who was helping put his provisional ballot package together at first did not include the "pink" provisional sheet, but he conceded that

another poll worker told her what to do and she did it. Further, the poll worker had just taken over that position.

- One witness complained that her voter registration was changed without her authorization. She conceded that she did go to the Arizona Department of Transportation to address a traffic citation issue on the same day that her registration was updated. The evidence established that the change was made through the Arizona Department of Motor Vehicles, not MCED. Further, Mr. Valenzuela from MCED established that MCED would have sent the witness an updated voter registration card within 48 hours of the change. The witness offered no evidence beyond her own testimony that any unauthorized change was the fault of any election official.

- One witness who felt that she had been disenfranchised conceded that she was allowed to vote a regular ballot. She went to vote early because she realized that she had moved during the election period. Her early ballot had been sent to her previous address. MCED was able to confirm that her ballot had been returned and allowed her to vote a regular ballot. Her ballot was counted.

- Another witness from Pima County experienced some issues, but the evidence also established that her ballot ultimately was counted.

The poll worker identified an issue that she occasionally experienced when she tried to give out a provisional ballot. She said that sometimes the ePollbook would not allow her to select any option other than Republican for voters who wanted a Democratic ballot. She wrote "Dem" on the provisional ballot slip and allowed them to vote a Democratic provisional ballot. As Mr. Valenzuela explained, the information sheet that accompanies the provisional ballot contains a failsafe that would address such a situation. The sheet shows whether the person voted Democratic or Republican ballot. If the party designation and the other information match the information in the voter's registration file, the voter's provisional ballot will be counted. In short, if the voter was correct about his or her voter registration and voted the provisional ballot, it counted.

The above evidence is anecdotal. It does not establish fraud on behalf of any election board members or any officer making or participating in the canvass. *See* A.R.S. § 16-672.A.1. It also does not establish misconduct on the part of any election board members or any officer making or participating in the canvass. *See id.* To the contrary, it shows that when problems

arose, MCED and the Pima County Elections Department did what they could to correct any issues and ensure that each person's ballot was counted if it was appropriate to do so.

C. Plaintiff did not establish that illegal votes were cast, for whom such alleged illegal votes were cast, or that if the alleged illegal votes were deducted proportionally among the candidates, it would have changed the outcome

With regard to the allegations of illegal votes, the only potential evidence presented was that in Maricopa County, some voters were permitted to vote a regular or provisional ballot from a congressional district different from the voter's home congressional district. The poll worker had some ballots that she gave out in this manner. MCED acknowledged that voters did vote ballots from congressional districts other than their home congressional district because of ballot shortages at some polling places. Earlier in the day, MCED was able to get additional ballots to at least one polling place that had this problem. Later in the day, MCED did not have sufficient staff to distribute more ballots.

The ballots cast in this manner are not illegal votes, though those ballots would have impacted the tabulation by congressional districts. Voters in that situation, and who received a regular ballot, would have been eligible to vote in the PPE. Voters in that situation and who received a provisional ballot would have their ballots counted only if they were eligible to vote in the PPE. Under either scenario, the votes counted would have been cast by voters eligible to vote in the PPE. Except for the congressional district designation, the PPE ballots were the same depending on the party affiliation.

The voter's use of a ballot with a congressional district designation that did not match the voter's home congressional district did not result in any vote being cast by a person who was not eligible to vote in the PPE. It did result in some votes being tabulated as having been cast in a different congressional district, but that does not make the vote itself illegal because the person was eligible to vote. *See* Babnew, 154 Ariz. at 94, 740 P.2d at 515 (illegal vote is one cast by a person who is not eligible to vote in the election). Moreover, at that point on election day, the two other options would have been to have all people who needed an alternative ballot use the Edge machine, which generally is reserved for persons needing additional assistance to vote independently, or to deny those voters any opportunity to vote at all, which would have been a greater harm under the circumstances.

As a final matter on the issue of illegal votes, plaintiff offered no evidence establishing for whom the alleged illegal votes were cast. *See* Babnew, 154 Ariz. at 94, 740 P.2d at 515. Plaintiff offered no evidence that the illegal votes, if eliminated, would have changed the outcome of the election. *See Clay*, 160 Ariz. at 338, 773 P.2d at 236. Plaintiff further did not offer evidence to establish that "if illegal votes would be deducted proportionately from both

candidates, according to the entire vote returned for each" the outcome would have been different. *See Grounds,* 67 Ariz. at 183-85, 193 P.2d at 451-53. As such, even if the votes cast using a ballot from the incorrect congressional district were illegal votes, plaintiff did not meet his burden of showing it would have changed the outcome. *See id.*

D. Plaintiff did not establish that the violation of any best practices amounted to fraud or misconduct

Plaintiff offered testimony from Douglas W. Jones. The Court conditionally admitted his testimony regarding voter registration database vulnerabilities and election tabulation vulnerabilities. Plaintiff maintained that the evidence might establish that failure to follow best practices could rise to the level of fraud or misconduct.

The Court will allow the testimony to be admitted based on some concerns presented regarding the ePollbooks.

Mr. Valenzuela from MCED testified in response to those allegations. Mr. Valenzuela's testimony established that MCED followed many of the best practices that Mr. Jones identified, including the following:

1. MCED considers and takes into account best practices, looking at a variety of resources.

2. MCED maintains a trail of all voter registration changes for each voter.

3. MCED's voter database is not connected to Wi-Fi. The only connection to the Internet is indirect and is through a secure VPN (Virtual Private Network).

4. For paper ballots, vote tabulations are printed, signed, and secured at the end of the election day and are maintained along with the memory pack. The paper ballots also were secured and preserved.

5. For the touchscreen voting (the Edge), the memory pack and the paper tally are preserved.

6. MCED's tabulation machines (Insight and Edge) are not Wi-Fi enabled and are not connected to the Internet.

7. All MCED databases are encrypted to protect the data.

8. MCED and all counties use hand counts to verify electronic tabulation results using 2% for ballots cast at the polls and 1% for other ballots. Third parties, people appointed by the political parties, are responsible for actually conducting the hand counts. As for the PPE, the hand count of MCED's ballots showed a 0% variation between the hand count and the electronic tabulation by the voter equipment.

9. Provisional ballots provide a failsafe to ensure voters are able to vote. The procedures appear at page 57 of the Board Worker Training Manual. *See* Exhibit 34. Any concern about the ePollbooks is addressed by the failsafe put in place by the provisional ballots.

