

1 Ryan L. Heath, Civil Rights Activist
2 THE GAVEL PROJECT
3 4022 E. Greenway Road, Suite 11 - 139
4 Phoenix, AZ 85032
5 thegavelproject.com
6 (480) 522-6615
7 inquiries@thegavelproject.com

8 *Pro Se*

9
10 **IN THE SUPREME COURT FOR THE**
11 **STATE OF ARIZONA**

12 Ryan L. Heath

13 Petitioner,

14 v.

15 Honorable Peter A. Thompson

16 Respondent,

17 Kari Lake, personally as Contestant/Plaintiff,
18 Katie Hobbs, Contestee/Defendant personally
19 and in her official capacity as Secretary of
20 State; Stephen Richer, Defendant in his official
21 capacity as Maricopa County Recorder; Bill
22 Gates, Clint Hickman, Jack Sellers, Thomas
23 Galvin, and Steve Gallardo, Defendants in their
24 official capacities as members of the Maricopa
25 County Board of Supervisors; Scott Jarrett,
26 Defendant in his official capacity as Maricopa
27 County Director of Elections; and the Maricopa
28 County Board of Supervisors,

Real Parties in Interest.

Case No.: CV-23-0002

Maricopa County Superior Court

Case No. CV 2022-095403

**AMENDED VERIFIED SPECIAL
ACTION PETITION FOR WRIT OF
MANDAMUS
ARIZONA CONSTITUTION:
ARTICLES II, §§ 13, 21 &
ARTICLE VII §§ 1 & 12, UNITED
STATES CONSTITUTION
FOURTEENTH AMENDMENT:
EQUAL PROTECTION &
FUNDAMENTAL RIGHT TO VOTE, &
42 U.S.C. § 1983**

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20

21 1. A.R.S. 16-550(A) is a “non-technical” statute and Maricopa County’s failure to comply

22 with its clear language requires, as a matter of law, that all results for the 2022 Arizona

23 gubernatorial race be “set aside.”

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25

26 2. Even if this Court disagrees that A.R.S. §16-550(A) is a “non-technical statute,” it should

27 nevertheless grant this Writ of Mandamus and Order Respondent to rule in favor of Ms.

28

1 Lake because Maricopa County’s failure to follow A.R.S. 16-550(A) also violates
2 fundamental rights that are clearly established by both the Arizona and United States
3 Constitutions.
4

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1 **INTRODUCTION AND SUMMARY**

2 For the reasons set forth below and pursuant to Arizona Constitution Articles II §§ 13, 21
3 & VII §§ 1, & 12, the Equal Protection Clause of the Fourteenth Amendment of the United
4 States Constitution, and 42 U.S.C. § 1983, Petitioner seeks a Writ of Mandamus Ordering
5 Honorable Peter A. Thompson of the Maricopa County Superior Court to vacate his Under
6 Advisement Ruling, issued December 24, 2022, “confirming the election of Katie Hobbs as
7 Arizona Governor-Elect Pursuant to A.R.S. § 16-676(B)[,]”¹ and to enter judgment for Real
8 Party in Interest, Kari Lake—setting aside all votes cast in Maricopa County’s November 8,
9 2022, gubernatorial election. *Lake v. Hobbs, et al.*, CV 2022-095403 (Ariz., filed Dec. 9, 2022).
10
11

12 **PARTIES**

13 1. Petitioner, Ryan L. Heath, is an Attorney licensed in the State of Arizona² and a resident
14 of Maricopa County, Arizona. Petitioner is an elector in Maricopa County, who cast a vote, by
15 mail, for Kari Lake during the November 8, 2022 (“Election Day”), general election for Arizona
16 Governor. Petitioner now fears that his vote in the general election was diluted by Maricopa
17 County’s inclusion of illegal ballots due to its admitted failure to comply with the “non-
18 technical” requirements of A.R.S. § 16-550(A). Absent this Court’s intervention, Petitioner
19 fears that his vote will continue to be diluted in future elections by the actions complained of
20
21
22
23
24

25 ¹ Attached hereto as Exhibit 1 and incorporated herein by this reference.

26 ² Petitioner is uniquely situated to bring this action—given that Petitioner graduated from law school in
27 2020 and was not licensed to practice law until November of 2020. Thus, even though Maricopa
28 County apparently employed the same illegal process as described herein during the 2020 election cycle,
this election cycle is the first opportunity Petitioner has ever had to challenge this process and, therefore,
laches should not bar this Special Action.

1 herein and, worse yet, that the illegitimate results of the November 8, 2022, Arizona
2 gubernatorial election will stand.

3
4 2. Respondent, Honorable Peter A. Thompson, is a Judge in the Maricopa County Superior
5 Court having jurisdiction over *Lake v. Hobbs, et al.*, CV 2022-095403 (Ariz., filed Dec. 9,
6 2022), a special action election challenge brought under A.R.S. § 16-672 *et. seq.*

7
8 3. Real Party in Interest, Kari Lake is the Contestant/Plaintiff in the *Lake v. Hobbs, et al.*
9 matter.

10
11 4. Real Party in Interest, Katie Hobbs, is a Contestee/Defendant in the *Lake v. Hobbs, et al.*
12 matter and is currently seated as the illegitimate Governor of the State of Arizona.

13
14 5. Real Parties in Interest, Stephen Richer, Bill Gates, Clint Hickman, Jack Sellers, Thomas
15 Galvin, Steve Gallardo, and Scott Jarrett are Defendants in the *Lake v. Hobbs, et al.* matter.

16 **JURISDICTION BEFORE THE ARIZONA SUPREME COURT**

17
18 6. Under A.R.S. § 12-2021, the Arizona Supreme Court may issue to any person a writ of
19 mandamus “on verified complaint of the party beneficially interested, to compel, when there is
20 not a plain, adequate and speedy remedy at law, performance of an act which the law
21 specifically imposes as a duty resulting from an office[.]”

22
23 7. Respondent, Peter A. Thompson, is an Honorable Judge of the Maricopa County Superior
24 Court. He is bound by Arizona precedent and must uphold and enforce all Arizona laws as
25 prescribed by the Arizona Revised Statutes. No citations are needed for such basic propositions.

26
27 8. Under 42 U.S.C. § 1983, when a person acts under color of state law to deprive another
28 person of his or her constitutional rights, the infringing party is liable at law and in equity.

9. This case, apparently, arises from a tragic oversight by many practitioners of law.

1 **THE LEGAL STANDARD**

2 10. In pertinent part, A.R.S. § 16-550(A) states that “*on receipt of the envelope*
3 *containing the early ballot and the ballot affidavit*, the county recorder or other officer in charge
4 of elections *shall* compare the signatures thereon *with the signature of the elector on the*
5 *elector's registration record.*”³

6
7 **MATERIAL FACTS**

8 11. On December 24, 2022, the Honorable Peter A. Thompson issued an Under
9 Advisement Ruling “confirming the election of Katie Hobbs as Arizona Governor-Elect
10 Pursuant to A.R.S. § 16-676(B).” See Exhibit 1, at 10 (*Lake v. Hobbs, et al.*, CV 2022-095403
11 (Ariz., filed Dec. 9, 2022)).

12 12. Having dismissed eight of Ms. Lake’s initial counts before the special election
13 proceeding, Judge Thompson noted that, with respect to Plaintiff’s remaining claims, there
14 are “four elements to each claim.” *Id.* at 3.
15
16
17
18

19 _____
20 ³ In 2019, A.R.S. § 16-550(A) was updated with the passage of SB1054, changing the phrase
21 “registration form” to “registration record.” Some may argue that this change was intended to expand
22 the scope of available signature comparisons. However, nothing from the legislative record even
23 suggests that this change was anything more than a mere happenstance use of a synonym.
24 <https://apps.azleg.gov/BillStatus/BillOverview/71131>. This Court has long refused to interpret statutes
25 in such a way “that would lead to a result at odds with the legislature’s intent.” See *State v. Estrada*, 201
26 Ariz. 247, 251 ¶ 19 (2001) (cleaned up and citations omitted). As attested to by one of the individuals
27 involved in the adoption of SB1054, Arizona State Senator Sonny Borrelli, changing the word “form” to
28 the word “record,” was “*nothing more than incidental.*” See Affidavit of Senator Sonny Borrelli,
attached hereto as Exhibit 2 and included herein by this reference. The Final Fact Sheet for A.R.S. 1054
even explains, “the county recorder or other officer in charge of elections shall compare the signatures
on completed early ballot affidavits *with the signature on the elector's registration form*. If the
signatures match, the ballot is tallied. If the signatures do not match, the county recorder or other officer
in charge of elections shall make a reasonable attempt to contact the voter. See
https://www.azleg.gov/legtext/54leg/1R/summary/S.1054JUD_ASPASSED_COW.pdf (accessed January
6, 2023) (emphasis added).

