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Attorneys for Plaintiffs/Contestants

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, an individual; TED
BOYD, an individual; ABRAHAM
HAMADEH, an individual; and
REPUBLICAN NATIONAL COMMITTEE,
a federal political party committee

Plaintiffs/Contestants,

v.

KRIS MAYES,

Defendant/Contestee,

and

KATIE HOBBS, in her official capacity as the
Secretary of State; LARRY NOBLE, in his
official capacity as the Apache County
Recorder; APACHE COUNTY BOARD OF
SUPERVISORS, in their official capacity;
DAVID W. STEVENS, in his official capacity
as Cochise County Recorder; COCHISE

No. CV-2022-01468

**VERIFIED PETITION TO INSPECT
BALLOTS**

1 COUNTY BOARD OF SUPERVISORS, in
2 their official capacity; PATTY HANSEN, in
3 her official capacity as the Coconino County
4 Recorder; COCONINO COUNTY BOARD
5 OF SUPERVISORS, in their official capacity;
6 SADIE JO BINGHAM, in her official
7 capacity as Gila County Recorder; GILA
8 COUNTY BOARD OF SUPERVISORS, in
9 their official capacity; WENDY JOHN, in her
10 official capacity as Graham County Recorder;
11 GRAHAM COUNTY BOARD OF
12 SUPERVISORS, in their official capacity;
13 SHARIE MILHEIRO, in her official capacity
14 as Greenlee County Recorder; GREENLEE
15 COUNTY BOARD OF SUPERVISORS, in
16 their official capacity; RICHARD GARCIA,
17 in his capacity as the La Paz County Recorder;
18 LA PAZ COUNTY BOARD OF
19 SUPERVISORS, in their official capacity;
20 STEPHEN RICHER, in his official capacity as
21 the Maricopa County Recorder; MARICOPA
22 COUNTY BOARD OF SUPERVISORS, in
23 their official capacity; KRISTI BLAIR, in her
24 official capacity as the Mohave County
25 Recorder; MOHAVE COUNTY BOARD OF
26 SUPERVISORS, in their official capacity;
27 MICHAEL SAMPLE, in his official capacity
28 as Navajo County Recorder; NAVAJO
COUNTY BOARD OF SUPERVISORS, in
their official capacity; GABRIELLA
CAZARES-KELLY, in her official capacity
as the Pima County Recorder; PIMA
COUNTY BOARD OF SUPERVISORS, in
their official capacity; DANA LEWIS, in her
official capacity as the Pinal County Recorder;
PINAL COUNTY BOARD OF
SUPERVISORS, in their official capacity;
SUZANNE SAINZ, in her official capacity as
the Santa Cruz County Recorder; SANTA
CRUZ COUNTY BOARD OF
SUPERVISORS, in their official capacity;
MICHELLE M. BURCHILL, in her official
capacity as the Yavapai County Recorder;
YAVAPAI COUNTY BOARD OF

1 SUPERVISORS, in their official capacity;
2 RICHARD COLWELL, in his official
3 capacity as the Yuma County Recorder; and
4 YUMA COUNTY BOARD OF
SUPERVISORS, in their official capacity,

5 Defendants.
6

7 Pursuant to A.R.S. § 16-677, Plaintiffs/Contestants aver that they cannot properly
8 prepare for trial without an inspection of the ballots and respectfully petition the Court
9 to authorize them, through their attorneys and agents, to inspect (1) the original and
10 duplicates of each ballot that underwent duplication in connection with the November
11 8, 2022 general election, (2) all original ballots for which there is a recorded undervote
12 in the contest for Arizona Attorney General, and (3) ballots on which the voter's putative
13 selection for the office of Arizona Attorney General in the November 8, 2022 general
14 election was subjected to electronic adjudication (to include records sufficient to identify
15 the disposition of each ballot during electronic adjudication).
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17

18 **GROUND FOR THE PETITION**

19 **Duplicated Ballots**

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21 1. If a voted ballot is returned in a damaged or defective form that renders it unreadable
22 by an electronic tabulator, it is referred to a Ballot Duplication Board appointed by the
23 County Recorder. The Ballot Duplication Board manually transposes each of the voter's
24 selection to a new ballot, which is then electronically tabulated. Both the original and
25 duplicated ballots are assigned a shared unique serial number. *See* A.R.S. § 16-621(A);
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1 Ariz. Sec’y of State, 2019 ELECTIONS PROCEDURES MANUAL (rev. Dec. 2019) [EPM] at
2 pp. 201–02.

