

1 Ryan Heath (036276)
HEATH LAW, PLLC
2 16427 N. Scottsdale Rd., Suite 370
Scottsdale, Arizona 85254
3 (480) 432-0208
ryan.heath@heathlaw.com

4 *Attorney for Plaintiffs Abraham Hamadeh and AZ Voters Rights*

5 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
6 **IN AND FOR COUNTY OF MARICOPA**

7 ABRAHAM HAMADEH & AZ VOTERS RIGHTS,

Case No.: CV2023-054320

8 Plaintiffs,

9 vs.

COMPLAINT IN SPECIAL ACTION

10 STEPHEN RICHER, IN HIS OFFICIAL CAPACITY AS
THE MARICOPA COUNTY RECORDER, SCOTT
11 JARRETT, IN HIS OFFICIAL CAPACITY AS
MARICOPA COUNTY DIRECTOR OF ELECTIONS,
RAY VALENZUELA, IN HIS OFFICIAL CAPACITY
AS MARICOPA COUNTY DIRECTOR OF
12 ELECTIONS, BILL GATES, CLINT HICKMAN, JACK
SELLERS, THOMAS GALVIN, STEVE GALLARDO,
13 IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF
THE MARICOPA COUNTY BOARD OF
SUPERVISORS; MARICOPA COUNTY, A
14 POLITICAL SUBDIVISION OF THE STATE OF
ARIZONA; THE MARICOPA COUNTY
RECORDER'S OFFICE, A POLITICAL SUBDIVISION
15 OF MARICOPA COUNTY; THE MARICOPA
COUNTY BOARD OF DIRECTORS, A POLITICAL
SUBDIVISION OF MARICOPA COUNTY, AND
16 ADRIAN FONTES, IN HIS OFFICIAL CAPACITY AS
ARIZONA'S SECRETARY OF STATE,

17 Defendants

18 **INTRODUCTION AND SUMMARY OF THE CASE**

- 19 1. This case centers around A.R.S. § 16-446(B)(4), which governs Arizona's
20 electronic voting system, and whether this "non-technical" and nondiscretionary
21 law that furthers Plaintiffs' and Maricopa County's voters constitutional rights was

1 applied by Maricopa County during the 2022 General Election in a way that is
2 consistent with its proper meaning.

3 2. Being that the next General Election will be held in November 2024, along with the
4 fact that it will include a presidential election, it is crucial that the concerns provided
5 for in this Complaint are ironed out beforehand. If the issues raised in this Complaint
6 are not remedied by this Court, public confidence in our election system will
7 continue to erode. Indeed, if this Court fails to act, then its inaction will cast serious
8 doubt on the legitimacy of all future Arizona elections.

9 3. Plaintiff Abraham Hamadeh was the Republican candidate for Attorney General of
10 the State of Arizona for the 2022 General Election. After final counts and
11 certification of the ballots cast, he lost his race against candidate Kris Mayes by only
12 280 votes.

13 4. Plaintiff, AZ Voters Rights is an Arizona public interest corporation. Its mission is
14 to promote social welfare by advocating for free and fair elections in Arizona—
15 including funding litigation to enhance and safeguard election security for the
16 benefit of Arizona voters.

17 5. Plaintiffs bring this Complaint (the “Complaint”) to request that this Court issue a
18 writ of mandamus ordering Maricopa County and State elections officials to
19 decertify the Maricopa County and Arizona canvass for the 2022 General Election
20 race for Attorney General (the “Contested Race”).

- 1 6. It took many months and a significant investment to gather the witnesses and
2 evidence necessary to file this lawsuit. Furthermore, much of the information
3 supporting the allegations herein was not released by Maricopa County officials
4 until months after Election Day. Given the Arizona Judiciary’s long history of
5 ensuring the legitimacy of its elections, the relief sought herein is timely. *See e.g.*
6 *Hunt v. Campbell*, 19 Ariz. 254 (1917) (overturning a gubernatorial race over a year
7 after the fact based on problems that manifested during the voting process).
- 8 7. Plaintiffs bring this action because many Maricopa County voters had their right to
9 vote on November 8, 2022 (“Election Day”) violated when attempting to vote in-
10 person (as people in this Nation have done for centuries) and their votes were not
11 counted due to various wrongful acts by Maricopa County officials—which
12 disproportionately impacted Election Day voters, the majority of whom were
13 Republicans and conservative leaning independent voters.
- 14 8. This Complaint challenges the outcome of the 2022 General Election in Arizona for
15 the Contested Race based on violations of the Arizona Constitution and other
16 Arizona laws. There is an actual controversy between the parties concerning the
17 lawfulness of the Contested Race, which plausibly would have been different but
18 for the wrongful acts of Maricopa County officials related to the administration of
19 in-person voting on November 8, 2022. Plaintiffs also demand declaratory relief to
20 ensure that future elections are run transparently, fairly—and in a way that is
21 consistent with both common sense and Arizona law.

1 **JURISDICTION AND VENUE**

2 9. Jurisdiction is proper in this court pursuant to Article VI, § 14 of the Arizona
3 Constitution; A.R.S. §§ 12-123, 12-1831, 12-2021, and Arizona Rule of Special
4 Action Procedure 4.

5 10. Venue is proper in this Court pursuant to A.R.S. §§ 12-401(15), (16).

6 **NATURE OF CLAIMS**

7 11. This action challenges the constitutionality of the inability of legitimate electors to
8 cast ballots on November 8, 2022 (“Election Day”) in violation of A.R.S. §§ 16-
9 446(B)(4), 16-452, and Articles II §§ 13, 21, VII §§ 7 & 12 of the Arizona
10 Constitution.

11 12. Plaintiffs seek mandamus relief pursuant to A.R.S. § 12-2021 against Defendants to
12 redress the violations of the Arizona Constitution, along with recovery of attorney’s
13 fees and costs under A.R.S. §§ 12-341, 12-2030.