1 13. Without providing further explanation or any meaningful citations, Respondent opined
2 that “Plaintiff needed to prove *by clear and convincing evidence*, each element to be entitled to
3 relief:
4

5 a. That the alleged misconduct – whether the BOD printer irregularities, or the
6 ostensible failure to abide by county election procedures – was an intentional act.

7 *See [Findley v. Sorenson, 35 Ariz. 265, 269 (1929)].*

8 b. That the misconduct was an intentional act conducted by a person covered by
9 A.R.S. § 16-672(A)(1), that is – an ‘officer making or participating in a canvass.’
10

11 c. That the misconduct was intended to change the result of the November 2022
12 General Election. *See Findley, 35 Ariz. at 269.*

13 d. That the misconduct did, in fact, change the result of that election. *See [Grounds v.*
14 *Lawe, 67 Ariz. 176, 189 (1948)].”*
15

16 14. Ultimately, Respondent found that Ms. Lake failed to meet her burden of demonstrating
17 by clear and convincing evidence that there had been: (1) an intentional act of misconduct by an
18 individual covered by A.R.S. § 16-672(A)(1), (2) intent on behalf of the acting party to change
19 the election results, and (3) an actual change to the election results because of the alleged
20 misconduct.
21

22 15. Maricopa County includes the Phoenix metropolitan area and is among the largest voting
23 jurisdictions in the Nation. On any given election day, it accounts for more than sixty percent of
24 Arizona’s registered voters.⁴
25

26
27 ⁴ See <https://www.maricopa.gov/5539/Voting-Equipment-Facts#:~:text=ballot%20rotation%20laws.-,Maricopa%20County%20is%20the%20second%20largest%20voting%20jurisdiction%20in%20the,percent%20of%20Arizona's%20registered%20voters> (accessed January 5, 2023).
28

1 16. Maricopa County was plagued by many well-publicized breakdowns during the
2 November 2022 general election.⁵

3
4 17. Regardless, On November 28, 2022, the Maricopa County Board of Supervisors certified
5 their canvas of returns of the November 8, 2022, general election—declaring Katie Hobbs as
6 victor in the Maricopa County election for Arizona Governor. In all, Ms. Hobbs received
7 790,352 votes, or 51.21% of total votes cast in this race. This canvas was subsequently
8 delivered to the Secretary of State.

9
10 18. On December 5, 2022, Arizona Secretary of State, Katie Hobbs, canvassed the returns of
11 the November 8, 2022, general election—declaring herself as victor in the state-wide race for
12 Governor of Arizona. That is after having purportedly received 1,287,891 votes, or 50.33% of
13 2,558,665 total votes cast across the State.⁶ Ms. Hobbs, apparently, defeated her rival by 17,117
14 votes and, although this may seem like an insurmountable number of votes, her margin of
15 victory was a mere fraction of a percentage—exactly 0.668982%.

17 The Mail-In Voting Process in Maricopa County

18
19 19. In Maricopa County, a person qualified to vote may cast a ballot either on Election Day
20 or during the “early voting” period (the twenty-seven (27) days preceding Election Day).

21 20. Throughout the early voting period, a qualified voter may vote by mail by (1) depositing
22 his or her mail-in ballot packet in an official Maricopa County drop box (of which there are
23 two), or (2) placing it in the mail, utilizing the United States Postal Service (“USPS”).
24

25
26 _____
27 ⁵See https://www.rasmussenreports.com/public_content/politics/biden_administration/most_voters_share_gop_concerns_about_botched_arizona_election (accessed January 5, 2023).

28 ⁶ See https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf (accessed January 5, 2023).

1 21. In Maricopa County, all mail-in ballot packets are sent to voters (also called, “electors”)
2 by a county contractor, Runbeck Election Services. Runbeck prints the name and address of the
3 voter on an outer mailing envelope. The outer mailing envelope contains a “mail-in ballot
4 packet,” which includes a ballot and a return ballot affidavit envelope. Each component of the
5 mail-in ballot packet contains the same, unique identifying number, called a “Piece ID.” A new,
6 unique Piece ID is created for each elector for every new election.
7

8 22. Generally, the voter completes the mail-in ballot, seals it inside the return envelope, and
9 signs the return envelope.
10

11 23. By signing the return envelope, the voter declares under penalty of perjury that he or she
12 is the registered voter of the ballot contained in the envelope. *See* A.R.S. § 16-547(A). Signing
13 the affidavit envelope also affirms the voter’s understanding of the criminal prohibition against
14 casting multiple ballots in the same election.
15

16 24. A voter may also vote early, in-person, at a vote center during the early voting period. To
17 do so, the voter must provide identification. Then, the voter’s ballot is printed on a ballot-on-
18 demand (“BOD”) printer. The voter completes the ballot, seals it inside a white affidavit
19 envelope, signs the envelope, and deposits it in a drop box inside the vote center. These white
20 envelopes containing BOD ballots from early voting centers are distinct from mail-in ballots
21 because the signature of the voter on the white envelope is not required to be verified by any
22 comparative analysis.
23
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Maricopa County’s Handling of Mail-In Ballot Packets

1
2 25. During the early voting period in Maricopa County, mail-in ballot packets deposited in
3 drop boxes, white envelopes containing BOD ballots from early voting centers, and provisional
4 ballots cast at early vote centers are retrieved, daily, by a bipartisan team of ballot couriers.
5

6 26. Upon retrieval from a secure drop box, an early vote center, or a vote center on Election
7 Day, ballot packets (which may include a mixture of early mail-in ballot packets, BOD ballot
8 packets, and provisional ballots cast at early vote centers) are placed in a transport container and
9 sealed. After sealing these ballots in the transport container, Maricopa County’s ballot couriers
10 are required to fill out an “Early Voting Ballot Transfer Receipt” (“EVBTR”), documenting that
11 an unspecified number of ballots were retrieved from a particular location and sealed for
12 transportation to the Maricopa County Tabulation and Election Center (“MCTEC”).
13
14

15 27. After arriving at MCTEC, a team of Maricopa County employees opens the sealed
16 containers and documents (on the EVBTR) the identification numbers for each of the seals that
17 are removed.
18

19 28. The mixture of early mail-in ballot packets, print on demand ballot packets, and
20 provisional ballots are then separated into batches and each type of ballot packet is
21 approximately “counted” using physical weight estimates of the sorted batches.⁷ The count is
22 recorded by Maricopa County employees on the EVBTR.
23
24
25

26
27 ⁷ Notably, this process is generally an accurate measurement and is objectively identical to that used by
28 USPS when providing weight estimates of the total number of mail-in ballot packets released to
Maricopa County couriers prior to their transport to Runbeck.

1 29. After the early mail-in ballot packets are counted at MCTEC, they are co-mingled into
2 batches with other boxes of mail-in ballot packets and sealed in secure transport bins for yet
3 another trip, this time to Runbeck’s warehouse.
4

5 30. Mail-in ballot packets submitted via USPS are picked up from a central USPS facility (at
6 48th Street and Washington) by a bipartisan courier team of Maricopa County employees. Prior
7 to retrieval from this facility, the mail-in ballot packets are trayed, sleeved, and secured in
8 “cages” by USPS employees. Upon retrieval, Maricopa County’s couriers are provided a “postal
9 receipt” by USPS staff. The postal receipt includes estimates of tray counts and the total number
10 of mail-in ballot packets within each tray (based on a calculation measuring the physical weight
11 of the ballots). Upon retrieval from USPS , Maricopa County’s courier team takes these mail-in
12 ballot packets directly to Runbeck.
13
14

15 Runbeck’s Handling of Mail-In Ballot Packets

16 31. Upon arrival at Runbeck (either from MCTEC or USPS), all mail-in ballot packets are
17 transferred to the custody of Runbeck employees who, in the presence of Maricopa County
18 employees, conduct an “inbound scan” of each packet.
19

20 32. According to the Maricopa County Elections Department’s “2022 Elections Plan: August
21 Primary and November General” (hereafter “Elections Plan”),⁸ at § 6.3.7, “[u]pon delivery of
22 early ballot affidavits, Runbeck conducts an inbound scan of the affidavit envelope [via mail
23 sorter] to capture a digital binary image of the voter signatures from that packet and places those
24 images into an automated batch system for Elections Department staff review.”
25
26

27 ⁸ See [https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-
28 %202022%20Elections%20Plan.pdf](https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-%202022%20Elections%20Plan.pdf) (accessed January 9, 2023).