Some of the other best practices that Mr. Jones recommended, such as same day voter registration at the polls, would require statutory changes.

Given the above, MCED uses many of the best practices highlighted by Mr. Jones. The above cuts against plaintiff's argument that MCED's practices support a finding of fraud or misconduct. They do not.

E. Issues regarding the number of polling places and the locations, as with all election procedures, are not the proper subject of a post-election challenge

Plaintiff's claims of misconduct based on the number of voting centers at the PPE are untimely. A person must challenge procedural violations in the election process before the actual election. *See Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶¶ 9-11, 45 P.3d 336, 339 (2002). (citing *Tilson v. Mofford,* 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) and *Kerby v. Griffin,* 48 Ariz. 434, 444–46, 62 P.2d 1131, 1135–36 (1936)).

Here, the number and location of polling places "generally involves the manner in which an election is held." *See id.* (quoting *Tilson*, 153 Ariz. at 470, 737 P.2d at 1369). Long standing precedent from the Arizona Supreme Court establishes that "courts should review alleged violation of election procedure prior to the actual election." *See id.* To do otherwise would require the courts to overturn the will of the people after the election. *See id.*

Plaintiff's allegations of voter disenfranchisement as a result of issues related to the number and location of polling places similarly is not subject to post election judicial review. *See*

Zajac v. City of Casa Grande, 209 Ariz. 357, 360, ¶ 15, 102 P.3d 297, 300 (2004) (allegations of harm as a result of procedural defects raise procedural, not substantive, issues). "[A] duty is imposed upon one who would question the correctness or regularity of an election to act promptly, and, if he has information before the election of any defects in the proceedings, he must take steps to prevent the election . . ., or he will be regarded as having waived them." *See id.* at 360, ¶ 14, 102 P.3d at 300 (quoting *Abbey v. Green*, 28 Ariz. 53, 68, 235 P. 150, 155 (1925)).

2. ***Preliminary Motions As Of April 25, 2016***:

The various defendants filed preliminary motions. Some raised multiple issues. Some raised just one. Other defendants joined in some of the motions. The preliminary motions are as follows:

- Secretary Reagan's Motion To Reconsider Order Requiring The Secretary to Produce All "Questioned Ballots" (Docket 8).
    - With regard to this motion, based on a stipulation of the parties, the court granted the motion as to the April 19, 2016 return hearing.
    - Plaintiff did not raise the issue again before the conclusion of the evidentiary hearing. The balance of the motion, therefore, is moot at this time.
- Maricopa County's Motion To Dismiss Election Contest (Docket 9).
    - Pinal County's Notice Of Limited Appearance To Contest Jurisdiction And Joinder in Maricopa County's Motion To Dismiss (Docket 12).
        - Pinal County's Reply To Plaintiff's Combined Response To Defendants' Pleadings And Reassertion Of Motion To Dismiss (Docket 36).
- Yavapai County Defendants' Motion To Dismiss Or Vacate Hearing (Docket 10).

- Defendants Coconino County Board of Supervisors And Coconino County Recorder's Joinder With Yavapai County Defendants [*sic.*] Motion To Dismiss Or Vacate Hearing (Docket 15).

- Secretary Of State Michelle Reagan's Motion For Judgment On The Pleadings (Docket 11).

- Pima County Defendants' Motion To Dismiss (Docket 16).

  - Pima County Defendants' Reply In Support Of Motion To Dismiss (Docket 34).

- Attorney General Mark Brnovich's Motion To Quash And Motion To Dismiss (Docket 18).

  - The Attorney General's Reply Brief Re Motion To Quash And Motion To Dismiss (Docket 37).

- Maricopa County's Motion In Limine And Motion To Strike Declarations Of Witnesses John Brakey, Jim March Simpson, and Richard Charnin (Docket 20).

  - Secretary of State Michelle Reagan's Notice Of Joinder In Maricopa County's Motion In Limine And Motion To Strike Declarations Of Witnesses John Brakey, Jim March Simpson, and Richard Charnin (Docket 23).

  - With regard to this motion, the Court held any ruling in abeyance to abide voir dire during the evidentiary hearing. During the evidentiary hearing, the Court granted the motion with regard to John Brakey and Richard Charnin. Plaintiff did not offer testimony from Jim March Simpson.

- Yavapai County Defendants' Motion To Dismiss For Failure To Join A Party Needed For Just Adjudication (Docket 29).

- Santa Cruz County's Motion To Dismiss (Docket 38).

- Secretary Reagan's Motion To Vacate Hearing For Lack Of Good Cause And Combined Replies To Motions Regarding Election Contest (Docket 39).

Plaintiff filed Plaintiff's Combined Response to Defendant's [*sic.*] Pleadings (Docket 24) in response to the above.

1. Motions To Dismiss

Most of the preliminary motions were in the form of a motion to dismiss for failure to state claim for which relief could be granted. Defendants offered several bases on which they argued the Court should grant relief, which the Court will group and address in the following order. Their arguments in summary are as follows:

a. The PPE is not subject to challenge under A.R.S. § 16-672.

b. Good cause did not exist to extend the hearing beyond the directive in A.R.S. § 16-676 to hold a hearing within ten days of the filing of the complaint.

c. Service was not timely because plaintiff did not properly serve the defendants at least five days before the ten-day hearing directive in A.R.S. § 16-676.

d. Plaintiff did not adequately plead his claim for fraud.

e. Plaintiff did not adequately plead his claim in the absence of fraud because plaintiff did not allege that any violations under A.R.S. § 16-672 would have changed the outcome of the election.

f. The Attorney General was not a proper party under A.R.S. § 16-672.B and A.R.S. § 16-675.A.

g. Plaintiff failed to name necessary and indispensable parties under Rule 19, Arizona Rules of Civil Procedure.

a. The PPE Is Subject To Challenge Under A.R.S. § 16-672.A.

Whether the PPE is subject to an election contest under A.R.S. § 16-672 is an issue of first impression. The specific issue is whether the PPE is an election that constitutes a "question

or proposal submitted to a vote of the people" and for which a result has been declared. Plaintiff argues that it is. Defendants argue that it is not.

Election challenges are statutory. *See Harles v. Lockwood*, 85 Ariz. 97, 332 P.2d 887 (1958); *Katan v. City of Prescott*, 223 Ariz. 179, 181-82 ¶ 8, 221 P.3d 370, 372-73 (App. 2009); *Barrera v. Superior Court*, 117 Ariz. 528, 573 P.2d 928, 573 P.2d 928 (App. 1977). The court therefore must strictly construe the statutory requirements. *Donaghey v. Attorney General*, 120 Ariz. 93, 95, 584 P.2d 557, 559 (1978). Longstanding precedent establishes that the person bringing an election challenge bears the burden of proving the statute applies to the challenged election. *See Henderson v. Carter*, 34 Ariz. 528, 534, 273 P. 10, 12 (1928).