14 13. Plaintiffs also seek declaratory relief under A.R.S. § 12-1831. As residents and
15 representing the interests of legitimate electors of Arizona, the Plaintiffs have a
16 vested “interest” in the proper and uniform enforcement by election officials of
17 statutory requirements. A.R.S. § 12-1832; *see also Ariz. Sch. Bds. Ass’n. v. State*,
18 252 Ariz. 219, 225 (2022).

19 **DESCRIPTION OF THE PARTIES**

20 14. Plaintiff Abraham Hamadeh was the Republican candidate for Attorney General of
21 the State of Arizona for the 2022 General Election. After final counts and
22

1 certification of the ballots cast, he lost his race against candidate Kris Mayes by only
2 280 votes.

3 15. Plaintiff AZ Voters Rights is an Arizona corporation. Its mission is to promote
4 social welfare by advocating for free, fair, and legal elections in Arizona—including
5 funding litigation to enhance and safeguard election law, compliance, and security
6 for the benefit of all Arizona voters.

7 16. Defendant Stephen Richer (“Richer”) is sued in his official capacity as Maricopa
8 County Recorder. Richer is an officer in charge of elections in Maricopa County.

9 17. Defendant Rey Valenzuela (“Valenzuela”) is sued in his official capacity as the
10 Maricopa County Director of Elections Services and Early Voting.

11 18. Defendant Scott Jarrett (“Jarrett”) is sued in his official capacity as the Maricopa
12 County Director of Elections for Election Day and Emergency Voting.

13 19. Defendants Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve
14 Gallardo are sued in their official capacities as members of the Maricopa County
15 Board of Supervisors.

16 20. Defendant Maricopa County is a political subdivision of the State of Arizona.
17 Maricopa County is charged by law with conducting elections within its
18 jurisdictional boundaries, including through its Board of Supervisors.

19 21. Defendant Maricopa Board of Supervisors is charged by law with conducting
20 elections within the Maricopa County jurisdictional boundaries. The Maricopa
21

1 County Board of Supervisors is a “public body” within the meaning of A.R.S. § 39-
2 121.01(A)(2).

3 22. Defendant Maricopa County Recorder’s Office is a political subdivision of
4 Maricopa County.

5 23. Defendant Adrian Fontes is Arizona’s Secretary of State, and he is named in his
6 official capacity.

7 **FACTUAL BACKGROUND**

8 24. Maricopa County is the fourth largest county and the second largest voting
9 jurisdiction in the United States. Approximately 60% of the 2,592,313 votes cast in
10 the 2022, General Election in Arizona came from Maricopa County. Of the total
11 votes, Maricopa County reported that approximately 248,000 votes were cast on
12 Election Day by in-person voters at Maricopa’s 223 vote centers.

13 25. The Election Day voting for the 2022 General Election in Maricopa County was
14 plagued by issues that the Maricopa Defendants caused by not testing the election
15 centers’ OKI Data B432 Ballot on Demand (“BOD”) printers under conditions
16 simulating those that were likely to occur on Election Day and by using 20-inch,
17 100 lb. paper—even though Maricopa County officials knew or should have known
18 that this combination of paper size and weight exceeded the capabilities of the OKI
19 B432 printers especially for printing double-sided ballots.

20 26. In 2017, Maricopa County acquired a large number of “off the shelf” OKI B432
21 printers. In 2020, Maricopa County retrofitted these B432 printers, which previously

1 printed only voter envelopes, to function as BOD printers, capable of printing
2 ballots, control slips, and envelopes.

3 27. During the 2022 August primary and November general elections, Maricopa County
4 used the retrofitted OKI B432 BOD printers (along with the County's Lexmark
5 C4150 BOD printers).

6 28. According to the Maricopa County Election Department's 2022 Elections Plan:
7 August Primary and November General (hereinafter "Election Plan"), at § 7.1.1, the
8 "[m]ini BOD printer is a retrofitted OKI B432 that [includes a] high-capacity
9 feeder . . . and scalable extender [that] will hold the 19" x 8½" ballots that would
10 normally not fit in the small manufacturer provided paper feeder."

11 29. For the 2022 August Primary Election Maricopa County used a 19" x 8½" ballot.
12 However, for the 2022 November General Election, Maricopa County used a 20" x
13 8½" ballot (double sided) on 100 lb. paper, which, upon information and belief,
14 exceeded the capabilities of the OKI B432 BOD printers.

15 30. Additionally, among other things, (a) due to their intermittent use, as each individual
16 ballot was prepared, the fusers for the OKI B432 printers would not stay hot enough
17 to properly fuse the toner to the paper thereby causing spotting; (b) some of the
18 printers had faint-ink issues; and (c) 20-inch ballot forms were somehow processed
19 using a "fit to page" function on the printers which shrunk the 20-inch ballot images
20 when printed on the 20-inch paper. Notably, the shrunken 20-inch ballot image
21 caused the markings on the ballot to be changed so that the on-site tabulators could

1 not read them. These conditions were investigated and verified by the “Maricopa
2 County 2022 General Election Ballot-on-Demand Printer Investigation,” conducted
3 by the Hon. Ruth V. McGregor, former Chief Justice of the Arizona Supreme Court,
4 and her staff.

5 31. The faint printing, spotting, and misalignment of the ballots printed on the 20-inch
6 100 lb. paper caused on-site tabulators to reject the ballots on Election Day.

7 32. Credible evidence demonstrates that about 59% of the voting centers in Maricopa
8 County had issues on Election Day—where the on-site tabulators were rejecting
9 misprinted ballots.¹ Credible evidence further shows that tabulators rejected over
10 7,000 ballots each half hour throughout most of Election Day. Even though those
11 ballots ultimately may have been counted, this case focuses on the delays caused by
12 printer and tabulator issues and the impact those delays had on willing voters from
13 Maricopa County who were disenfranchised by the exceptionally long lines on
14 Election Day.