1 33. Per Defendant Jarrett testimony on December 21, 2022, this plan was followed by
2 Maricopa County during the November 8, 2022, general election. *See* Tr. of Proceedings, Day 1
3 at 56–58, (attached hereto as Exhibit 3 and incorporated herein by this reference).⁹

4
5 34. This inbound scan serves three purposes: (1) capturing an image of the packet for
6 signature comparison for verification purposes, (2) providing a detailed count of the total
7 number of mail-in ballot packets received by Runbeck, and (3) verifying the Piece ID for each
8 packet.

9
10 35. After the inbound scan, the total number of mail-in ballot packets are recorded on a chain
11 of custody form produced by Runbeck called an “Inbound Receipt of Delivery” (“IRD”). For
12 each delivery of these packets, Runbeck provides a copy of a new IRD to Maricopa County.

13
14 36. 1,311,734 mail-in ballot packets for the 2022 general election were allegedly delivered by
15 Maricopa County to a Runbeck warehouse, which utilized mail sorters and scanners like those
16 used by the U.S. Postal Service.¹⁰

17 Mail-In Ballot Packets Received at MCTEC on Election Day

18
19 37. According to Defendant Richer’s sworn testimony on December 21, 2022, Maricopa
20 County’s MCTEC facility “received 120,000 more early ballot drop-offs on election night than
21 the office had ever seen before[.]” *See* Tr. of Proceedings, Day 1 at 42, (Exhibit 3), *Lake v.*
22 *Hobbs, et al.*, CV 2022-095403 (Airz. filed Dec. 9, 2022).

23
24
25
26 _____
27 ⁹ Tr. of Proceedings, Day 2 (although not cited herein), is also attached hereto as Exhibit 4 and
28 incorporated herein by this reference for the Court’s convenience.

¹⁰ *See* video at https://www.youtube.com/watch?v=u_t1XTnhMMU&t=8s (accessed January 5, 2023).

1 38. On the morning of November 9, 2022, Defendant Richer publicly announced, via
2 Twitter,¹¹ that approximately 275,000 mail-in ballot packets were submitted by Maricopa
3 County Voters during Election Day. Per Defendant Richer, these ballots were sorted from
4 midnight until 5:00 a.m. on November 9.

6 39. On the stand, Defendant Richer confirmed that, generally, as sealed bins arrive at
7 MCTEC, nobody knows how many mail-in ballot packets are contained within. *See* Tr. of
8 Proceedings, Day 1 at 30 (Exhibit 3).

10 40. When asked whether these mail-in ballot packets are counted as a matter of course when
11 they arrive at MCTEC, including those received on Election Day, Defendant Richer
12 unequivocally responded with, “[c]orrect.” *Id.*

14 41. Referring to the sealed boxes used to transport mail-in ballot packets from voting centers
15 to MCTEC, Defendant Richer testified, “so these boxes were coming in and as we were
16 organizing them, we were assessing them by tray before confirming the official count, *and that’s*
17 *how I most likely got that estimate number.” Id.*

18 42. Upon information and belief, the 275,000 mail-in ballot packets publicly reported by
19 Defendant Richer as having been submitted by Maricopa County Voters reflects an
20 accurate estimate—based on a combined measurement of the physical weight of the total
21 number mail-in ballot packets dropped off at vote centers in Maricopa County on Election Day.
22 Stated differently, the approximate number of 275,000 constitutes all ballots physically
23 processed at MCTEC before being delivered to Runbeck.
24
25
26

27 _____
28 ¹¹ *See* https://twitter.com/stephen_richer/status/1590404215767461888?s=20&t=5Aqf7B-uPI-BITtwyKFYWw (accessed January 5, 2023).

1 43. Upon information and belief, the EVBTRs from Election Day—which were inexplicably
2 withheld by Maricopa County in response to a public records request timely filed by Ms. Lake’s
3 Counsel prior to the first day of her election challenge proceedings (December 21, 2022)—
4 demonstrate the basis of this accurate estimate.
5

6 44. In his Ruling Under Advisement, Respondent determined that the EVBTRs from Election
7 Day in fact exist but were not produced. *See* Exhibit 1, at 5 (*Lake v. Hobbs, et al.*, CV 2022-
8 095403 (Ariz., filed Dec. 9, 2022)).
9

10 45. Upon information and belief, Maricopa County has yet to publicly disclose these
11 documents because they show a large discrepancy between, on the one hand, the total number of
12 mail-in ballot packets submitted by Maricopa County electors on Election Day that were
13 physically processed at MCTEC and, on the other hand, the total number of mail-in ballot
14 packets purportedly received by Runbeck. Absent a proper disclosure by Maricopa County
15 proving this assertion otherwise, Petitioner requests that this Honorable Court Order Respondent
16 to accept this adverse inference against Maricopa County in rendering his final judgment on in
17 this matter in favor of Ms. Lake.
18
19

20 Maricopa County’s Signature Verification Process

21 46. To verify signatures contained on mail-in ballot packets, Maricopa County employs a
22 needlessly complex (and patently illegal) multi-level system.
23

24 47. At the first level, Signature Verifiers – temporary workers hired at \$15 an hour to sit at
25 computer monitors for extended periods of time – are presented with a digital display of only
26 two signatures: a scanned image of a purported elector’s signature as it appears on his or her
27 ballot affidavit, and another from the elector’s registration record.
28

1 48. These temporary Signature Verifiers are tasked with deciding, instantaneously, whether
2 to verify each signature presented, accepting the signature on the mail in ballot for its tabulation,
3 or “flagging” the ballot and moving it to an “exception” status, which triggers a second-level
4 managerial review.
5

6 49. Maricopa County’s Election Plan § 6.3.8 explains, “[i]f an envelope is moved to an
7 ‘exception’ status, the manager *can review every signature sample we have on file for that*
8 *voter*. When a signature is initially, deemed an exception, the record is systematically triaged to
9 the ‘Manager’s Mode’ queue where higher level management staff are tasked with performing
10 an additional review using *all historical signatures on file for the voter*.” In the “Manager’s
11 Mode” queue, staff can either accept the signature (the manager deems the ballot affidavit
12 signature as a “good signature”) or reject the signature for a “curing” process. Reasons for
13 curing include “no signature, questionable signature, need packet, deceased, and household
14 exchange.”¹²
15
16

17 50. According to the Election Plan, § 6.3.5, Maricopa County assigned a mere three full-time
18 staff to handling the entire burden of processing all ballots deemed “exception” status.
19

20 51. Although an obviously mismatching signature can be rejected at the initial level because
21 of clear differences between the ballot affidavit signature and the signature on the purported
22 elector’s registration record (which is the only comparison allowed by Arizona law, *see* A.R.S. §
23 16-550(A)), Maricopa County makes it easy for its managers to nevertheless override this
24 statutorily proper determination and verify the mismatched signature for tabulation by
25
26

27 ¹² See [https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-
28 %202022%20Elections%20Plan.pdf](https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-%202022%20Elections%20Plan.pdf) (accessed January 9, 2023).

1 comparing the affidavit signature to any “historical reference signature that was previously
2 verified and determined to be a good signature for the voter. These historical documents *may*
3 *include voter registration forms, in-person roster signatures and early voting affidavits from*
4 *previous elections.*”

6 52. Upon information and belief, Maricopa County is the only one in the State of Arizona to
7 employ a multi-tier approach to signature verification of mail-in ballot packets that
8 uses unenumerated signatures for comparative verification as a means of remedying a proper
9 rejection in accordance with A.R.S. § 16-550(A).

11 53. Importantly, Maricopa County does not provide the rejection rates for each level of their
12 multi-tier verification process.

13 Signature Verification in Maricopa County by the Numbers

14 54. Upon information and belief, Maricopa County ran more than 1.3 million images, on
15 monitors, past the eyes of a few dozen of its Signature Verifiers so fast that it was physically and
16 mathematically impossible for them to have engaged in the statutorily mandated task of
17 verifying signatures.

19 55. Upon information and belief, it would take at least thirty seconds for anyone viewing an
20 image on a monitor to compare a signature on a ballot with a known or attributed signature for
21 verification. To make matters worse, following Election Day, Maricopa County officials
22 apparently lowered the standard by which signatures were verified to process a greater volume
23 of mail-in ballots at an even faster clip.