3 2. Ballots in which one or more selections is determined by a tabulation device to be
4 ambiguous or indeterminate are electronically examined by an Electronic Adjudication
5 Board appointed by the County Recorder. To the extent the voter’s “clear” intent can be
6 ascertained, the ballot is marked and tallied accordingly. *See* A.R.S. § 16-621(B); Ariz.
7 Sec’y of State, Electronic Adjudication Addendum to the 2019 Elections Procedures
8 Manual (Feb. 2020) at pp. 2–3.
9

10 3. A sampling of duplicated ballots cast in the 2020 presidential election revealed an
11 error rate that was at least 0.37% and may have been as high as 0.55%. *See Ward v. Jackson*,
12 2020 WL 8617817, at *2 (Ariz. Dec. 8, 2020).
13

14 4. Upon information and belief, no county has materially altered its ballot duplication
15 or electronic adjudication processes since the 2020 general election.
16

17 5. The margin separating Contestant Abraham Hamadeh and Contestee Kris Mayes in
18 the race for Arizona Attorney General is 0.02%, or 510 votes.
19

20 6. There is a substantial probability that a recurrence of a similar error rate in
21 connection with the November 8, 2022 general election would either independently or in
22 conjunction with other tabulation errors and irregularities alleged in the Statement of
23 Contest—be material to the outcome of the race for Arizona Attorney General.
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25 7. In order to prove that there are material errors in tabulation of ballots resulting from
26 errors in the ballot duplication process, Plaintiffs/Contestants need to be able to inspect the
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1 original and corresponding duplicate ballot for each ballot that underwent the ballot
2 duplication process.

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4 8. Without such inspection, Plaintiffs/Contestants will be unable to properly prepare
5 for trial on this matter.

6 **ELECTRONIC ADJUDICATION**

7
8 9. Voters sometime mark their ballots in a manner that precludes an accurate electronic
9 tabulation. Two frequent causes of impeded electronic tabulation are (a) apparent “over-
10 votes,” in which the tabulator detects that a voter may have marked more than the
11 permissible number of selections for a given office or ballot measure, and (b) ballots that
12 the tabulator has identified as containing unclear markings. When the first of these
13 circumstances is present, the ballot is referred for electronic adjudication.

14
15 10. Electronic adjudications are carried out on a secure computer application and are
16 conducted by an Electronic Adjudication Board that is appointed by the County Recorder
17 and consists of one inspector and two judges who are members of different political parties.
18 *See* A.R.S. § 16-621(B)(2).

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20 11. The Electronic Adjudication Board examines a digital image of the ballot and
21 assesses voter selections that the tabulator was unable to definitively ascertain. If the voter’s
22 intent is “clear,” the Electronic Adjudication Board ensures that the voter’s intended
23 selections are properly indicated and tabulated. If the voter’s intent cannot be sufficiently
24 verified, the ambiguous selections are not tabulated. *See id.*; Ariz. Sec’y of State,
25 ELECTRONIC ADJUDICATION ADDENDUM TO THE 2019 ELECTIONS PROCEDURES MANUAL
26 (Feb. 2020) at pp. 2–3, available at
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1 https://azsos.gov/sites/default/files/Electronic_Adjudication_Addendum_to_the_2019_Elections_Procedures_Manual.pdf.
2