15
16
17 ¹ Maricopa County has repeatedly claimed that only about 60 out of 223 vote centers
18 experienced the printer problems described herein on Election Day. However, former
19 Supreme Court Justice Ruth V. McGregor (who was hired by Maricopa County to
20 investigate the Election Day failures) has questioned this assertion and the discovery
21 process will demonstrate the falsity of Maricopa County’s claim. *See* Ruth V. McGregor,
22 Maricopa County 2022 General Election Ballot-on-Demand Printer Investigation, at 12 n.
30 (Apr. 10, 2023) (“The number may have been somewhat higher, based on our review
of the election report logs. Whatever the precise number, we can fairly state that although
approximately two-thirds of the vote centers did not experience printer issues, *a*
substantial number of the vote centers utilizing Oki B432 printers experienced problems
and were not able to tabulate some ballots on site.”) (Emphasis added).

1 33. As the printer and tabulator issues developed throughout Election Day,
2 extraordinarily long lines formed. Maricopa's Election Plan recognized the
3 importance of keeping wait times in lines of people to vote on Election Day to no
4 more than thirty minutes. Despite the recognized importance of short lines, news
5 reports, interviews of election workers, and observers reported many long lines of
6 voters waiting to cast their ballots. During Election Day, local reporters informed
7 the public that many people standing in line for hours (some more than three hours)
8 had left for a multitude of reasons. Observers reported that 72 of 115 visited voting
9 centers, or roughly 60% saw material problems with the tabulators not being able to
10 tabulate BOD ballots.

11 34. Further, election officials at the voting centers were informing those standing in line
12 that their voting machines were inoperable.² They failed, however, to properly
13 inform those in line about how they could cast their votes elsewhere which, upon
14 information and belief, is because Maricopa County did not train poll workers how
15 to "check out" voters.

16
17
18
19 ² See Video (Nov. 8, 2022)

20 <https://x.com/tylerbowyer/status/1589986706744578048?s=20> (accessed November 6,
21 2023). Plaintiffs will call the individual who shot this footage as a witness. He will attest
22 to the fact that, based on his all-day observation of the events at the Anthem Voting
Center, a huge number of people left the lines (after waiting for hours) before they could
check in to vote.

1 35. While Maricopa Election Department's public announcements generally
2 downplayed the significance of the delays, Maricopa County election workers have
3 described Election Day as "chaos."³

4 36. Whether it was 20%, 60% or something in between of the percentage of voting
5 centers that experienced significant delays in voting because of printer and tabulator
6 errors; upon information and belief, the printers having issues producing readable
7 ballots were more prevalent in precincts that historically voted Republican.

8 37. It has been credibly estimated that 20% of the voters who had been waiting in long
9 lines left the lines without casting their ballots. Many other voters who learned of
10 the chaos were likely dissuaded entirely from trying to vote.

11 38. Being that an overwhelmingly large number of voters on Election Day, in Maricopa
12 County, were Republicans and conservative leaning independent voters, the long
13 lines had a disproportionate impact upon Election Day results and plausibly changed
14 the outcome of the election costing Plaintiff Hamadeh his race.

15 39. The individuals deterred from voting would have plausibly changed the outcome of
16 the Contested Race had they been able to vote.

17
18
19
20
21
22

³ See Fleetwood Shawn *Poll Worker Gives An Inside Look At The 'Complete Chaos' In Maricopa County On Election Day* (Dec. 1, 2022) <https://thefederalist.com/2022/12/01/poll-worker-gives-an-inside-look-at-complete-chaos-in-maricopa-county-on-election-day/> (accessed November 4, 2023)

1 40. It cannot reasonably be disputed that long lines on Election Day resulted in
2 depressed voter turnout in Maricopa County.

3 41. Upon information and belief, had Maricopa County used an appropriate paper size
4 and weight on Election Day, the OKI BOD printers would have worked properly,
5 the tabulators would have recorded all votes (without issue), and long voter lines
6 would have been avoided—allowing all citizens to vote on equal footing.

7 42. Many Maricopa County voters could not vote on Election Day due to the long lines
8 nor were their votes counted as a result of the chaotic conditions caused by printer
9 and tabulator issues.

10 43. Further, had all those who intended to vote on Election Day been able to cast their
11 ballots, the results of the Contested Race would have plausibly been different.

12 44. Plaintiff Hamadeh was the Republican candidate for the office of Attorney General.

13 Had the Election Day errors with the printers and tabulators been avoided, Plaintiff
14 Hamadeh would have been elected as Arizona's Attorney General.

15 45. As set forth herein, many Maricopa County voters were denied their constitutional
16 equal protection and due process rights to a fair vote. Thus, Plaintiffs should be
17 granted a declaratory judgment that the Defendants' failure to properly test and
18 certify all the election equipment by simulating Election Day conditions violates
19 both common sense and Arizona law. An injunction also should be granted
20 prohibiting the Defendants from failing to test Election Day equipment under
21 reasonably expected circumstances.

1 46. If this Honorable Court ignores the Defendants’ errors, omissions, and misconduct,
2 then it will give reason for future elections in Arizona—and throughout the
3 Country—to continue haphazardly all to the detriment of the voters. The time for
4 the Court to order corrective action is upon us, and time is of the essence.

5 47. Counts I and II of the Complaint assert equal protection and due process
6 claims, respectively, under the Arizona Constitution, including the
7 allegation that Election Day problems disproportionately burdened voters who were
8 aged, disabled, pregnant, or for a variety of other reasons unable to stand in long
9 lines to exercise their constitutional right to vote.

10 48. In addition, the failure to follow Arizona election law for testing and certifying
11 election equipment constitutes a violation of Arizona voters’ due process rights.

12 49. The 2022 General Election in Maricopa County has been challenged on numerous
13 grounds including violations of Arizona law in the procedures utilized by Maricopa
14 County, which admittedly failed to “compare” mail-in ballot affidavit signatures
15 with the putative voters’ signature from the “registration record.” On September 1,
16 2023, the Superior Court in and for the County of Yavapai, the Hon. John Napper
17 presiding, issued an Under Advisement Ruling and Order holding that the signatures
18 on mail-in ballot affidavits must be compared to voters’ “registration record”
19 signatures, not other “historical record” signatures (as was done in Maricopa
20 County). If the reasoning of that case is properly applied to the 2022 General
21 Election in Maricopa County, the County will be required to re-examine over 1.3

1 million mail-in ballot signatures against the voters' correct registration record
2 signatures or there will have to be a re-vote or some other remedy.