24 56. To review 1.3 million ballot signatures in the allotted time (thirty–seven days) thirty–
25 two full-time Signature Verifiers, missing not a single day of work and taking no breaks, would
26
27
28

1 need to set a blistering pace—comparing one pair of signatures every 25.6 seconds. At this
 2 pace, it is physically impossible for human beings to pull off any meaningful comparison with
 3 any reasonable accuracy.
 4

	30-Second Review	15-Second Review	1-Second Review	Review <i>Matching the Staff Available</i>
Total Maricopa Cty. Mail-in and Drop-off Ballots	1,311,734	1,311,734	1,311,734	1,311,734
Seconds Per Ballot Review	30	15	1	0.975
Total Seconds Required	39,352,020	19,676,010	1,311,734	1,278,941
Total Hours Required (Secs / 3600)	10,931	5,465	364	3,553
8-hour Worker Days Required*	1,366	683	45	1,184
Number of Workers Available	32	32	32	32
Number of Days Available**	37	37	37	37
Maximum Worker Days Available	1184	1184	1184	1184
* No breaks for workers				
** Business days, Oct. 13 - Dec. 4				

19 Witness Testimony Regarding Signature Verification in Maricopa County

20
 21 57. In *Lake v. Hobbs, et al.*, CV 2022-095403 (Airz. filed Dec. 9, 2022), three witnesses
 22 testified that their and their co-workers’ rejection rates while verifying signatures ranged from
 23 35-40% (Onigkeit Decl. ¶¶ 19-22), 15%-30% (Myers Decl. ¶¶ 18, 21), and 35%-40% (Nystrom
 24
 25
 26
 27
 28

1 Decl. ¶ 13).¹³ These figures—*easily*—equate to tens of thousands of illegal ballots being
2 counted in the state-wide election in violation of A.R.S. § 16-550(A).

3
4 58. Each of these witnesses testified to deep flaws in the ballot signature verification and/or
5 curing process employed by Maricopa County.

6 59. Jacqueline Onigkeit reviewed approximately 42,500 ballots and rejected about 13,000 to
7 15,000 of them, with rejection rates in the 25% - 40% range. Her co-workers complained of
8 similar rejection rates. Onigkeit Decl. ¶¶ 23, 25. Every single one of these rejected ballots was
9 subject to an illegitimate signature comparison and, each of those accepted by the “Manager’s
10 Mode” queue inarguably violated the clear language of A.R.S. § 16-550(A).

11
12 60. Andy Myers, who was employed by Maricopa County to cure ballots not approved by the
13 “Manager Mode” queue for a mismatching signature, described Maricopa’s process for
14 signature verification and curing:
15

16 In my room we had a white board that Michelle would update with the number of
17 ballots to be verified that day. Throughout the day Michelle would update the
18 progress the people were making in verifying signatures. *The math never added up.*
19 Typically, we were processing about 60,000 signatures a day. I would hear that
20 people were rejecting 20-30% which means I would expect to see 12,000 to 15,000
21 ballots in my pile for curing the next day. However, I would consistently see every
22 morning only about 1000 envelopes to be cured. *We typically saw about one tenth*
23 *of the rejected ballots we were told we would see.*

24 Andrew, one of the signature reviewers, would tell me every day that I was going
25 to get crushed the next day because he was excepting (rejecting) a “ton” of bad
26 signatures. However, we never saw a correlation.

27 The most likely explanation for this discrepancy is that the level 2 managers who
28 re-reviewed the rejections of the level 1 workers *were reversing and approving*
signatures that the level 1 workers excepted and rejected. This seems to me to be

¹³ These Declarations are consolidated and attached hereto as Exhibit 5 and are incorporated herein by this reference. For the Court’s convenience, additional records from this matter are available here: <https://www.clerkofcourt.maricopa.gov/records/election-2022/cv2022-095403>

1 the more likely explanation. If this is the case, then the level 2 managers were
2 changing about 90% of the rejected signatures to accepted.

3 Myers Decl. ¶¶ 21-23 (emphasis added).

4 61. Most of the work of these level two managers was not subject to the accountability of
5 observers. Nystrom Decl. ¶ 16.

6 62. Additionally, Maricopa’s signature verification managers had a practice of sending
7 already rejected ballots (those unable to be cured as required by A.R.S. § 16-550(A)) back
8 through the process and, upon information and belief, did so because they wanted those ballots
9 approved:
10

11 On the last day of work, November 15, we were asked by manager Celia to go
12 through perhaps 5,000 to 7,000 ballots, that had already been rejected at levels 1, 2
13 and 3. We were asked to go to the SHELL program and to only find one signature
14 that matched the green envelope, even if all other signatures in the program did not
15 match the green envelope. The implication from Celia is that [she] was desperate to
16 get the work complete and that she wanted the ballots approved. These 5,000 to
17 7,000 ballots ***had already been through the full level 1, 2, and 3 process and been
18 rejected.*** Therefore, I do not know why [we were] going through them again, and
19 that is why it seemed that Celia wanted them approved.”

20 Nystrom Decl. ¶ 21.

21 63. This practice of pushing rejected ballots back through the system with the hope that they
22 would be un-rejected was also attested by Andy Myers:

23 When the excepted numbers grew the managers would resend those excepted
24 signatures back out into the general pool, hoping that someone would approve
25 those same signatures, which would thereby reduce the excepted signature load.

26 Myers Decl. ¶ 11.

27 64. Moreover, Maricopa County permitted any signature reviewer to un-reject ballots without
28 accountability using curing stickers. Workers were able to obtain massive amounts of these
stickers and use them to cure ballots without any oversight. Onigkeit explained:

1 In order to perform the curing process, we were given a batch of stickers to place
2 on a ballot, which included stickers with abbreviations. Some, but not all, of the
3 ballot stickers and abbreviations were as follows: “VER” meant that we verified the
4 voter’s information, and their ballot was approved to be counted, “WV” meant that
5 a voter did not want to verify their ballot over the phone, and “LM” meant that we
6 called the voter and left a message.

7 One of the problems with the stickers was that nothing prevented a level 1, 2 or 3
8 worked [*sic*] from requesting a massive amount of “approved” stickers and placing
9 them on ballots. Again, observers did not watch any level 3 work and did not watch
10 most of level 2 work. Once stickers were placed on ballots, there was no record on
11 the ballot or elsewhere to determine who placed the sticker there. We were told to
12 not sign or initial the sticker, but to only date it. Accordingly, there was no way to
13 know who placed “verified” stickers on ballots. The system was wide open to abuse
14 and allowed for potential false placement of “verified” stickers without
15 accountability.

16 Onigkeit Decl. ¶¶ 17-18.

17 65. Petitioner has exhausted all possible avenues at the lower Court level. *See* Complaint &
18 Notice of Nonsuit, *Borrelli v. Hobbs, et al.*, CV 2022-01480 (Ariz. filed Dec. 12, 2022) attached
19 hereto as Exhibit 8 and incorporated herein by this reference. Importantly, the undersigned is
20 apparently the only Attorney challenging the 2022 Arizona gubernatorial election that cited
21 *Reyes v. Cuming*, 952 P.2d 329 (Ariz. Ct. App. 1997) in his Complaint. Despite having ample
22 grounds to show good cause for appealing the partial dismissal of the election challenge, the
23 undersigned chose not to appeal that decision because he wrongly assumed that one of the
24 numerous attorneys in Ms. Lake’s case would live up to the ethical duties of care to research the
25 law and disclose to the tribunal controlling authority. *See* Ariz. R. Prof’l Conduct R. 1.1, 1.2, &
26 3.3. Apparently, this was a mistake. By the time of Judge Thompson’s Ruling Under
27 Advisement (Exhibit 1), it was too late to file an appeal pursuant to A.R.S. § 16-672 *et seq.*
28 Thus, absent this Honorable Court’s intervention, no adequate remedy is available for petitioner.

1 **1. A.R.S. 16-550(A) is a “non technical” statute and Maricopa County’s failure to**
2 **comply with its clear language requires, as a matter of law, that all results for the**
3 **2022 Arizona gubernatorial race be “set aside.”**
4

5 Before explaining his reasons for holding that Plaintiff failed to meet her burden of proof
6 through clear and convincing evidence of (1) an intentional act of misconduct by an individual
7 covered by A.R.S. § 16-672(A)(1),¹⁴ (2) intent on behalf of the subject actor to change the
8 election results, and (3) an actual change to the election results stemming from this
9 misconduct,¹⁵ Judge Thompson thought it worth “mentioning that because of the requested
10 remedy – setting aside the result of the election – the question that is before the Court is of
11 monumental importance to every voter. The margin of victory as reported by the official canvass
12 is 17,117 votes – beyond the scope of a statutorily required recount. A court setting such a
13 margin aside, *as far as the Court is able to determine, has never been done in the history of the*
14 *United States.” Id. (emphasis added).*
15
16

17 Not only does Judge Thompson inexplicably adopt a heightened “clear and convincing”
18 burden of proof for Plaintiff to overcome, Respondent (and, apparently, each Attorney involved
19
20

21 ¹⁴ Here, allegedly: (1) printer sabotage (either by overriding the image file that was sent from the site-
22 book laptop to the printer or through the injection of impermissible “ballot definitions” or “ballot styles”
23 onto Maricopa County’s Election Management System, which can only be accessed at the
24 “administrative level” due to security and configuration settings (per the testimony of Ms. Lake’s
25 cybersecurity expert, Clay Parikh), or (2) impermissible injection of ballots into a highly questionable
supply chain, especially on Election Day—for which the County has yet to provide evidence proving a
valid chain of custody.