This Court, however, must interpret statutes, including election statutes, in accord with the drafters' intent, with the plain language being the best indicator of that intent. *See Zamora v. Reinstein,* 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996); *In re Estate of Winn,* 225 Ariz. 275, 277, ¶ 9, 237 P.3d 628, 630 (App. 2010). If the statute is clear and unambiguous, this Court need not employ other methods of statutory construction. *State ex rel. Romley v. Hauser,* 209 Ariz. 539, ¶ 10, 105 P.3d 1158, 1160 (2005); *State v. Riggs,* 189 Ariz. 327, 333, 942 P.2d 1159, 1165 (1997).

The Court presumes "the legislature expressed itself in as clear a manner as possible and that it accorded words their natural and obvious meanings unless stating otherwise." *See State v. Johnson*, 171 Ariz. 39, 42, 827 P.2d 1134, 1137 (App. 1992) (internal citations omitted); *State v. Reynolds,* 170 Ariz. 233, 234, 823 P.2d 681, 682 (1992); *Deatherage v. Deatherage,* 140 Ariz. 317, 320, 681 P.2d 469, 472 (App. 1984). "Whenever possible, a statute will be given such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant." *See Johnson*, 171 Ariz. at 42, 827 P.2d at 1137 (quoting *State v. Arthur,* 125 Ariz. 153, 155, 608 P.2d 90, 92 (App. 1980)). In that regard, the statute must be read as a whole. *See id.*

If the Court finds that the statute is ambiguous and the intent is unclear, the Court must consider the context of the statute, "its language, subject matter, and historical background; its effects and consequences; and its spirit and purpose." *See Courtney v. Foster ex rel. Maricopa*, 235 Ariz. 613, 615, 334 P.3d 1272, 1274 (App. 2014) (quoting *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994)) (internal quotations omitted).

Plaintiff relies on the plain language of the statute. Plaintiff takes the position that the PPE involved a statewide question that was submitted to a vote of the people and for which a result was declared.

Defendants point out that A.R.S. § 16-672.C and A.R.S. § 16-675.A both use narrower language, referring to a "question or proposal, which has been declared carried . . .." However, those subsections address when the Attorney General (A.R.S. § 16-672.C and A.R.S. § 16-675.A) and the Governor (A.R.S. § 16-675.A) must be served and may intervene in an election challenge. That very language was the subject of the Attorney General's motion to quash. The statute authorizing the challenge, section 16-672.A, uses broader language, allowing a challenge to a question or proposal submitted to a vote of the people for which a result has been declared. Subsection A does not require that the question or proposal "be declared carried." Other statutes to which defendants pointed similarly involved unique language that made them simply inapplicable. Further, to the extent A.R.S. § 16-672.C and A.R.S. § 16-675.A use narrow language, A.R.S. § 16-673 uses very broad language, talking about "contesting a state election." *See* A.R.S. § 16-673.A. In other words, the Court can find examples of broader and narrower language in the relevant article, but the controlling language is in A.R.S. § 16-675.A.

Defendants' reliance on *McCall v. City of Tombstone*, 21 Ariz. 161, 164, 185 P. 942, 943 (1919) is misplaced. The language is *McCall* is very specific. *McCall* simply says that based on other statutes in place at the time, for an "other question" to be challenged, it must involve (1) the same electorate and (2) the same canvassing board as a state office or a constitutional amendment. *See id.* ("'other question' refers to a state-wide proposition requiring the same electorate and the same canvassing board as a state office or a constitutional amendment before it would be subject to a contest thereunder."). The Court cannot read *McCall* as broadly as defendants ask. *See id. McCall* does not say that to constitute an "other question" under the statute, the election must be an election to state office or a constitutional amendment. *See id.* The issue in *McCall* was whether the state election challenge statute could apply to a county election. *McCall* said no, it had to involve a statewide election.

Here, the PPE is statewide, it involves the same statewide electorate, and it involves the same statewide canvassing board as an election to state office or an amendment to the state constitution. And A.R.S. § 16-672 bears the caption "state elections" just as the statute at issue in *McCall*. *See id.*

THE COURT THEREFORE FINDS that based on the above, the PPE is an election that is subject to challenge under A.R.S. § 16-672.A.

IT IS THEREFORE ORDERED denying the motions to dismiss on the grounds that the PPE is not subject to challenge under A.R.S. § 16-672.A.

b. & c. Good cause existed to extend the hearing beyond the time directed in A.R.S. § 16-676 and service, therefore, was timely because plaintiff properly served the defendants at least five days, excluding the date of service, before the April 25, 2016 hearing began.

The issue is whether the Court could extend the time for the evidentiary hearing to April 25, 2016. If the Court could extend the time for the evidentiary hearing, then service on the Defendants by April 19, 2016 was timely.

The timeline is as follows:

- Plaintiff timely filed the challenge to the official canvass of the PPE April 8, 2016.

- Plaintiff served defendants on Tuesday, April 19, 2016, which was five days before the April 25, 2016 evidentiary hearing. The service deadline also is jurisdictional. *See* A.R.S. § 16-675.A; *see also* *Diaz v. Superior Court, In and For Pinal County* 119 Ariz. 101, 102, 579 P.2d 605, 606 (App. 1978). Defendants must be given five days, not including the date of service, to answer the complaint. *See id.*

Under the circumstances, the Court acted within its discretion to continue the evidentiary hearing until Monday, April 25, 2016. Arizona law directs the Court to hold any evidentiary hearing on an election challenge within ten days of the challenge being filed. *See* A.R.S. § 16-676.A. It also allows the Court to extend the hearing deadline by five days for good cause shown. *See* A.R.S. § 16-676.A. These statutory directives are not jurisdictional. *See Brousseau v. Fitzgerald*, 138 Ariz. 453, 456, 675 P.2d 713, 716 (1984); *see also* *Babnew v. Linneman*, 154 Ariz. 90, 93, 740 P.2d 511, 514 (App. 1987).