3 50. This lawsuit raises new issues concerning irregularities with respect to Election Day
4 voting—which caused thousands (perhaps tens of thousands) of voters to not cast
5 their votes or otherwise not have their votes counted. More particularly, had
6 Maricopa County officials not ignored the limitations of the OKI B432 printers, as
7 set forth in the owner's manual, or had the OKI BOD printers been tested under
8 reasonably expected Election Day conditions, it would have been discovered that
9 the *intermittent* use of 20-inch 100 lb. paper exceeded many of the printers'
10 capacities so that the ballots they produced could not be properly read by the on-site
11 tabulators.

12 51. Voters on Election Day encountered huge delays and long lines. The delays were
13 caused by the following: efforts to diagnose the printer and tabulator problems,
14 attempts to correct them, re-submissions of ballots only to have the tabulators
15 continue to reject them again, spoiling the ballots and re-doing the votes, and errors
16 in having Door 3 ballots not counted. These issues all combined to create Election
17 Day chaos that led to excessive wait times and consequently, the disenfranchisement
18 of many ready and willing voters.

19 52. The vast majority of Election Day voters (as opposed to mail-in ballot and early
20 voters) were Republican and conservative leaning independent voters. Thus, the
21

1 printer and tabulator errors disproportionately negatively impacted Republican
2 candidates, including Plaintiff Hamadeh.

3 53. Because of the long voter lines and tabulation and printer errors at vote centers, as
4 many as twenty percent (20%) of potential voters were unable to cast their ballots
5 on Election Day. Below is a small sample of individuals who were disenfranchised
6 on Election Day by Maricopa County's negligence and mistakes.

- 7 a. Affiant⁴ Peggy Weiman ("Weiman") was (and is) a registered voter in
8 Maricopa County. Weiman is over the age of 65 years with various health
9 issues. On Election Day, Weiman repeatedly went to her designated voting
10 center at Desert Hills Community Church of Nazarene (at 7th Street and the
11 Carefree Highway) attempting to vote in person. Notably, this voting center
12 has around 30 parking spaces on the premises, and the roads near this
13 voting center do not have sidewalks—rather, they are lined with desert and
14 drainage ditches. The first time Weiman went to the voting center (around 9
15 A.M.), the parking lot was full and there was a line of approximately sixty
16 to seventy people, standing outside, waiting to vote. Due to Weiman's
17 health conditions, she could not wait in such a long line to vote. She left
18 with plans to return later. Around 11 A.M., Weiman returned to Desert
19 Hills Community Church voting center. Upon arriving she found that the

20 _____
21
22 ⁴ See Exhibit 1, attached hereto and incorporated herein by this reference.
COMPLAINT IN SPECIAL ACTION - 14

1 parking lot was again completely full, people were parked along the street
2 and in locations on the premises not meant for parking. At this time, there
3 were around 100 people in line waiting to vote. Indeed, the line of people
4 was so long that it was overflowing down the street and those waiting to
5 vote were standing in between the cars parked along 7th Street and the
6 drainage ditch on the sides of the road. Again, because of her health
7 conditions, Weiman was not able to stand in line long enough to vote.
8 Additionally, because the line was standing on a dirt incline, she could not
9 join the line. Accordingly, Weiman returned home and looked for another
10 vote center on the internet. Unfortunately, the second closest voting center
11 (at the Anthem outlets) had an expected wait time of between two and three
12 hours. Weiman considered driving to Wickenburg but determined that this
13 location was too far. Thus, she returned to the Desert Hills Community
14 Church voting center around 2 P.M. (around when school let out) hoping to
15 cast her ballot. When she arrived—for a third time—the parking lot was
16 again completely full. Weiman recalls a line of parked vehicles spanning
17 about two miles down the street, and the line of people was about a mile
18 long (again, people were standing between the parked cars and the drainage
19 ditches, which is impossible for Weiman due to her physical condition).
20 Due to the long lines caused by the printer and tabulator malfunctions,
21 Weiman was unable to vote on Election Day and, therefore, she was

1 disenfranchised. Had Weiman been able to vote, she would have voted for
2 Abraham Hamadeh for Attorney General.

3 b. Affiant⁵ Duane White (“White”) was (and is) a registered voter in Maricopa
4 County. On Election Day, sometime around 11:00 a.m., White attempted to
5 vote at the Faith Baptist Church voting center in Glendale. White’s ballot
6 was repeatedly rejected by the tabulator, and he was forced to place his
7 ballot into “Box 3.” He left and went home. Notably, White lives within
8 five minutes of the Faith Baptist Church voting center. As soon as White
9 got home, he checked his voting status on the Maricopa County Voter
10 Dashboard.⁶ Amazingly, the dashboard read “You voted on Election Day.
11 Your ballot was counted.” This, however, was impossible because, at that
12 time, White’s ballot was still in “Box 3” and could not have been counted.
13 Indeed, Box 3 ballots were not brought to MCTEC for tabulation until that
14 evening. Due to the printer and tabulator malfunctions at his voting center,
15 White believes that he was unable to vote on Election Day and, therefore,
16 he was disenfranchised. Had White been able to vote, he would have voted
17 for Abraham Hamadeh for Attorney General.

18
19
20
21 ⁵ See Exhibit 2, attached hereto and incorporated herein by this reference.

22 ⁶ <https://recorder.maricopa.gov/Elections/BeBallotReady/>

1 c. Affiant⁷ Dawn Lee (“Lee”) was (and is) a registered voter in Maricopa
2 County. On the morning of Election Day, Lee attempted to cast her ballot at
3 the Biltmore voting center. Lee waited in line for more than two hours due
4 to the printer and tabulator problems occurring at this voting center.
5 Because Lee could not wait any longer and because she needed to use the
6 restroom after standing in line for multiple hours, she was forced to leave
7 the line and was therefore unable to cast her ballot. Due to the printer and
8 tabulator malfunctions at her voting center, Lee was unable to vote on
9 Election Day and, therefore, she was disenfranchised. Had Lee been able to
10 vote, she would have voted for Abraham Hamadeh for Attorney General.