26 ¹⁵ Respondent reasoned that, because ballots that could not be read by the on-site tabulators could
27 nevertheless be deposited in Door 3 of the tabulator and counted subsequently after duplication by a
28 bipartisan adjudication board, Plaintiff could not possibly meet her burden of showing that any
alleged misconduct had an actual impact on the election. For the reasons explained herein, an actual
impact on the outcome of the election is not a prerequisite to overturning an election under Arizona law.

1 in this matter) overlooked binding precedent requiring—as a matter of law—that the Maricopa
2 County election be set aside based solely upon the facts admitted during the election challenge
3 proceedings. Because Maricopa County Officials admitted to willfully ignoring the “non-
4 technical” requirements established by A.R.S. § 16-550(A) (by verifying signatures on mail-in
5 ballot packets in their “Manager’s Mode” queue using comparisons to unenumerated criteria),
6 they irreparably tainted the result of all state-wide elections with the irredeemable stain of
7 uncertainty and, thus, illegitimacy. *Reyes v. Cuming*, 952 P.2d 329, 331 (Ariz. Ct. App. 1997).¹⁶
8
9

10 In November of 1996, Marco A. (“Tony”) Reyes (a Democrat) and Clyde Cuming (a
11 Republican incumbent) squared off as candidates for a seat on the Yuma County Board of
12 Supervisors. *Id.* at 331.¹⁷ After an initial count, excluding absentee ballots, Reyes led Cuming
13 1,320 votes to 1,169 votes. After 1,210 absentee ballots were added to the total count, however,
14 Cuming led Reyes 1,861 to 1,838. Mr. Cuming was declared the winner by the Yuma County
15 Board of Supervisors, having secured victory by a margin of merely 23 votes—or 0.62179%.
16

17 Mr. Reyes timely filed a contest to the election. The trial court determined that the then
18 Yuma County Recorder, Susan Marler, failed to compare “any of the signatures on the outside
19
20

21 ¹⁶ Perhaps this tragedy by so many legal professionals is excusable—given that one of the two largest
22 research tools available to legal practitioners across the United States, LexisNexis, failed to publish the
23 substantive opinion from this dispositive precedent. If, at the time of this trial, one tried to access *Reyes*
24 on the LexisNexis research engine, he or she would see an opinion simply reading: “REVERSED AND
25 REMANDED WITH DIRECTIONS.” See pdf of opinion from LexisNexis, downloaded on December
26 12, 2022, attached hereto as Exhibit 6.

27 ¹⁷ See also, fourteen articles from the Yuma Sun—published between December 12, 1997, and
28 September 2, 1998—reporting on the outcome of this litigation and consequences for Yuma County’s
failure to comply with A.R.S. § 16-550(A), attached hereto as Exhibit 7 and incorporated herein by this
reference. It is the undersigned’s opinion that Respondent cannot be blamed for the failure to uncover
this information because such was not readily available online. In fact, the undersigned only uncovered
this information after driving to Yuma to examine the records, which were available at the Yuma
County Library.

1 of the absentee ballots with the registration lists, as required by statute.” *Id.* (citing A.R.S. § 16-
2 550(A) (1996). Despite the abject failure, the trial court determined “that compliance with the
3 statute would place an ‘undue burden on the recorder’ and that there was ‘no evidence indicating
4 that any ballot was cast by any person other than the elector who requested the early ballot.”
5 Considering these findings, the trial court held that “the Recorder was in *substantial compliance*
6 *with all of the rules, regulations, and statutes governing election for this office*, and affirmed the
7 election.” *Id.* (emphasis added).
8
9

10 Over a year after the election—despite Mr. Cuming having never stepped down from his
11 seat as an incumbent—a three judge panel for the Court of Appeals of Arizona (Division 1)
12 unanimously ordered that the results of the Yuma election be set aside.¹⁸ The court explained,
13 “[a]t first blush,” the nondiscretionary requirement for immediate signature verification set forth
14 in A.R.S. § 16-550(A) may seem “unimportant”—just as the requirement for “mailing versus
15 hand delivery [of ballots as required by A.R.S. § 16-542] may seem unimportant.” *Id.* at 331
16 (*quoting Miller v. Picacho Elementary School District No. 33*, 179 Ariz. 178, 180
17 (1994)). However, this Court has explained, considering their purpose, such laws are “very
18 important.” Both “non-technical” statutes advance the constitutional goal of “setting forth
19 procedural safeguards to prevent undue influence, fraud, ballot tampering, and voter
20 intimidation.” *Id.* (*quoting* Ariz. Const. Art. VII § 1)). Although seemingly trivial on their face,
21 such laws are imperative to “secure the purity of elections and guard against abuses of elective
22 franchise.” *Id.* (*quoting* Ariz. Const. Art. VII § 12).
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28 ¹⁸ In March of 1998, this Honorable Court denied review.

1 The Arizona Court of Appeals concluded, despite the trial court’s determination that “it
2 would be impracticable for the [Yuma County] Recorder to comply with A.R.S. 16-550(A), we
3 hold as a matter of law that such a finding does not excuse the complete noncompliance with
4 this *non-technical* statute.” *Id.* (emphasis added). Indeed, “election statutes are mandatory, not
5 ‘advisory,’ *or else they would not be law at all.*” *Id.* (quoting *Miller*, 179 Ariz. at 180). If this
6 statute “unduly burdens election officials, the Recorder or other appropriate officials *may lobby*
7 *the legislature to change it; until then it is the law.*” *Id.* at 331-32 (emphasis added).
8

9 The “purpose of A.R.S. 16-550(A) is to prevent the inclusion of invalid votes.” *Id.* at
10 332. “To rule otherwise would ‘affect the result *or at least render it uncertain.*’” *Id.* (quoting
11 *Miller*, 197 Ariz. at 180). In spite of Respondent’s recent determination to the contrary, “*Miller*
12 established that an election contestant need only show that absentee ballots counted in violation
13 of a non-technical statute changed the outcome of the election [or rendered it ‘uncertain’]; *actual*
14 *fraud is not a necessary element.*” *Id.* (quoting *Miller*, 197 Ariz. at 180). In other words, the
15 absence of tangible “evidence that any ballots were cast by persons other than registered voters
16 is irrelevant.” *Id.*
17
18

19 Although 17,117 votes may seem like an insurmountable number, Defendant Hobbs’s
20 margin of victory was, in fact, a mere fraction of a percentage—exactly 0.668982%. Critically,
21 this nominal margin is nearly identical to that seen in *Reyes*—0.62179%—where, more than a
22 year after the challenged election and based on substantively identical facts, a Yuma County
23 Election was, as a matter of law, *unanimously set aside by the Arizona Court of Appeals.*
24 To be lawful and eligible for tabulation, the signature on the affidavit accompanying a mail-in
25 ballot must match the signature featured on the elector's "registration record." A.R.S. § 16-
26
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1 550(A). To the extent the Elections Procedures Manual purports to authorize the validation of
2 early ballot affidavit signatures by reference to a signature specimen that is not found on the
3 voter's "registration record," the Manual is contrary to the plain language and intent of A.R.S. § I
4 6-550(A), and hence unenforceable.
5

6 Maricopa County employed an arbitrary screening system for verifying affidavit
7 signatures that necessarily included illegal votes in the state-wide gubernatorial election for
8 2022. *Reyes*, 952 P.2d 329. Here, inexperienced temporary workers were paid \$15 an hour to
9 sit at computer monitors for extended periods of time as signatures flashed rapidly before their
10 eyes. As they sat there, all day, they saw a succession of two images: a scanned image of a
11 ballot affidavit signature and a statutorily proper signature from the purported voter's
12 registration record (meaning, the "registration form"). Due to their insufficient numbers, these
13 temporary employees were tasked with deciding—within a few seconds—whether the signatures
14 matched.
15
16