In an election challenge, the Court may extend the evidentiary hearing beyond the statutory directive when the delay is necessitated by the court's failure to set a timely hearing. *See Babnew*, 154 Ariz. at 93, 40 P.2d at 513. Such a delay is appropriate to keep the courthouse doors open "to hearing charges of deception and fraud that in any way impedes the exercise of a free elective franchise." *See* *Diaz*, 119 Ariz. at 102, 579 P.2d at 606.

Defendants rely on the holding in *Klebba v. Carpenter*, 213 Ariz. 91, 93, ¶ 10, 139 P.3d 609, 611 (2006). *Klebba* is not applicable here. *Klebba* dealt with appellate jurisdiction based on the trial court's delay in issuing a written ruling. The appellate court's jurisdiction is not delayed in this case. Unlike *Klebba*, this Court is issuing its signed ruling within less than 24 hours of the

conclusion of the hearing. And the Court's ruling is being issued within the time period that would have been required had the Court not extended the hearing deadline by two additional days.

Here, the Court set a non-evidentiary, fifteen-minute return hearing for Tuesday, April 19, 2016, which was the eleventh day after the complaint was filed. At that point, through no fault of plaintiff or defendants, the Court could not conduct the evidentiary hearing within the statutorily directed ten-day period. By setting the non-evidentiary review hearing on the eleventh day, the Court had to extend the evidentiary hearing beyond the ten-day statutory directive.

The Court statutorily could extend the deadline by five days, but that would have put the hearing on Saturday, April 23, 2016. *See* A.R.S. § 16-676.A. Five days from the review hearing would have been Sunday, April 24, 2016. If the Court has set the hearing one of those two days, it would have deprived plaintiff of a hearing through no fault of plaintiff. The Court instead set the evidentiary hearing for the seventeenth day after the hearing, which was Monday, April 25, 2016.

By extending the hearing for two additional days beyond the statutory directive, this Court does not deprive itself of jurisdiction to resolve the matter. *See Brousseau v. Fitzgerald*, 138 Ariz. 453, 456, 675 P.2d 713, 716 (1984); *see also* Babnew v. Linneman, 154 Ariz. 90, 93, 740 P.2d 511, 514(App. 1987). The delay was caused by this court's failure to set a timely hearing. *See Babnew*, 154 Ariz. at 93, 40 P.2d at 514. To rule otherwise would defeat the rights of the plaintiff because of this Court's failure to set a timely review hearing. *See id.*

Because the Court appropriately set the evidentiary hearing on Monday, April 25, 2016, service on Tuesday, April 19, 2016 was timely. Defendants' answers were due five days after service, which was Sunday, April 24, 2016, the day before the evidentiary hearing.

IT IS THEREFORE ORDERED denying the motions to dismiss on the grounds that the evidentiary hearing had to be held no later than April 17, 2016 , or April 23, 2016 if the Court had found good cause and extended the deadline for the evidentiary hearing by five days.

IT IS FURTHER ORDERED denying the motions to dismiss on the grounds that service on April 19, 2016 was untimely.

d. & e. Plaintiff adequately plead his claims.

The issue with regard to the sufficiency of pleading is whether plaintiff gave "sufficient information, time, and opportunity before the hearing to alert the other parties to the . . . grounds for his challenges so that they would have a meaningful opportunity to prepare to rebut them."

See McClung v. Bennett, 225 Ariz. 154, 156, ¶ 10, 235 P.3d 1037, 1039 (2010). *McClung* involved a nomination petition challenge in which the plaintiff's theory shifted as the evidentiary hearing began.

Here, the complaint when read as a whole, including the attachments, sufficiently put defendants on notice of plaintiff's claims based on fraud, misconduct, and illegal votes. These issues also came up during the review hearing and the subsequent teleconference. With the review hearing and the teleconference, the information was sufficient to alert defendants. Indeed, Defendants here were sufficiently alerted that they filed the motion three days before the evidentiary hearing. *McClung* cannot be read to stand for the proposition that no evidence beyond that expressly and completely contained in the complaint can be considered. *See id.* Even in election law cases, Arizona is a notice pleading state.

Throughout the case, plaintiff conceded that he likely could not show that the allegations, if true, would have changed the outcome of the election. However, plaintiff also did not completely concede that point. Indeed, at the conclusion of the evidentiary hearing, after the testimony by Ms. Tunnell from MCED, plaintiff suggested that alleged fraud and misconduct might have changed the allocation of delegates to the national convention by congressional district based on the Arizona Democratic Party's bylaws. However, even if adequately proven, it was not proof that it would have changed the outcome of the election itself.

When appropriate, the Court did not allow the introduction of evidence that would have denied defendants the information, time, and opportunity to mount a meaningful defense. Though the Court was not called upon to resolve the issue of whether Richard Charnin could provide mathematical analysis based on the official canvass of the PPE, the parties discussed the issue and plaintiff offered no further evidence by Mr. Charnin.

IT IS THEREFORE ORDERED denying the motions to dismiss for failure to adequately plead claim under Rule 12(b)(6), Arizona Rules of Civil Procedure.

f. The Attorney General need not be served in a PPE challenge and may not intervene in a PPE challenge.

The Attorney General and the Governor were served on April 18, 2016. The Governor has not made an appearance, limited or otherwise.

The Attorney General has made a limited appearance to challenge service of the summons on the Attorney General under A.R.S. §§ 16-672.C and16-675.A.

Section 16-772.C says:

> In a contest of the election of a person declared elected to a state office or of an initiated or referred measure, constitutional amendment, or other question or proposal, which has been declared carried, the attorney general may intervene, and upon demand, the place of trial of the contest shall be changed to Maricopa county, if commenced in another county.

Section 16-675.A says:

> If the contest is on an initiative or referred measure, a proposed constitutional amendment, or other proposition or question submitted, which has been declared carried, the summons shall be served upon the governor and attorney general who may appear and answer the statement of contest, or, by leave of court, an elector of the state may intervene and defend the contest."

Service on the Attorney General and the Governor under both is to permit them to intervene in the action if they choose to do so. They are not necessary and indispensable parties. Moreover, both statutes allow the intervention in narrower circumstances. In short, the Attorney General and the Governor need not be served in every election challenge under § 16-672.A and they cannot intervene in every challenge.

In other words, election contests as described in section 16-672.A are not limited to contests regarding an "initiative or referred measure, a proposed constitutional amendment, or other proposition or question submitted, **which has been declared carried**." *See* A.R.S. § 16-675.A (emphasis added). Also, election contests as described in section 16-672.A are not limited to "the election of a person declared elected to a state office or of an initiated or referred measure, constitutional amendment, or other question or proposal, **which has been declared carried**." *See* A.R.S. § 16-672.C (emphasis added).