11 d. Affiant⁸ Tona Jackson (“Jackson”) went to her crochet group (around 11:00
12 A.M.) on the morning of Election Day, November 8, 2022. Jackson’s
13 crochet group happened to be meeting at the Anthem Outlet Mall at the
14 same location where the Anthem Voting Center was located.
15 Approximately every half hour, from 11:00 A.M. until about 2:00 P.M.,
16 Jackson stepped out of her crochet group to check on the line to vote. The
17 line, however, was extraordinarily long. At the end of her crochet group,
18 around 2:00 P.M., she got in line attempting to cast her ballot. Jackson
19

21 ⁷ See Exhibit 3, attached hereto and incorporated herein by this reference.

22 ⁸ See Exhibit 4, attached hereto and incorporated herein by this reference.

1 waited in line for a few minutes when she was informed by the people
2 standing in front of her that the expected wait time was an hour (due to the
3 printer and tabulator problems occurring at this voting center).

4 Accordingly, around 2:30 P.M., Jackson went home and checked online for
5 an alternative voting location (as the Anthem Voting Center was showing
6 around a 2 hour wait). Unfortunately, no alternative voting locations were
7 within a reasonable driving distance. Jackson, therefore, returned to the
8 Anthem Voting Center around 5:30 P.M., but the line to vote was again
9 extraordinarily long. Because Jackson could not wait in such a long line,
10 she was forced to leave and was therefore unable to cast her ballot. Due to
11 the printer and tabulator malfunctions at Jackson's voting center, she was
12 unable to vote on Election Day and, therefore, she was disenfranchised.

13 54. The foregoing is a small sampling of Plaintiffs' evidence regarding how voters in
14 Maricopa County were disenfranchised on Election Day, and Plaintiffs will bring
15 additional evidence should this case proceed to trial.

16 55. Upon further information and belief, lines at the Outlet Mall Voting Center in
17 Anthem, Arizona, exceeded three hours, and many voters were witnessed having
18 left those lines rather than continue to wait to cast their votes.

19 56. Those long lines of voters waiting to cast their ballots could have been avoided if
20 the non-technical aspects of the 2019 Arizona Secretary of State Elections

1 Procedure Manual (“EPM”) had been followed and had the requirement of binding
2 Arizona statutory law been met by the Defendants.

3 57. The EPM provides in relevant part:

4 I. VOTING EQUIPMENT CERTIFICATION

5 *All components of a voting system must be properly certified prior to use in
any election for a federal, state, or county office....*

6 A voting system is defined as *the total combination of mechanical,
electromechanical, or electronic equipment ... that is used to define ballots,
7 cast and count votes, report or display election results, and maintain and
produce any audit trail information.... Thus, a voting system consists of the
8 electronic voting equipment (including ... precinct voting equipment,)
and election management system (EMS) used to tabulate ballots. (EPM, at
9 76) (Emphasis added).*

10 2. The voting system *must have the following functional capability and/or
characteristics* required under federal and state law:

11 a. The voting system *must be suitably designed* and be of durable
construction;

12 b. The voting system *must provide for secure, efficient, and accurate voting....*

13 c. The voting system *must function for all types of elections.* (EPM, at 79)
(Emphasis added).

14 ii. Demonstration and Functionality Test

A demonstration and functionality test consists of:

15 1. Explaining the testing process (of both primary and general election test
ballots) during the public meeting.

16 2. Casting ballots on all electronic voting equipment in accordance with the
test script prepared for the meeting....

17 3. If the system captures digital ballot images, determining whether the
system

18 a. Produces digital images of readable quality, including clearly displaying
write-in votes....

19 6. *Demonstrating the voting system’s ability to function in compliance with
applicable state and federal law.* (EPM, at 80 - 81) (Emphasis added).

20
21 58. A.R.S. §16-446 provides in relevant part:

1 An electronic voting system shall:
2 *Be suitably designed for the purposes used* and be of durable construction, and
3 may be used safely, efficiently and accurately in the conduct of elections and
4 counting ballots....

5 6. When properly operated, record correctly and count accurately every vote cast.
6 (Emphasis added).

7 59. A.R.S. §16-452 further provides in relevant part:

8 *C. A person who violates any rule adopted pursuant to this section [regarding*
9 *production of the EPM by the secretary of state] is guilty of a class 2*
10 *misdemeanor.* (Emphasis added).

11 60. “All components of the voting system” used by Maricopa County in the 2022
12 General Election were not “properly certified.” The electronic voting system
13 comprised in part of OKI BOD printers were not “suitably designed for the
14 purposes used,” *i.e.*, they were not suitable to handle large quantities of 20-inch,
15 100 lb. paper—which exceeded the known capabilities of the OKI B432 and
16 which was processed through the printers intermittently—outside of the expected
17 norm on Election Day. The voting system was not “efficient,” and it did not
18 “function for all types of elections.”

19 61. The failure of the Maricopa Defendants to utilize appropriate paper and properly
20 test the OKI B432 printers in a way to simulate Election Day conditions
21 disenfranchised far more than 280 voters (probably tens of thousands) and
22 constitutes misconduct in violation of the Arizona Constitution.

62. The Election Day conditions that should have been emulated would have been to
use 20-inch, 100 lb. paper ballots that were printed intermittently to create
individualized ballots for the different voters.

1 63. The Arizona Constitution, Art. 2, § 21 provides that “elections shall be free and
2 equal” and that “no power, civil or military, shall at any time interfere to prevent
3 the free exercise of the right of suffrage.” In this case, the elections were not free
4 and equal because Election Day voters were not able to cast their ballots without
5 great difficulty – much more so than in prior elections.