3 12. Actual “over-votes” are invalid and may not be counted. *See* A.R.S. § 16-610.
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5 13. By statute, the County Recorder must conduct a hand count audit of selected
6 candidate races across a randomly generated sample of (a) 5,000 of early ballots and (b)
7 ballots cast at 2% of vote centers in the county. *See* A.R.S. § 16-602(B), (F). The purpose
8 of the hand count is to verify the accuracy of tallies generated by tabulator devices and
9 determinations by various ballot processing boards.
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11 14. The hand count audit following the November 8, 2022 general election revealed at
12 least one instance in which the Maricopa County Electronic Adjudication Board incorrectly
13 characterized the voter’s ostensible intent. Specifically, the Electronic Adjudication Board
14 had tabulated the disputed ballot as a vote for gubernatorial candidate Katie Hobbs. As the
15 hand count audit found, however, the ballot contained both an indicated preference for
16 Hobbs and an accompanying write-in vote for a different candidate, Kari Lake. The
17 Electronic Adjudication Board was required by law to designate the gubernatorial contest
18 as over-voted and not to tabulate a vote for any candidate in that race. *See* Statement of
19 Election Contest, Exhibit B p. 32.
20

21 15. The Attorney General contest was not among the races randomly selected for
22 inclusion in Maricopa County’s hand count audit but, upon information and belief, a similar
23 and proportionate rate of erroneous determinations afflict the broader corpus of all ballots
24 that underwent electronic adjudication.
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1 16. Additionally, an observer of the ballot adjudication process has reported that
2 tabulation and electronic adjudication equipment have been unable to clearly capture the
3 ballot markings made by some voters who did not use the writing implements recommended
4 by elections officials. Although it is likely that such markings can be assessed and correctly
5 tabulated by a manual inspection of the affected ballots, elections officials have not
6 undertaken a manual inspection of such ballots and therefore have failed to correctly
7 tabulate the votes marked on such ballots, and instead tabulated them as undervotes. The
8 Contestors petition for access to all ballots containing an undervote.
9
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11 17. Furthermore, an observer in Navajo County is currently observing the Recount of
12 votes. On December 7, 2022, Navajo County re-tabulated 3% of the county's ballots. On
13 election day, a large portion of the ballots processed were tabulated using the central count
14 tabulator. However, during this recount, the county is using the smaller precinct tabulators.
15 These small precinct tabulators identified two ballots that should have been sent to
16 adjudication. It appears that the faster central count tabulators were not functioning or set
17 up entirely properly and that they failed to flag ballots for adjudication that might not
18 contain a valid vote for the Attorney General race.
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21 18. In order to prove that there are material errors in electronic adjudication and
22 tabulation of apparent "over" or "under" votes in the race for Attorney General,
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1 Plaintiffs/Contestants need to be able to inspect the original ballot for each ballot that was
2 flagged for electronic adjudication as a potential under or over vote.

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4 19. Without such inspection, Plaintiffs/Contestants will be unable to properly prepare
5 for trial on this matter.

6 20. The Plaintiffs/Contestants will post the statutorily required sum of \$300 with the
7 Court. A.R.S. § 16-677.
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9 In the alternative, Plaintiffs/Contestants request that the Court permit them to access
10 or obtain the ballot images requested in this Petition on an expedited basis pursuant to
11 Arizona Rule of Civil Procedure 34.

12
13 RESPECTFULLY SUBMITTED this 12th day of December, 2022.
14

15
16 By: /s/ Timothy A. La Sota
17 Timothy A La Sota, SBN # 020539
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21 /s/ David A. Warrington
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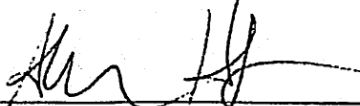
27
28 **Pro hac vice forthcoming*

Attorneys for Plaintiffs/Contestants

VERIFICATION

Pursuant to A.R.S. § 16-673(B), I, Abraham Hamadeh, hereby verify that the allegations contained in the foregoing Petition to Inspect Ballots are true and correct to the best of my knowledge.

Executed under penalty of perjury, this 12th day of December, 2022.



Abraham Hamadeh