When the election contest involves issues not listed in section 16-675.A, the Attorney General is not a proper party. *See Katan v. City of Prescott*, 223 Ariz. 179, 181, ¶ 8, 221 P.3d 370, 372 (App. 2009). As *Katan* explained, "Because a court's jurisdiction over election contests is purely statutory and not a matter of common law, if no statute exists granting jurisdiction, the court has no jurisdiction to act." *See id.*

Even if section 16-675.A did apply, the Attorney General has the discretion to decline to appear. The motion establishes that the Attorney General has elected not to exercise his discretion to "intervene and defend that action" in this case even if he had discretion to do so.

IT IS THEREFORE ORDERED granting Attorney General Mark Brnovich's Motion to Quash (Docket 18).

IT IS FURTHER ORDERED denying Attorney General Mark Brnovich's Motion to Dismiss (Docket 18).

g. Plaintiff did not fail to name necessary and indispensable parties.

Yavapai County asks that the matter be dismissed because plaintiff failed to name necessary and indispensable parties. Specifically, Yavapai County argues that plaintiff should have included as parties, the three political parties that had candidates in the challenged election (Democratic, Libertarian, and Republican). Yavapai also asserts that the individual candidates on the ballot also should have been made parties. Yavapai relies on the language in A.R.S. § 16-243.B, which purports to control how delegates to the parties' national conventions are required to vote based on the PPE results. Subsection A provides that selection of delegates is controlled by the party's bylaws. The litigants before the Court conceded that the political parties honor subsection B more in the breach and that there is no enforcement mechanism to compel compliance.

To determine whether the political parties and the candidates are necessary and indispensable, the Court must engage in a three-part analysis. First, this Court must determine whether they are necessary to the action. They are necessary if they have an interest relating to the subject of this lawsuit (the canvass of the PPE) and that interest may be impaired or impeded as a practical matter if the matter is disposed of in their absence. In short, they are necessary parties. The political parties and the candidates each may have an interest relating to the outcome of this action that may be impaired or impeded in their absence.

Second, the Court must consider whether they can be joined in the present lawsuit. At this stage in an election contest, new parties cannot be added.

Third, the Court must consider whether they are indispensable. To make that determination, the Court must consider several factors. First, given the statutory structure, it is unclear whether rendering a decision in the absence of the political parties and the candidates will prejudice them; it will not prejudice the parties before the Court.

SUPERIOR COURT OF ARIZONA
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Fourth, the Court cannot fashion a result to lessen the impact on the political parties or the candidates. The Court has two options, which are to grant plaintiff's relief by striking the official canvass or to deny plaintiff's relief, and in so doing, allowing the official canvass to stand.

Fifth, the judgment either way will be adequate.

Sixth, the plaintiff will not have any other adequate remedy if this action is dismissed.

THE COURT FINDS that based on the above, though the political parties and candidates are necessary parties, they cannot be joined, and they are not indispensable parties.

IT IS THEREFORE ORDERED denying the motion to dismiss for failure to name necessary and indispensable parties under Rule 19, Arizona Rules of Civil Procedure.

IT IS FURTHER ORDERED that any motion or request for relief not expressly granted or denied above is deemed denied.

IT IS FURTHER ORDERED signing this minute entry as a final written Order of the Court. **The Court notes that no further matters remain pending and the order is entered pursuant to Rule 54(c) of the Arizona Rules of Civil Procedure.**

Dated: April 27, 2016

/s/ David B. Gass
HONORABLE DAVID B. GASS
JUDICIAL OFFICER OF THE SUPERIOR COURT

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Leslie Feldman, et al., Plaintiffs, vs. Arizona Secretary of State's Office, et al., Defendants.	CV 16-01065-PHX-DLR Phoenix, Arizona May 10, 2016 10:35 a.m.

BEFORE: THE HONORABLE DOUGLAS L. RAYES, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Telephonic Hearing re: Scheduling and Discovery)

Official Court Reporter:

David C. German, RMR, CRR
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, SPC-39
Phoenix, Arizona 85003-2151
(602) 322-7251

PROCEEDINGS TAKEN BY STENOGRAPHIC COURT REPORTER
TRANSCRIPT PREPARED BY COMPUTER-AIDED TRANSCRIPTION

fact that there's also an outstanding public records request that seems to be duplicative. That, at least, I believe we are able to reach an agreement on, that to the extent we were able to produce those documents, obviously, that would moot any discovery requests. 11:01:57

Just an update that we received this morning, a draft response from the secretary, I'm currently in the process of reviewing that information. And there are a number of documents. So we'll be reviewing those as well and getting those out to the plaintiffs as soon as possible, you know, by the end of this week at the very latest. 11:02:15

So we are making progress in that regard on certain items.

However, you know, the discovery requested they spoke of on the phone were the statewide voter registration file and the County polling places, both of which, Your Honor, they already -- as a State party, one of their parties being a State party, they already have access to, the voter registration database through the counties, and that's granted by statute. 11:02:34 11:02:59

And then as to the polling places, not only is that a County level request, it must be clear only Maricopa County has been named in this lawsuit. So there are 14 other counties in this state whose election procedures have not been challenged, which would go to, I believe, the out-of-precinct 11:03:19

ballot issue in their preliminary injunction motion, and would go to the extent of their request, but that's also available on line, and I believe that Maricopa County during the phone call did tell them where that information was available, and it was only later that they brought up all these additional requests. 11:03:39

And as you said, it's voluminous, and we've been working with the Secretary to at least respond to the public records requests, but at this point in time we do not believe that the rest of the information was necessarily germane to the preliminary injunction motion. 11:03:56

But again, you know, we've been having difficulty getting out of plaintiffs' counsel exactly what it is that they're trying to seek in their preliminary injunction motion and what exactly the scope of their preliminary injunction motion was. It makes it very, very difficult for us to try to resolve these things, unfortunately, without outside intervention. 11:04:12

But we are -- you know, we are moving forward. They are going to have information, some information, at least, in regards to the public records request. 11:04:28

And I know that the AG's Office provided a public records response to the records requested on the HB 2023 public records request that they sent the General's Office, and that was on Friday, so I believe that they've already 11:04:52

C E R T I F I C A T E

I, DAVID C. GERMAN, Official Court Reporter, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the proceedings and testimony reported by me on the date specified herein regarding the afore-captioned matter are contained fully and accurately in the notes taken by me upon said matter; that the same were transcribed by me with the aid of a computer; and that the foregoing is a true and correct transcript of the same, all done to the best of my skill and ability.