6 64. In this case, these foundational principles were violated. Many Election Day
7 voters were forced to endure conditions that impaired their right to vote (as shown
8 by those witnesses whose votes were submitted and not counted due to the chaos
9 created by the printer/tabulator errors). The right of many citizens to exercise their
10 vote was impaired, especially for those voters who could not wait in long lines or
11 were dissuaded from voting because of the reported long lines due to their age,
12 disability, pregnancy, work, childcare, other requirements, etc.

13 65. “[E]lection statutes are mandatory, not ‘advisory,’ or else they would not be law at
14 all.” *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994).
15 The electoral processes established in the EPM, once adopted according to the
16 statutory process, have “the force of law.” *Ariz. Pub. Integrity Al. v. Fontes*, 250
17 Ariz. 58, 63 (2020).

18 66. In this case, the Defendants’ non-technical violations of Arizona statutes and the
19 EPM certainly altered the outcome of Plaintiff Hamadeh’s race for Attorney
20 General. In any event, however, the harm that was caused by inhibiting electors
21

1 from voting on Election Day warrants the declaratory and injunctive relief sought
2 herein.

3 67. As set forth above, the Defendants have violated the Arizona Constitution,
4 Arizona statutory law, and the EPM, which has the force of law. If the voting
5 deficiencies that occurred on Election Day are not corrected, then Democrat
6 candidates will be favored as such candidates predominantly benefit from early
7 and mail-in voting. Accordingly, this Court must order a correction to include
8 equipment testing and compliance with the EPM and applicable Arizona laws.

9 **FIRST CAUSE OF ACTION**
10 **(Denial of Equal Protection)**

11 68. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 67 above.

12 69. The Arizona Constitution, in Articles II §§ 13, 21, VII §§ 7 & 12, establishes certain
13 guarantees, which respectively provide: (1) laws must apply “equally . . . to all
14 citizens” and do so “upon the same terms”; (2) elections must be “free and equal,”
15 with no power, whether civil or military, being permitted to interfere with their free
16 execution; (3) “the person, or persons, receiving the highest number of legal votes
17 shall be declared elected[;]” and (4) the institution of “registration and other laws”
18 is necessary to ensure the integrity of elections and prevent potential abuses of the
19 electoral franchise. These guarantees are not empty promises but the most
20 fundamental rights we possess—ensuring that our Nation is one “of laws, and not
21 of men.” *See Winsor v. Hunt*, 29 Ariz. 504, 512 (1926).

1 70. “Arizona’s constitutional right to a ‘free and equal’ election is implicated when
2 votes are not properly counted.” *Chavez v. Brewer*, 222 Ariz. 309, 320 (Ct. App.
3 2009).

4 71. In Arizona, a voter's right to cast a vote must be in accordance with constitutional
5 and statutory voting laws, and each proper vote (whether in Yavapai or Maricopa
6 and whether by mail or in-person) demands equal treatment. *See e.g., Archer v. Bd.*
7 *of Supervisors*, 166 Ariz. 106, 107 (1990) (in the context of a primary contest
8 challenge, “any elector or voter, regardless of his political affiliation . . . has the
9 responsibility to uphold the integrity of the . . . process, and therefore, may challenge
10 the nomination or election of any person”). Procedural safeguards, such as those
11 defined by A.R.S. §§ 16-446 & 16-452, were established to ensure that the results
12 of an election reflect the electorate's will. *See Ariz. Const. Art. II §§ 13, 21, and VII*
13 *§§ 7 & 12; see also e.g. Reyes v. Cuming*, 952 P.2d 329 (Ariz. Ct. App. 1997)
14 (holding that Arizona’s signature verification statute (A.R.S. § 16-550(A)), which
15 was passed to further the fundamental rights of voters established by the Arizona
16 Constitution, was a “non-technical” law such that a violation resulting in
17 “uncertainty” in the outcome necessitated setting aside the election results as a
18 matter of law). During Arizona’s 2022 General Election, Maricopa County's failure
19 to apply these safeguards led to a situation where these fundamental protections
20 were ignored. This gross oversight puts at risk the very principles that our legal
21 system and this Court have vowed to uphold.

1 72. It has long been established that the right to vote is fundamental. *Charfauros v. Bd.*
2 *Of Elections*, No 99-15789, 2001 U.S. App. LEXIS 15083, at * 31 (9th Cir. May 10,
3 2001). Voting is a right “of the most fundamental significance under our
4 constitutional structure. *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). “No right is
5 more precious in a free country than that of having a voice in the election of those
6 who make the laws under which, as good citizens, we must live. Other rights, even
7 the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*,
8 376 U.S. 1, 17 (1964). States may not, by arbitrary action or other unreasonable
9 impairment, burden a citizen’s right to vote. *Baker v. Carr*, 369 U.S. 186, 208 (1962).
10 Here, by using 20” x 8½”, 100 lb. paper, which exceeded the known capabilities of
11 the OKI B432 BOD printers, Maricopa County officials acted unreasonably to
12 impair the ability of willing, in-person voters to cast ballots on Election Day.

13 73. Maricopa County’s decision to use 20” x 8½”, 100 lb. paper for printing ballots
14 during the 2022 General Election—despite the limitations of the OKI B432 BOD
15 printers, which Maricopa County officials knew or should have known—constitutes
16 a breach of their duty to act reasonably. Maricopa County officials further breached
17 their duty of care by not testing the OKI B432 BOD printers under reasonably
18 expected Election Day conditions. The breach of these duties by Maricopa County
19 officials caused an outcome determinant number of voters to not vote on Election
20 Day for Plaintiff Hamadeh. But for Maricopa County’s failure to act reasonably by

1 using appropriate paper on Election Day, the Attorney General Race plausibly
2 would have been different.

3 74. “Since the right to exercise the franchise in a free and unimpaired manner is
4 preservative of other basic civil and political rights, any alleged infringement of the
5 right of citizens to vote must be carefully and meticulously scrutinized.” *Reynolds*
6 *v. Sims*, 377 U.S. 533, 562 (1964). The fundamental right to vote is “the right of
7 qualified voters within a state to cast their ballots and have them counted.” *United*
8 *States v. Classic*, 313 U.S. 299, 315 (1941).