17 Throughout the 2022 general election, Maricopa County ran more than 1.3 million pairs
18 of images past the eyes of a few dozen temporary employees—and it did so at such a rapid clip
19 that it was physically impossible for them to have, in fact, verified these signatures. Those
20 signatures about which the first level Signature Verifiers were hesitant were assigned
21 "exception" status, triggering a second level of review. Even though a signature might be
22 properly rejected at the first level because of an unequivocal mismatch between the ballot
23 affidavit and the signature on the purported voter's registration record (meaning, the specific
24 form upon which the voter registered to vote—which is the only comparison allowed by Arizona
25 law, *see* A.R.S. § 16-550(A)), Maricopa County makes it easy for its managers to nevertheless
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1 verify these mismatched signatures for tabulation by illegally expanding the scope of the
2 signature comparison—to include any “historical reference signature that was previously
3 verified and determined to be a good signature for the voter. Again, these historical documents
4 *may include voter registration forms, in-person roster signatures and early voting affidavits*
5 *from previous elections.” See Election Plan § 6.3.8.¹⁹*

7 Here, Maricopa County’s ambiguous use of the word “may” instead of the phrase “may
8 only” means the pool documents comprising the “historical” comparison is open-ended and,
9 thus, completely arbitrary. This standard not only provides an apparently limitless number of
10 comparative signatures from which a manager may verify a clearly mismatched signature, it also
11 fails to explain (a) how the “historical reference signature” was “previously verified and
12 determined to be a good signature for the voter,” or (b) who (or, *perhaps, what computer*
13 *program*) made that determination.

16 It is indisputable that tens of thousands of mail-in ballot packets submitted in Maricopa
17 County for the 2022 general election for Arizona Governor were transmitted in envelopes
18 containing affidavit signatures that were, at least initially, determined not to match the
19 signatures from the putative voters’ “registration record.” The Maricopa County Recorder
20 nevertheless accepted a material number of these mismatched signatures by comparing them to
21 statutorily prohibited documents. Consequently, these mail-in ballot packets containing
22 statutorily unverified signatures were accepted by Maricopa County and included in their
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27 ¹⁹ See [https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-
28 %202022%20Elections%20Plan.pdf](https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-%202022%20Elections%20Plan.pdf) (accessed January 9, 2023).

1 official canvas. Thus, Maricopa County’s election was tainted by a process that rendered the
2 outcome—as a matter of law—impermissibly uncertain. *Reyes*, 952 P.2d at 331.

3
4 The mere inclusion of illegal votes in violation of the plain language and intent of A.R.S.
5 § 16-550(A), which is a “non-technical” (*i.e.*, substantive) statute, requires this Court to set
6 aside Maricopa County’s 2022 general election results for Governor:

7 This is not a case of mere technical violation or one of dotting one's "i's" and
8 crossing one's "t's." At first blush, mailing versus hand delivery may seem
9 unimportant. But in the context of absentee voting, it is very important. Under the
10 Arizona Constitution, voting is to be by secret ballot. Ariz. Const. art VII, § 1.
11 Section 16-542(B) advances this constitutional goal by setting forth procedural
12 safeguards to prevent undue influence, fraud, ballot tampering, and voter
13 intimidation. [... A] showing of fraud is not a necessary condition to invalidate
14 absentee balloting. It is sufficient that an express non-technical statute was violated,
15 and ballots cast in violation of the statute affected the election. We therefore vacate
16 the opinion of the court of appeals and reinstate the judgment of the trial court
17 setting aside the election.

18
19 *Miller*, 179 Ariz. at 180, 877 P.2d at 279.

20 In short, “because A.R.S. section 16-550(A) is a non-technical statute and because
21 absentee ballots counted in violation of that statute have rendered the outcome of this election
22 uncertain,” the only appropriate remedy—as a matter of law—is for the results from the
23 Maricopa County election for Arizona Governor to be “set aside.” *Reyes*, 952 P.2d at 331
24 (*quoting Miller*, 179 Ariz. at 180).

25 THE CONSTITUTIONAL STANDARDS

- 26 **1. Even if this Court disagrees that A.R.S. §16-550(A) is a “non-technical statute,” it
27 should nevertheless grant this Writ of Mandamus and Order Respondent to rule in
28 favor of Ms. Lake because Maricopa County’s failure to follow A.R.S. 16-550(A)**

1 **also violates fundamental rights that are clearly established by both the Arizona and**
2 **United States Constitutions.**

3 “Over a century ago, the United States Supreme Court held that the right to vote was *a*
4 *fundamental political right.*” *Charfauros v. Bd. Of Elections*, 249 F.3d 941, 950–51 (9th Cir.
5 2001) (emphasis added, citations and internal quotations omitted). “It is beyond cavil that
6 ‘voting is of the most significance under our constitutional structure.’” *Burdick v. Takushi*, 504
7 U.S. 428, 433 (1992) (*quoting Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173,
8 184 (1979)).

9 The Equal Protection Clause of the Fourteenth Amendment of the United States
10 Constitution provides that no State shall “deny to any person within its jurisdiction the equal
11 protection of the laws.” U.S. Const. Amend. XIV, § 1. Generally, the Equal Protection Clause is
12 “a direction that all persons similarly situated should be treated alike.” *Green v. City of Tucson*,
13 340 F. 3d 891, 896 (9th Cir. 2003) (quotations omitted). Similarly, the Equal Protection Clause
14 of the Arizona Constitution provides that “[no] law shall be enacted granting to any citizen, class
15 of citizens, or corporation other than municipal, privileges or immunities which, upon the same
16 terms, shall not equally belong to all citizens or corporations.” Ariz. Const. Art. II § 13.
17 Importantly, Arizona’s Privileges or Immunities Clause “is substantially the same in effect as
18 the Equal Protection Clause in the United States Constitution.” *See Chavez v. Brewer*, 222 Ariz.
19 309, 320 (Ct. App. 2009).

20 The Arizona Constitution further provides that “[a]ll elections shall be free and equal, and
21 no power, civil or military, shall at any time interfere to prevent the free exercise of the right of
22 suffrage.” Ariz. Const. Art. II § 21. “Arizona’s constitutional right to a ‘free and equal’
23

1 election is implicated when votes are not properly counted.” *Chavez*, 222 Ariz. at 320. Here,
2 because Maricopa County has admitted to not complying with A.R.S. § 16-550(A), Arizona’s
3 Equal Protection Clause is implicated. To “be entitled to injunctive and/or mandamus relief[,]”
4 one need only “establish that a significant number of votes cast [in the challenged manner] will
5 not be properly recorded or counted.” *Id.* Assuming just a ten percent signature rejection rate at
6 the first level of Maricopa County’s signature verification process (five percent less than the
7 lowest estimate provided herein (*see* Mr. Myers Decl. ¶¶ 18, 21)) means that more than 100,000
8 mail-in ballots (an inarguably significant number given that the election at issue was decided by
9 17,117 votes) were compared to statutorily illegitimate criteria. Even if one assumes that only a
10 fraction of those ballots deemed “exception status” were accepted at the second level (which is
11 highly unlikely given the clear weight of evidence), inclusion of such votes was likely outcome
12 determinative.
13
14
15

16 “Because our democracy was founded on the principle that ‘the right to exercise the
17 franchise in a free and unimpaired manner is preservative of other basic civil and political
18 rights,’ . . . our courts *vehemently protect every citizen's right to vote, carefully and meticulously*
19 *scrutinizing any alleged infringement.*” *Charfauros*, 249 F.3d at 951 (*quoting Reynolds v. Sims*,
20 377 U.S. 533, 562 (1964)) (emphasis added). “The right to vote can neither be denied outright,
21 nor destroyed by the alteration of ballots, nor diluted by ballot box stuffing.” *Reynolds*, 377 U.S.
22 at 555 (internal citations omitted).
23
24

25 In cases involving disenfranchisement and undue burdens on suffrage, equal treatment
26 must be analyzed from within the “confines of the governmental entity concerned, be it the State
27 or its political subdivisions.” *Holt Civic Club v. Tuscaloosa*, 439 U.S. 60, 68 (1978). In fact,
28

1 “[o]nce the geographical unit for which a representative is to be chosen is designated, all who
2 participate in the election are to have an equal vote.” *Id.* Put simply, each United States citizen
3 “has a constitutionally protected right to participate in elections on an equal basis with other
4 citizens in the jurisdiction.” *Dunn v. Blumstein*, 405 U.S. 330, 366 (1972). Here, because the
5 case at hand involves a state-wide election, electors across Arizona must be treated equally with
6 respect to the way their votes are counted—irrespective of which county they reside in or how
7 they vote.
8

9
10 The right to vote far exceeds the initial allocation of the franchise. *Bush v. Gore*, 531
11 U.S. 98, 104 (2000). “Equal protection applies *as well to the manner of its exercise*. Having
12 once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate
13 treatment, value one person’s vote over that of another.” *Id.* Moreover, “[i]t must be
14 remembered that the right of suffrage can be denied by a debasement or dilution of the weight of
15 the citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.”
16 *Id.* at 105 (*quoting Reynolds*, 377 U.S. at 555).
17

18 Here, for each of the tens of thousands²⁰ of mail-in ballot illegitimately accepted by
19 Maricopa County using its wholly ambiguous “historical record” for signature verification, all
20 qualified electors across the State of Arizona experienced some level of disenfranchisement.
21 For each signature illegally accepted in the “Manager’s Mode” queue—irrespective of who
22 benefits from the votes on the illegitimate ballot—some number of Arizona residents, in fact,
23 have their votes relatively diluted. Maricopa County is by far the most populous county in
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27 ²⁰ Based on sworn witness testimony, Maricopa County likely verified (and, therefore, tabulated in the
28 2022 gubernatorial election) more than 100,000 signatures using statutorily illegitimate comparisons.
See Exhibit 5.