DATED at Phoenix, Arizona, this 8th day of June, 2016.

s/David C. German
DAVID C. GERMAN, RMR, CRR

EXHIBIT D

David B. Rosenbaum, No. 009819
drosenbaum@omlaw.com
Shane M. Ham, No. 027753
sham@omlaw.com
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794
Telephone: 602.640.9000
Facsimile: 602.640.9050

Matthew P. Kanny, No. 018044
mkanny@manatt.com
John W. McGuinness *(pro hac vice application pending)*
jmcguinness@manatt.com
Andrew C. Case, No. 030668 *(pending reactivation)*
acase@manatt.com
Christopher Rheinheimer *(pro hac vice application pending)*
crheinheimer@manatt.com
Eric B. Chen *(pro hac vice application pending)*
echen@manatt.com
MANATT, PHELPS & PHILLIPS, LLP
11355 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: 310.312.4000
Facsimile: 310.312.4224

Ezra D. Rosenberg *(pro hac vice application pending)*
erosenberg@lawyerscommittee.org
Brendan B. Downes *(pro hac vice application pending)*
bdownes@lawyerscommittee.org
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

Attorneys for Plaintiffs

OSBORN MALEDON
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

JULIANA HUERENA, an individual: and MONICA COOPER, an individual;

Plaintiffs,

v.

MICHELE REAGAN, in her official capacity as Arizona Secretary of State; HELEN PURCELL, in her official capacity as Maricopa County Recorder; MARICOPA COUNTY BOARD OF SUPERVISORS; and DENNY BARNEY, STEVE CHUCRI, ANDY KUNASEK, CLINT HICKMAN, and STEVE GALLARDO, in their official capacities as members of the Maricopa County Board of Supervisors,

Defendants.

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case arises from the drastic reduction in the number of polling places for the 2016 Presidential Preference Election ("PPE") in Maricopa County, which caused lines in excess of five hours at certain locations and effectively disenfranchised countless Arizonans.

2. Together, Maricopa County officials reduced the number of PPE polling places from 403 in 2008, to 211 in 2012, to just 60 in 2016.

3. This flawed decision and severe mismanagement created unendurable wait times for numerous Arizonans who were forced to leave polling places without casting a ballot.

4. On average, Maricopa County operated one polling place for approximately every 21,000 eligible voters, compared to an average of one polling place for approximately every 1,500 eligible voters in the rest of the State.

5. Maricopa County is the largest county in Arizona, containing more than 60% of Arizona's total population, and approximately 60% of Arizona's minority populations.

6. Were it not for the decision of the Supreme Court in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), Maricopa County would have had to obtain preclearance from the federal government before implementing this drastic reduction in polling places.

7. The gross mismanagement of the March 22, 2016 election is but one of a series of incidents, which have impeded the right to vote of the citizens of Maricopa County.

8. For the impediments to the franchise erected by the Defendants, as well as the functional disenfranchisement that occurred on account of their acts and omissions, Plaintiffs respectfully ask this Court to declare that Defendants violated the constitutional and statutory rights of Arizonans, and to issue an injunction exercising supervision over all elections leading up to and through the 2020 PPE, and to require,

in advance of those elections, that specified measures be taken to reduce and manage wait times.

PARTIES

9. Plaintiff Juliana Huerena is a qualified elector, registered to vote in Maricopa County.

10. Plaintiff Monica Cooper is a qualified elector, registered to vote in Maricopa County.

11. Defendant Michele Reagan is the Arizona Secretary of State (the "Secretary of State"), a public officer of this State, and is named in her official capacity. The Secretary of State is the public officer responsible for supervising, conducting, and providing regulations and guidelines for statewide elections.

12. Defendant Helen Purcell is the Maricopa County Recorder, an office created by the Arizona Constitution. Ariz. Const. art. XII, § 3. Defendant Purcell is named in her official capacity. The Maricopa County Recorder is responsible for conducting elections in Maricopa County.

13. Defendant Maricopa County Board of Supervisors ("Board of Supervisors") is the governing body of Maricopa County. The Board of Supervisors is obligated under Arizona law to designate a reasonable and adequate number of polling places for PPEs.

14. Defendants Denny Barney, Steve Chucri, Andy Kunasek, Clint Hickman, and Steve Gallardo are members of the Board of Supervisors and are named in their official capacities.

JURISDICTION AND VENUE

15. This Court has jurisdiction of this action under Ariz. Const. art. VI, § 14, as well as A.R.S. §§ 12-123, 12-1831 *et. seq.*, and 12-1801, *et. seq.*

16. Venue is proper in this County under A.R.S. § 12-401.

STATEMENT OF THE CLAIM

A. Nature of the Action

17. Plaintiffs allege that Defendants, or several of them, caused or permitted acts amounting to a failure to: (i) provide for free and equal elections under Ariz. Const. art. II, § 21; (ii) provide for a maximum allowable wait time for any election and an effective wait time reduction method under A.R.S. § 16-411(J); (iii) designate a reasonable and adequate number of polling places for PPEs under A.R.S. § 16-248(A); (iv) adhere to the provisions of the instructions and procedures manual created under A.R.S. § 16-452 pursuant to wait time management; and (v) effectively respond to election day requests from election marshals for assistance in wait time reduction under A.R.S. § 16-535(B).

18. Plaintiff Juliana Huerena has been a regular voter in Maricopa for approximately ten years. She arrived at her polling place at around 4 P.M. and waited in line for approximately four and a half hours before casting her ballot.

19. Plaintiff Monica Cooper attempted to vote in the PPE. She has a disability and took paratransit to the polls. As paratransit requires users to schedule rides in advance, Ms. Cooper allotted herself two hours to cast a ballot. However, due to the excessively long lines, that two hour period expired before Ms. Cooper had the opportunity to cast a ballot. Her ride came and she had to leave her polling place without voting.

B. Maricopa County Demographics

20. According to the U.S. Census Bureau, Maricopa County is the fourth-most populous county in the United States. As of July 2015, the County had an estimated population of 4,167,947.

21. According to the U.S. Census Bureau, as of July 2014, the County's population is 57.0% white not Hispanic or Latino, 30.3% Hispanic or Latino, 5.7% African American, and 4.1% Asian.