9 75. Article II § 1 of the Arizona Constitution provides: “A frequent recurrence to
10 fundamental principles is essential to the security of individual rights and the
11 perpetuity of free government.” Article II § 2 states: “All political power is inherent
12 in the people, and governments derive their just powers from the consent of the
13 governed” and governments are established to protect and maintain individual rights.
14 Finally, Article II § 4 requires that: “[n]o person shall be deprived of life, liberty, or
15 property without due process of law.”

16 76. In cases involving disenfranchisement and undue burdens on suffrage, equal
17 treatment must be analyzed from within the “confines of the governmental entity
18 concerned, be it the State or its political subdivisions.” *Holt Civic Club v.*
19 *Tuscaloosa*, 439 U.S. 60, 68 (1978). In fact, “[o]nce the geographical unit for which
20 a representative is to be chosen is designated, all who participate in the election are
21 to have an equal vote.” *Id.* Put simply, each United States citizen “has a

1 constitutionally protected right to participate in elections on an equal basis with
2 other citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 366 (1972).
3 Because the case at hand involves a state-wide election, voters across Arizona must
4 be treated equally with respect to the way their votes are counted—irrespective of
5 which county they reside in or how they vote. Because Arizona citizens in counties
6 outside of Maricopa were not unduly burdened when voting in person, Maricopa
7 County Election Day voters were treated differently in violation of their
8 constitutional rights.

9 77.A.R.S. § 16-446 (B)(4) provides that the electronic voting system shall “[b]e
10 suitably designed for the purpose used and be of durable construction, and may be
11 used safely, efficiently and accurately in the conduct of elections and counting
12 ballots.”

13 78. Maricopa County’s failure to use paper designed for the OKI B452 printers means
14 that Maricopa County electronic voting system was not “suitably designed for the
15 purpose used” nor was the plan designed to produce a “safe, efficient, and accurate”
16 result in the “counting of ballots.”

17 79. According to the EPM, the wait time for in-person voting is “defined as the duration
18 of time from when the voter arrives in line to the time the voter is provided a ballot
19 or access to an accessible voting equipment to vote a regular ballot.” See EPM IX.
20 P. 166. Section 2.4 of the Election Plan acknowledged the need to keep wait times
21 at thirty minutes or less by representing that if wait-times exceeded thirty minutes

1 at a voting center, then Inspectors or Trouble Shooters were to assess the cause of
2 the issue or bottleneck and deploy additional resources.

3 80. “[E]lection statutes are mandatory, not ‘advisory,’ or else they would not be law at
4 all.” *Miller v. Picacho Elementary Sch. Dst. No. 33*, 179 Ariz. 178, 180 (1994).
5 Legal electoral processes established in the Arizona EPM that are compliant with
6 statutory requirements, once adopted according to the statutory process, have “the
7 force of law.” *Ariz. Pub. Integrity Al. v. Fontes*, 250 Ariz. 58, 63 (2020).

8 81. As alleged herein, Maricopa County voters that voted on Election Day were not
9 treated equally with their fellow Maricopa County voters who voted by mail, nor
10 were they treated equally as compared to voters from other Arizona counties that
11 voted on Election Day.

12 82. The right to vote far exceeds the initial allocation of the franchise. *Bush v. Gore*,
13 531 U.S. 98, 104 (2000). “Equal protection applies as well to the manner of its
14 exercise. Having once granted the right to vote on equal terms, the State may not,
15 by later arbitrary and disparate treatment, value one person’s vote over that of
16 another.” *Id.*

17 83. Here, there is an expectation set by the EPM explicitly, that the lines used by the
18 voters do not consist of excessive wait times. However, it is apparent that many
19 voters were subjected to waiting in line for many hours—some more than three (3)
20 hours. Such long wait times plausibly caused thousands of willing voters in

1 Maricopa County not to vote on Election Day for their preferred candidate,
2 Abraham Hamadeh.

3 84. These long wait times, which remain inconsistent throughout the state of Arizona,
4 as not all voting centers had the same issues, is crucial. Without these preventable
5 tabulation and printing errors, the waiting lines across voting centers would have
6 been much more similar in duration – allowing for the equal treatment of citizens’
7 voting rights.

8 85. As established in the Arizona EPM, the goal is to do whatever is necessary to
9 “facilitate efficiency and reduce wait times.” EPM, Chapter 8, Section IX (C)(8).
10 These expectations should be given “the force of law.” *Ariz. Pub. Integrity Al. v.*
11 *Fontes*, 250 Ariz. 58, 63 (2020). The violation of this “law” is a threat to the very
12 foundation that the voting structure is based on – equal opportunity to vote.

13 86. At the time of the 2022 General Election, voters in Maricopa County have been
14 afforded the right to on-site tabulation of their ballots for three decades. On-site
15 tabulation of ballots furthers the rights of voters by ensuring transparency in the
16 electoral process. Failure by Maricopa County to afford in-person voters on-site
17 tabulation constituted a violation of such electors’ rights under the Equal Protection
18 Clause of the Arizona Constitution.

19 87. As set forth above, the Defendants, all of whom are “state actors” caused the long
20 lines dissuading a disproportionate number of Republican and conservative
21 independent voters from casting their votes on Election Day. More particularly, the

1 state actors failed to properly test and certify the election equipment in accordance
2 with the limitations of the equipment and under conditions that simulated Election
3 Day conditions. Had that been done, the issues with the BOD printers would have
4 been discovered; hundreds of thousands of rejections by the tabulators would have
5 been avoided; and the long lines of voters encountered on Election Day, which far
6 exceeded Maricopa County's own Election Plan to keep voters waiting no more
7 than thirty minutes from the time they entered the line to the time they received their
8 ballots, would have been avoided allowing all willing and ready voters to cast their
9 ballots.

10 88. The facts and circumstances set forth above constitute a denial of Election Day
11 voters' rights to equal protection.