1 Arizona and purportedly counted more than 1.3 million mail-in ballots—far more than any other
2 County. Thus, any error in Maricopa County’s process resulting in the inclusion of illegitimate
3 votes does more relative harm as compared to an error elsewhere.
4

5 Because it would have been physically impossible for the number of workers assigned
6 the task to meaningfully check more than 1.3 million signatures during the allotted time,
7 Maricopa County officials inevitably let an undue number of mail-in ballots get tabulated with
8 no assurance they had, in fact, been verified. As a necessary consequence, a disproportionate
9 number of Maricopa County mail-in ballots were included in the state-wide tally in the race for
10 Arizona Governor. Maricopa County’s counting of ballots that would have been subjected to
11 greater scrutiny under a statutorily compliant review process (such as the uniform processes in
12 place in all other Arizona counties) diluted the voting strength of all electors in the state-wide
13 election, including Petitioner’s vote. Effectively, Petitioner was deprived of his fundamental
14 right to vote by having his ballot cancelled out, respectively, by each one of the tens of
15 thousands of votes tainted by Maricopa County’s patently illegal process.
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18 Additionally, the “Equal Protection Clause of the Fourteenth Amendment to the United
19 States Constitution guarantees each and every person that they will not be denied their
20 fundamental rights—including the right to vote—in an arbitrary or discriminatory manner.”
21 *Charfauros*, 249 F.3d at 951. Thus, “it is well-established that once the legislature prescribes a
22 particular voting procedure, *the right to vote in that precise manner is a fundamental right*, and
23 ‘one source of its fundamental nature lies in the . . . equal dignity owed to each voter.’” *Id.* at
24 953 (*quoting Gore*, 531 U.S. at 104) (emphasis added); *see also San Antonio Indep. Sch. Syst. v.*
25 *Rodriguez*, 411 U.S. 1, 35 n. 78 (1973) (noting that, “implicit in our constitutional system, [is
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1 the right] to participate in state elections on an equal basis with other qualified voters whenever
2 the State has adopted an elective process for determining who will represent any segment of the
3 State’s population.”); *see also e.g., Green*, 340 F. 3d at 897 (“once a state grants citizens the
4 right to vote on a particular matter, such as municipal incorporation, that right is protected by the
5 Equal Protection Clause.”).

7 Here, A.R.S. § 16-550(A) is a statute passed by the Arizona legislature that prescribes a
8 particular voting procedure with respect to how every county across Arizona must verify the
9 signatures on mail-in ballot packets before a purported elector’s vote can
10 be counted. Accordingly, the procedural safeguards conferred by A.R.S. § 16-550(A) are
11 fundamental rights—and they must be strictly followed. *Gore*, 531 U.S. at 104; *Charfauros*,
12 249 F.3d at 953 (*emphasis added*). Because the State of Arizona guarantees to Plaintiff (and all
13 similarly situated electors) the right to have their mail-in ballot packets scrutinized for tabulation
14 in a particular way, Maricopa County’s failure to conform with the clear requirements of A.R.S.
15 § 16-550(A), by utilizing unenumerated sources for signature verification, must withstand strict
16 scrutiny. *Charfauros*, 249 F.3d at 950–51; *Dunn*, 405 U.S. at 343; *Green*, 340 F. 3d at 899.

17 If a challenged government action “grants the right to vote to some citizens and denies
18 the franchise to others, the Court must determine whether the exclusions are necessary to
19 promote a compelling state interest.” *Charfauros*, 249 F.3d at 951 (internal punctuation and
20 quotations omitted). State actions that burden fundamental rights “must be drawn with precision
21 and must be tailored to serve their legitimate objectives.” *Dunn*, 405 U.S. at 343 (durational
22 residence restriction unconstitutional as drafted). Because Maricopa County unquestionably
23 included tens of thousands of unverified mail-in ballots in the state-wide election for Arizona
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1 Governor which “may *dilute* the effectiveness of some citizens’ votes,” *Kramer v. Union Free*
2 *Sch. Dist.*, 395 U.S. 621, 626 (1969) (emphasis original), Maricopa County’s actions “must be
3 measured by a strict equal protection test: they are unconstitutional unless the State can
4 demonstrate that such laws are ‘*necessary to promote compelling governmental interest.*’”
5 *Dunn*, 405 at 342 (emphasis in original) (*quoting Shapiro v. Thompson*, 394 U.S. 618, 634
6 (1969) & *Kramer*, 395 U.S. at 627).
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9 This strict scrutiny requirement of complying with prescribed voting procedures is
10 exactly why, in *Reyes*, the Arizona Appellate Court continuously referred to A.R.S. § 16-
11 550(A) as a “very important,” “non-technical” (*i.e.*, substantive) statute which advances the
12 constitutional goal of “setting forth procedural safeguards to prevent undue influence, fraud,
13 ballot tampering, and voter intimidation.” 952 P.2d at 331 (quoting Ariz. Const. Art. VII §
14 1). Such safeguards are imperative to “secure the purity of elections and guard against abuses of
15 elective franchise.” *Id.* (quoting Ariz. Const. Art. VII § 12). Although decided before *Gore*,
16 *Reyes* rests upon the same principle, that uniform application of state election laws is necessary
17 to guard against arbitrary and disparate determinations for what constitutes a “legal vote.” The
18 “purpose of A.R.S. 16-550(A) is to prevent the inclusion of invalid votes.” *Id.*
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21 Here, Maricopa County’s desire to verify signatures using unenumerated criteria must be
22 in pursuit of a “compelling” or “important” state interest, and the chosen course of action must
23 not “unnecessarily burden or restrict [the] constitutionally protected activity.” *Dunn*, 405 U.S. at
24 343. “And if there are other, reasonable ways to achieve those goals with a lesser burden on
25 constitutionally protected activity, a State may not choose the way of greater interference. If it
26 acts at all, it must choose ‘less drastic means.’” *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479
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1 (1960). Maricopa County must overcome strict scrutiny by demonstrating that the challenged
2 procedures were no less burdensome than available alternatives and, thus, “well calculated to
3 sustain the confidence that all citizens must have in the outcome of elections.” *Gore*, 531 U.S. at
4 109.
5

6 This is simply an impossible burden for Maricopa County to meet because, upon
7 information and belief, it is the only county in Arizona that uses a wholly ambiguous “historical
8 record” to verify mail-in signatures for tabulation. Obviously, less burdensome alternatives
9 exist. Instead of contracting with Runbeck for a purportedly more efficient yet illegal process,
10 Maricopa County should have lobbied for the law to change or invested more resources in hiring
11 enough staff to handle the signature verification comparison, by hand, as prescribed by A.R.S. §
12 16-550(A). While elected officials in Maricopa County may have felt it necessary to take
13 shortcuts due to anticipated volume of mail-in ballots, “[t]he press of time does not diminish the
14 constitutional concern. A desire for speed is not a general excuse for ignoring equal protection
15 guarantees.” *Gore*, 531 U.S. at 108. Accordingly, even if this Court chooses not to follow the
16 clear standards set forth in *Reyes*, Respondent must still be compelled to vacate his ruling and
17 find in favor of Ms. Lake, setting aside the results from Maricopa County’s 2022 election for
18 Arizona Governor because such are constitutionally void.
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22 Petitioner (as an elector in Maricopa County that voted by mail) has suffered and (absent
23 this Honorable Court’s intervention) will continue to suffer irreparable harm—namely,
24 disenfranchisement by vote dilution caused by Maricopa County’s illegitimate signature
25 verification policy for mail-in ballots. Based on numbers alone (with tens of thousands of mail-
26 in ballot packets being accepted after a comparison to an utterly opaque “historical record”),
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1 Petitioner has no confidence that Maricopa County conducted a legitimate review of the 1.3
2 million mail-in ballot packets allegedly received during the November 8, 2022, general election.
3 If there is no change in the status quo, Petitioner will have no confidence in future
4 elections. Unless Respondent is enjoined to follow binding precedent, Maricopa County will
5 continue to inflict injuries for which Petitioner has no adequate remedy at law and—worse yet—
6 the results of the 2022 general election for governor will improperly stand.
7