C. Preclearance Requirement Under the Voting Rights Act and *Shelby County* Decision

22. Section 5 of the Voting Rights Act of 1965 ("VRA") prevents certain jurisdictions ("covered jurisdictions") with a history of racial discrimination from implementing changes that affect voting unless and until the jurisdiction demonstrates to federal authorities that the change will not have the purpose or effect of abridging or denying the right to vote on account of race, color, or membership in a language minority group. Under the coverage formula contained in Section 4 of the VRA, Maricopa County was a covered jurisdiction.

23. On June 25, 2013, in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), the U.S. Supreme Court held Section 4 of the VRA unconstitutional, and thus that its coverage formula could no longer be used as a basis for subjecting jurisdictions, including Maricopa County, to preclearance requirements.

24. Because *Shelby County* effectively removed the preclearance barrier, Maricopa County was not required to submit its plan to reduce the number of polling stations for the 2016 PPE to the DOJ for preclearance.

D. Factual Background of the 2016 PPE

25. On February 17, 2016, Defendant Purcell proposed, and Defendant Board of Supervisors approved, reducing the number of 2016 PPE election day polling places to 60 locations.

26. The number of polling places represented a significant reduction from the number in prior PPEs. In 2008, a year in which both major parties had multiple candidates competing for nominations, the County operated 403 polling places. In 2012, when there was no notable contest for the Democratic nomination due to the incumbency of President Obama, the County operated 211 polling places.

27. As a result of the reduction, in 2016, on average, the County operated one polling place for approximately every 21,000 eligible voters.

28. In contrast to Maricopa, Pima County operated 130 polling places, despite having approximately one-fourth of the total eligible voters in Maricopa County.

29. Aside from Maricopa, on average, all other counties in the state operated one polling place for approximately every 1,500 voters.

30. On March 22, 2016, numerous eligible voters in Maricopa waited in line in excess of five hours to cast a ballot.

31. Though the polls were scheduled to close at 7 P.M., some voters who were in line by that time waited until past midnight to vote.

32. On information and belief, five polling places stayed open past midnight, while 20 of the 60 locations were open until after 10 P.M.

33. Many voters could not endure such long waits for a variety of reasons, including, without limitation, family or work responsibilities, or physical limitations. Those voters who were unable to endure the excessive wait times at Maricopa County polling places were effectively disenfranchised.

34. Others who waited in line for hours ran short on water and food.

35. In addition, many Arizonans without a party affiliation were not fully aware, and were not properly informed, of their inability to participate in the PPE.

36. As a result of the failure to properly inform voters about their eligibility for the PPE, over 18,000 unaffiliated voters cast provisional ballots that were not counted.

37. Maricopa County estimated that it takes a minimum of five minutes per voter to issue a provisional ballot.

38. Thus, Maricopa County concluded that with approximately 24,000 total provisional ballots cast, poll workers spent approximately 2,000 hours processing provisional voters on election day.

39. Defendant Purcell admitted that she did not adequately publicize details regarding the election, including whether unaffiliated voters could participate, until March 9, just 13 days before the PPE.

40. According to an informal survey by the Arizona Republic, the longest reported wait time outside of Maricopa was 40 minutes at one location in Coconino County.

41. While Arizonans were outraged by their government's failures on election day, Defendant Purcell initially pointed the finger at voters themselves for the long lines. When asked who was to blame for the fiasco, Defendant Purcell responded, "The voters, for getting in line."

42. Defendants' mismanagement has continued past the PPE. The Spanish language version of early ballots mailed to 1.3 million Maricopa County voters for the May 17, 2016 special election mistakenly repeated the title of Proposition 123 as the title for Proposition 124. While Proposition 124 is a proposal to change pensions of police and firefighters, the title of Proposition 124 described it as a proposal concerning education funding. Defendants did not address the error until after early voting began on April 20, 2016.

43. Additionally, the Secretary of State admitted that it failed to send publicity pamphlets, which describe the initiatives on the May 17, 2016 special election ballot, outline the pro and con arguments, and show voters where they can cast their ballots, to 200,000 households in the State. The Secretary of State discovered the error on April 22, 2016, after early voting commenced, but did not notify the public until May 6, 2016.

E. Violations of Arizona Law

44. Under A.R.S. § 16-241(C), "[e]xcept as otherwise provided [], the presidential preference election shall be conducted and canvassed in the same manner as prescribed in this title for the primary election held pursuant to § 16-201. All

provisions of other laws that govern elections and that are not in conflict with this article apply to a presidential preference election . . . ."

45. Because Defendant Board of Supervisors approved the grossly inadequate number of only 60 polling places, it failed to "designate a reasonable and adequate number of polling places" in violation of A.R.S. § 16-248(A).

46. The provisions of Section 16-248(A) are not in conflict with the provisions of Section 16-241, and therefore apply to PPE.

47. Defendant Secretary of State violated Arizona law by failing to provide for a maximum allowable wait time for the PPE. A.R.S. § 16-411(J) requires the Secretary of State to "provide through the instructions and procedures manual adopted pursuant to § 16-452 the maximum allowable wait time for any election that is subject to § 16-204 . . . ."

48. According to the instructions and procedures manual, the maximum allowable wait time for elections subject to Section 16-204 is one hour.

49. The Secretary of State, as alleged herein, failed to provide for the maximum allowable wait time for the March 22 PPE in the instructions and procedures manual.

50. Defendant Secretary of State was also required, and, as alleged herein, failed to, provide for a method to reduce voter wait times for PPEs. Under A.R.S. § 16-411(J):

> The secretary of state shall . . . provide for a method to reduce voter wait time at the polls in the primary and general elections [and] shall consider at least all of the following for primary and general elections in each precinct: (1) The number of ballots voted in the prior primary and general elections. (2) The number of registered voters who voted early in the prior primary and general elections. (3) The number of registered voters and the number of registered voters who cast an early ballot for the current primary or general election. (4) The number of election board members and clerks and the number of rosters that will reduce voter wait time at the polls.

51. The provisions of Section 16-411(J) are not in conflict with the provisions of Section 16-241, and, therefore, apply to PPEs.

52. Under A.R.S. § 16-535(B), election marshals "shall also periodically measure the length of waiting times at that polling place throughout the day, and if the waiting time is thirty minutes or more, the marshal shall inform the officer in charge of elections and shall request additional voting machines, voting booths and board workers, as appropriate."

53. That wait times were inordinately long at polling places in Maricopa County on March 22 was highly publicized throughout the day, and Defendant Purcell knew or should have known that wait times at many polling places were thirty minutes or more.