12 89. Plaintiffs are entitled to the issuance of a writ of mandamus or an order setting aside
13 the 2022 Attorney General race results in Maricopa County and having a re-vote on
14 that election with the results thereof conveyed to the State of Arizona and the winner
15 of the Attorney General race inducted into office. Alternatively, Plaintiffs are
16 entitled to setting aside the Attorney General race results in Maricopa County and
17 being awarded relief as this Court deems just and fair.

18 90. Plaintiffs are also entitled to declaratory and injunctive relief that the Maricopa
19 County election officials test all electronic voting equipment in a manner that
20 simulates actual expected Election Day conditions and to use proper paper weight

1 and length for the ballots, efficient and properly working printers to print the BODs,
2 and on-site tabulators capable of properly reading the ballots.

3 **SECOND CAUSE OF ACTION**
4 **(Denial of Due Process)**

5 91. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 90 above.

6 92. When election practices reach “the point of patent and fundamental unfairness,” the
7 integrity of the election itself violates substantive due process.” *Griffin v. Burns*,
8 570 F.2d 1065, 1077 (1st Cir. 1978); *Marks v. Stinson*, 19 F.3d 873, 878 (3rd Cir.
9 1994); *Duncan v. Poythress*, 657 F.2d 691, 702 (5th Cir. 1981); *Florida State*
10 *Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1183 – 84 (11th Cir. 2008);
11 *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580 – 82 (11th Cir. 1995).

12 93. With respect to procedural due process, intentional failure to follow election law as
13 enacted by a State’s legislature can violate the Due Process Clause. *Hudson v.*
14 *Palmer*, 468 U.S. 517, 532 (1984); *Parratt v. Taylor*, 451 U.S. 527, 537 – 41 (1981),
15 *overruled in part on other grounds by Daniels v. Williams*, 474 U.S. 327, 330 – 31
16 (1986). In this case, the Defendants knew that they were dealing with new
17 conditions, i.e. the use of 20- inch ballots of 100 lb. paper; they knew the
18 manufacturer’s standards indicated that those dimensions exceeded or were at the
19 upper end of stated tolerances; and they knew that unlike in their testing and
20 certifying of the election equipment that the BOD ballots would be printed
21 intermittently thus cooling the fusers, rather than in continuous runs which allowed
22 the printers’ fusers to remain hot enough to fuse the toner to the paper. Despite this

1 knowledge, the testing and certification failed to simulate anticipated Election Day
2 conditions.

3 94. The BOD printer and tabulator errors encountered on Election Day caused by the
4 Defendants' failure to properly test and certify the election equipment,
5 disproportionately burdened a class of voters—Election Day voters. Those voters'
6 due process rights were accordingly violated. The overwhelming majority of those
7 voters were Republican and conservative independent voters.

8 95. Plaintiff is entitled to the issuance of a writ of mandamus or an order setting aside
9 the Attorney General race results in Maricopa County and having a re-vote on that
10 election with the results thereof conveyed to the State of Arizona and the winner of
11 the Attorney General race inducted into office.

12 96. Plaintiffs are also entitled to declaratory and injunctive relief that the Maricopa
13 County election officials test all electronic voting equipment in a manner that
14 simulates actual expected Election Day conditions and to use proper paper weight
15 and length for the ballots, efficient and properly working printers to print the BODs,
16 and tabulators capable of properly reading the ballots.

17 **DEMAND FOR RELIEF**

18 WHEREFORE, Plaintiffs demand relief in this matter as follows:

19 A. For a declaration pursuant to A.R.S. §§ 16-446 and 16-452, that the Defendants
20 violated Arizona election law by failing to use means of suitable electronic voting,

21 In this violation of A.R.S. §§ 16-446 and 16-452, Defendants failed to properly test

1 the Election Day voting equipment under conditions that would have simulated
2 those on Election Day. *See* A.R.S. § 12-1831. Plaintiff AZ Voters Rights,
3 representing the residents and legitimate electors of Arizona, has an “interest” in the
4 proper and uniform enforcement by election officials of statutory requirements for
5 completed early ballots. A.R.S. § 12-1832; *see also* *Ariz. Sch. Bds. Ass’n. v. State*,
6 252 Ariz. 219, 225 (2022). Plaintiff Hamadeh, as a voter and a candidate whose race
7 was adversely impacted by the Election Day events alleged herein also has standing.

8 B. For an Order setting aside the certified results of the Contested Race. *See* A.R.S. §
9 12-2021.

10 C. For the issuance of a Writ of Mandamus or injunctive relief against the Defendants
11 requiring that they re-conduct the election for the Contested Race in Maricopa
12 County in accordance with all applicable law. If the voters desire to have Kris Mayes
13 represent Arizona as the Attorney General—then a re-vote in Maricopa County will
14 not change that result. Yet, if the will of the voters was thwarted by Maricopa
15 County’s well-publicized failures on Election Day, then that also will be clear with
16 the issuance of the writ requested. *See* A.R.S. § 12-2021.

17 D. An award of reasonable attorneys’ fees and costs pursuant to A.R.S. §§ 12-341, 12-
18 2030, the private attorney general doctrine, and other applicable law.

19 E. Grant and impose any other relief as the Court deems necessary, equitable, proper,
20 and just.

21 DATED this 7th day of November, 2023.

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

Respectfully submitted,

By: /s/ RYAN HEATH
Ryan Heath (036276)
HEATH LAW, PLLC
16427 N. Scottsdale Rd., Suite 370
Scottsdale, Arizona 85254
(480) 432-0208
ryan.heath@heathlaw.com

RETRIEVED FROM DEMOCRACYDOCKET.COM

1 **VERIFICATION**

2 I, Abraham Hamadeh, certify that I have read the foregoing Complaint in Special Action
3 and know the contents thereof by personal knowledge. I know the allegations of the
4 Complaint in Special Action to be true, except the matters therein on information in
5 belief, which I believe to be true.

6
7 Executed under penalty of perjury on this 7th day of November, 2023.

8 

9 Abraham Hamadeh

10
11
12
13
14
15
16
17
18
19
20
21
22
RETRIEVED FROM DEMOCRACYDOCKET.COM