8 **PRAYER AND REQUESTED RELIEF**

9
10 Petitioner respectfully request the following relief:

11 66. Declare impermissible and unlawful Maricopa County’s failure to conform with the
12 unambiguous and “non-technical” requirements of A.R.S. § 16-550(A), by utilizing an open-
13 ended and unenumerated "historical record” for determining the validity or invalidity of
14 signatures on mail-in ballot packets, as violating Petitioner’s rights under the Equal Protection
15 Clause of the Fourteenth Amendment of the United States Constitution and Articles II §§ 13, 21
16 & VII §§ 1 & 12 of the Arizona Constitution and—after having so Declared—Order Respondent
17 to rule accordingly.
18

19 67. Order Respondent to issue an Order removing Ms. Hobbs from the office of Arizona’s
20 Governor—as she has no legitimate basis for holding this elected office.
21

22 68. Issue a Writ of Mandamus Ordering Honorable Peter A. Thompson of the Maricopa
23 County Superior Court to vacate his Under Advisement Ruling (Exhibit 1), issued December 24,
24 2022, “confirming the election of Katie Hobbs as Arizona Governor-Elect Pursuant to A.R.S. §
25 16-676(B)[,]” accept the adverse inference as set forth herein, and enter judgment for Real Party
26 in Interest, Kari Lake. *Lake v. Hobbs, et al.*, CV 2022-095403 (Ariz., filed Dec. 9, 2022).
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1 69. Order Respondent to set aside the 2022 Maricopa County general election results for the
2 race for governor and declare a victor based on the new totals of lawful votes cast throughout
3 the remainder of Arizona (518,060 for Ms. Lake & 497,539 for Ms. Hobbs).
4
5 Alternatively, Order Respondent to invalidate and set aside all Maricopa County mail-in ballots
6 cast in the 2022 general election with respect to the race for Arizona Governor and Declare the
7 victor based on the new state-wide totals. As a third alternative, Order Respondent to (1)
8 invalidate and set aside the 2022 Maricopa County general election results in the for the race for
9 Arizona Governor, (2) require Maricopa County (as soon as practicable but no later than
10 February 1, 2023) to conduct an emergency special election to redo the race for Governor, and
11 (3) Order all Maricopa County Defendants to personally pay for the cost of said special election
12 as punishment for their reckless disregard of Petitioner’s clearly established constitutional rights
13 and Arizona law (where, as here, a state actor’s conduct is shown to be inspired by evil motive
14 or intent, *or otherwise involves reckless or callous indifference to Plaintiff’s constitutional*
15 *rights*—as demonstrated by Maricopa County’s premeditated disregard of A.R.S. § 16-550(A)—
16 punitive damages may be awarded. *Smith v. Wade*, 461 U.S. 30, 103 S. Ct. 1625 (1983)).

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20 70. Mandate that elections officials in Arizona seek to extend the time and resources
21 available for signature verification to ensure such verification is constitutionally adequate to the
22 task of verifying millions of signatures.

23
24 71. Grant and impose any other remedy and grant and impose such other and further relief, at
25 law or equity, that this Court deems just and proper in the circumstances.

26 Dated: January 12, 2023

27 Respectfully Submitted,
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By: /s/ RYAN L. HEATH
Ryan L. Heath, Civil Rights Activist
THE GAVEL PROJECT
4022 E. Greenway Road, Suite 11 - 139
Phoenix, AZ 85032
thegavelproject.com
(480) 522-6615
inquiries@thegavelproject.com

1 **VERIFICATION OF RYAN L. HEATH**

2 Before me, the undersigned notary, on this day personally appeared Ryan L. Heath, the
3 affiant, whose identity is known to me. After I administered the oath, affiant testified as
4 follows:
5

- 6 1. My name is Ryan L. Heath. I am over eighteen (18) years of age, of sound mind, and
7 capable of making this verification. I have read thoroughly the document to which this
8 verification is attached, Petitioner’s Special Action Petition for Writ of Mandamus, as
9 well as the exhibits attached to the document.
10
- 11 2. Unless stated upon information and belief, the facts stated and set forth in Petitioner’s
12 Special Action Petition for Writ of Mandamus as well as all exhibits attached to the
13 document are within my personal knowledge and are true and correct.
14

15 Further Affiant Seyeth Not.

16 Respectfully Submitted,

17
18 By: _____
19 Ryan L. Heath, Civil Rights Activist
20 THE GAVEL PROJECT
21 4022 E. Greenway Road, Suite 11 - 139
22 Phoenix, AZ 85032
23 thegavelproject.com
24 (480) 522-6615
25 inquiries@thegavelproject.com

26 Subscribed to and sworn before me on this 12 day of January, 2023.

27 By: _____
28 Notary Public in and for the state of Arizona

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2023, I transmitted a true and accurate copy of the attached, Amended Verified Special Action Petition for Writ of Mandamus, along with and a flash drive containing an electronic, pdf copy of each Exhibit mentioned therein to the following individuals via certified, overnight mail:

Respondent:

Honorable Peter A. Thompson
Maricopa County Superior Court
Southeast Facility in Mesa
222 E. Javelina, 2F/206
Mesa, AZ 85210

Real Parties in Interest:

Bryan James Blehm,
Blehm Law PLLC
10869 N. Scottsdale Rd., Suite 103-256
Scottsdale, Arizona 85254
Attorney for Plaintiff/Contestant, Kari Lake

Kurt Olsen, D.C. Bar No. 445279 (pro hac vice pending)
Olsen Law, P.C.
1250 Connecticut Ave., NW, Suite 700
Washington, DC 20036
Attorney for Plaintiff/Contestant, Kari Lake

Daniel C. Barr
Alexis E. Danneman
Austin Yost
Samantha J. Burke
Perkins Coie LLP
2901 North Central Avenue, Suite 2000
Phoenix, AZ 85012
Attorneys for Defendant Katie Hobbs

Abha Khanna
Lalitha D. Madduri
Christina Ford
Elana A. Rodriguez Armenta
Ellias Law Group LLP

1 1700 Seventh Avenue, Suite 2100
2 Seattle, WA 98101
3 *Attorneys for Defendant Katie Hobbs*

4 Lalitha D. Madduri
5 Christina Ford
6 Elana A. Rodriguez Armenta
7 Ellias Law Group LLP
8 250 Massachusetts Ave NW, Suite 400
9 Washington, D.C. 20001

10 D. Andrew Gaona
11 Coppersmith Brockelman PLC
12 2800 North Central Avenue, Suite 1900
13 Phoenix, AZ 85004
14 *Attorney for Defendant Secretary of State Katie Hobbs*

15 Sambo Dul
16 States United Democracy Center
17 8205 South Priest Drive, #10312
18 Tempe, Arizona 85284
19 *Attorney for Defendant Secretary of State Katie Hobbs*

20 Thomas P. Liddy
21 Joseph La Rue
22 Joseph Branco
23 Karen Hartman-Tellez
24 Jack L. O'Connor
25 Sean M. Moore
26 Rosa Aguilar
27 Maricopa County Attorney's Office
28 225 West Madison Street
Phoenix, AZ 85003
Attorneys for Maricopa County Defendants

Emily Craiger
The Burgess Law Group
3131 East Camelback Road, Suite 224
Phoenix, AZ 85016
Attorneys for Maricopa County Defendants

E. Danya Perry (pro hac vice forthcoming)
Rachel Fleder (pro hac vice forthcoming)
Joshua Stanton (pro hac vice forthcoming)

1 Lilian Timmermann (pro hac vice forthcoming)
2 Perry Guha LLP
3 1740 Broadway, 15th Floor
4 New York, NY 10019
5 *Attorneys for Amici Curiae*
6 *Helen Purcell and Tammy Patrick*

7 Respectfully Submitted,

8 By: /s/ RYAN L. HEATH
9 Ryan L. Heath, Civil Rights Activist
10 THE GAVEL PROJECT
11 4022 E. Greenway Road, Suite 11 - 139
12 Phoenix, AZ 85032
13 thegavelproject.com
14 (480) 522-6615
15 inquiries@thegavelproject.com