54. The "officer in charge of elections" in Maricopa County is Defendant Purcell. On information and belief, Defendant Purcell failed to effectively respond to election day requests from election marshals for assistance in wait time reduction and/or from public reports of the excessively long wait times. Defendant Purcell's actions or inactions violated A.R.S. § 16-535(B).

55. The provisions of Section 16-535(B) are not in conflict with the provisions of Section 16-241, and, therefore, apply to PPEs.

56. Together, the acts or omissions of the Defendants violated Ariz. Const. art. II, § 21, which guarantees that, "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

FIRST CLAIM FOR RELIEF
(Declaratory Judgment Relief)

57. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.

58. There exists a real and justiciable controversy between the parties regarding whether Plaintiffs rights under Ariz. Const. art. II, § 21, A.R.S. § 16-248(A), A.R.S. § 16-411(J), A.R.S. § 16-452, and A.R.S. § 16-535(B) were violated.

59. Pursuant to A.R.S. § 12-1831 *et. seq.*, Plaintiffs – as parties whose rights, status or other legal relations are affected by the following constitutional and statutory provisions – are entitled to a declaration from this Court that their rights under Ariz. Const. art. II, § 21, A.R.S. § 16-248(A), A.R.S. § 16-411(J), A.R.S. § 16-452, and A.R.S. § 16-535(B) were violated during the 2016 Arizona PPE.

SECOND CLAIM FOR RELIEF
(Injunctive Relief)

60. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.

61. Pursuant to A.R.S. § 12-1801, *et seq.*, Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendants from conducting future elections, up to and through the 2020 PPE, in the absence of judicial supervision, and requiring, in advance of such elections, that specified measures be taken to reduce and manage wait times.

62. As alleged in this Complaint, the Defendants violated Plaintiffs' statutory and constitutional rights, and, given the scope of those violations and the proven inability to operate elections effectively, will continue to violate those rights absent judicial intervention.

63. Given the nature of the claims in this Complaint, Plaintiffs do not have an adequate remedy at law, and, therefore, injunctive relief is appropriate.

64. The threatened injury to Plaintiffs is irreparable and substantial, and granting injunctive relief will not cause Defendants to suffer any harm.

65. Granting the requested injunctive relief will promote the public interest by ensuring the free and fair administration of future elections.

THIRD CLAIM FOR RELIEF
(Attorneys' Fees)

66. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.

67. Plaintiffs are entitled to an award of attorneys' fees under the Arizona private attorney general doctrine, as adopted in *Arnold v. Ariz, Dep't of Health Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989), because the vindication of rights in this action "(1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." As a result, this action meets all the conditions of the private attorney general doctrine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

A. Issue an order declaring that Defendants, or several of them, caused or permitted acts related to the 2016 PPE that amounted to a failure to: (i) provide for free and equal elections under Ariz. Const. art. II, § 21; (ii) provide for a maximum allowable wait time for any election and an effective wait time reduction method under A.R.S. § 16-411(J); (iii) designate a reasonable and adequate number of polling places for PPEs under A.R.S. § 16-248(A); (iv) adhere to the provisions of the instructions and procedures manual created under A.R.S. § 16-452 pursuant to wait time management; and (v) effectively respond to election day requests from election marshals for assistance in wait time reduction under A.R.S. § 16-535(B).

B. Grant Plaintiffs preliminary and permanent injunctive relief providing for court supervision over all elections leading up to and through the 2020 PPE, and providing that:

(a) The Board of Supervisors create a polling place plan for each election sufficiently ahead of the election to allow for court review and approval;

(b) The Secretary of State and the County Recorder provide sufficient notice to all voters as to their eligibility to cast a regular ballot in presidential preference and other elections;

(c) The Secretary of State provide a maximum allowable wait time for presidential preference elections;

(d) The Secretary of State, the County Recorder, and the Board of Supervisors develop a comprehensive plan to reduce wait times for all elections; and

(e) The Secretary of State regularly train county election officials on the details and execution of that plan.

C. Award attorneys' fees under the private attorney general doctrine.

D. Award of costs of litigation in favor of Plaintiffs.

E. Grant Plaintiffs such other and further relief as may be just and equitable.

DATED this 2nd day of June, 2016.

Respectfully submitted,

OSBORN MALEDON, P.A.

By _____

David B. Rosenbaum, No. 009819
drosenbaum@omlaw.com
Shane M. Ham, No. 027753
sham@omlaw.com
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794
Telephone: 602.640.9000
Facsimile: 602.640.9050

MANATT, PHELPS & PHILLIPS, LLP

By _____ for (w/ permission)

Matthew P. Kanny, No. 018044
mkanny@manatt.com
John W. McGuinness *(pro hac vice application pending)*
jmcguinness@manatt.com
Andrew C. Case, No. 030668 *(pending reactivation)*
acase@manatt.com
Christopher Rheinheimer *(pro hac vice application pending)*
crheinheimer@manatt.com
Eric B. Chen *(pro hac vice application pending)*
echen@manatt.com
11355 W. Olympic Blvd.
Los Angeles, CA 90064
Telephone: 310.312.4000

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

By _____
Ezra D. Rosenberg *(pro hac vice application pending)*
erosenberg@lawyerscommittee.org
Brendan B. Downes *(pro hac vice application pending)*
bdownes@lawyerscommittee.org
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

Attorneys for Plaintiffs

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Civil Court Case Information - Case History

Case Information

Case Number:	CV2016-007890	Judge:	Gama, J. Richard
File Date:	6/2/2016	Location:	Downtown
Case Type:	Civil		

Party Information

Party Name	Relationship	Sex	Attorney
Juliana Huerena	Plaintiff	Female	Shane Ham
Monica Cooper	Plaintiff	Female	Shane Ham
Michele Reagan	Defendant	Female	Pro Per
Helen Purcell	Defendant	Female	Pro Per
Maricopa County Board Of Supervisors	Defendant		Pro Per
Denny Barney	Defendant	Male	Pro Per
Steve Chucri	Defendant	Male	Pro Per
Andy Kunasek	Defendant	Male	Pro Per
Clint Hickman	Defendant	Male	Pro Per
Steve Gallardo	Defendant	Male	Pro Per

Case Documents

Filing Date	Description	Docket Date	Filing Party
6/2/2016	COM - Complaint	6/2/2016	
6/2/2016	CCN - Cert Arbitration - Not Subject	6/2/2016	
6/2/2016	CSH - Coversheet	6/2/2016	

Case Calendar

There are no calendar events on file

Judgments

There are no judgments on file