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

MARICOPA COUNTY REPUBLICAN  
PARTY, APACHE COUNTY  
REPUBLICAN PARTY, NAVAJO  
COUNTY REPUBLICAN PARTY, and  
YUMA COUNTY REPUBLICAN  
PARTY,

Plaintiffs,

v.

MICHELE REAGAN, in her official  
capacity as Arizona Secretary of State;  
EDISON J. WAUNKA, in his official  
capacity as Apache County Recorder;  
DAVID W. STEVENS, in his official  
capacity as Cochise County Recorder;  
PATTY HANSEN, in her official capacity  
as Coconino County Recorder; SADIE JO  
BINGHAM, in her official capacity as Gila  
County Recorder; WENDY JOHN, in her  
official capacity as Graham County  
Recorder; BERTA MANUZ, in her official  
capacity as Greenlee County Recorder;  
SHELLY BAKER, in her official capacity  
as La Paz County Recorder; ADRIAN  
FONTES, in his official capacity as  
Maricopa County Recorder; KRISTI  
BLAIR, in her official capacity as Mohave  
County Recorder; DORIS CLARK, in her  
official capacity as Navajo County  
Recorder; F. ANN RODRIGUEZ, in her

No.

**VERIFIED COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

1 official capacity as Pima County Recorder;  
2 VIRGINIA ROSS, in her official capacity  
3 as Pinal County Recorder; SUZANNE  
4 SAINZ, in her official capacity as Santa  
5 Cruz County Recorder; LESLIE M.  
6 HOFFMAN, in her official capacity as  
7 Yavapai County Recorder; ROBYN  
8 STALLWORTH POUQUETTE, in her  
9 official capacity as Yuma County  
10 Recorder,  
11 Defendants.

12 The Maricopa County Republican Party, Apache County Republican Party, Navajo  
13 County Republican Party, and Yuma County Republican Party (collectively, the “County  
14 Parties” or “Plaintiffs”) bring this action for declaratory, injunctive, and mandamus relief  
15 and hereby alleges as follows:

### 16 INTRODUCTION

17 1. A uniform and impartial adherence to the law is vital to public confidence in  
18 the Arizona electoral system and its outcomes. By implementing and enforcing disparate  
19 deadlines by which Arizona voters may rehabilitate an early ballot deemed facially  
20 deficient, the State’s 15 County Recorders (the “County Recorders” or “Defendants”) are  
21 undermining the constitutional guarantee that all Arizonans are entitled to cast a ballot on  
22 equal terms, irrespective of their geographic location within the state. This Court should  
23 require all County Recorders to enforce an equivalent deadline to ensure that Arizona voters  
24 across the state receive an equal opportunity to vote in the November 6, 2018 general  
25 election.

### 26 JURISDICTION AND VENUE

27 2. This Court has jurisdiction and venue pursuant to article 6, section 14 of the  
28 Arizona Constitution and A.R.S. § 12-123.

3. A justiciable controversy exists because, without Court intervention, the  
County Recorders stand to violate under color of state law the rights of Plaintiffs under the  
U.S. Constitution, the Arizona Constitution, and Arizona statutes, and Plaintiffs will suffer  
immediate and irreparable injury and loss of rights.

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4. This Court has personal jurisdiction over Defendants.

PARTIES

5. The County Parties are county political committees that works to ensure that elections in Maricopa, Apache, Navajo, and Yuma Counties, respectively, are conducted in a free and open manner; seek to assist and facilitate the electoral success of its candidates; and work to protect the fundamental constitutional right to vote of its members and all Arizonans and to promote their participation in the political process. The County Parties have a direct, personal, and substantial interest in this litigation because its members vote in the State, and the manner in which elections are administered determines whether the ballots legally cast by the members of the County Parties are counted or diluted, nullified, or cancelled.

6. Defendant Secretary of State Michele Reagan is the chief elections officer in the state, and is responsible for supervising and issuing directives concerning the conduct of all elections in the state. A.R.S. § 16-142.

7. Edison J. Wauneka is the duly elected Apache County Recorder and is named as a defendant in this action solely in his official capacity.

8. David W. Stevens is the duly elected Cochise County Recorder and is named as a defendant in this action solely in his official capacity.

9. Patty Hansen is the duly elected Coconino County Recorder and is named as a defendant in this action solely in her official capacity.

10. Sadie Jo Bingham is the duly elected Gila County Recorder and is named as a defendant in this action solely in her official capacity.

11. Wendy John is the duly elected Graham County Recorder and is named as a defendant in this action solely in her official capacity.

12. Berta Manuz is the duly elected Greenlee County Recorder and is named as a defendant in this action solely in her official capacity.

13. Shelly Baker is the duly elected La Paz County Recorder and is named as a defendant in this action solely in her official capacity.

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14. Adrian Fontes is the duly elected Maricopa County Recorder and is named as a defendant in this action solely in his official capacity.

15. Kristi Blair is the duly elected Mohave County Recorder and is named as a defendant in this action solely in her official capacity.

16. Doris Clark is the duly elected Navajo County Recorder and is named as a defendant in this action solely in her official capacity.

17. F. Ann Rodriguez is the duly elected Pima County Recorder and is named as a defendant in this action solely in her official capacity.

18. Virginia Ross is the duly elected Pinal County Recorder and is named as a defendant in this action solely in her official capacity.

19. Suzanne Sainz is the duly elected Santa Cruz County Recorder and is named as a defendant in this action solely in her official capacity.

20. Leslie M. Hoffman is the duly elected Yavapai County Recorder and is named as a defendant in this action solely in her official capacity.

21. Robyn Stallworth Pouquette is the duly elected Yuma County Recorder and is named as a defendant in this action solely in her official capacity.

**FACTUAL ALLEGATIONS**

22. The 2018 general election was held on November 6, 2018. *See* A.R.S. § 16-211.

23. Arizona has an early voting regime that is far more permissive than those enacted in other states. Every elector may cast an early ballot, either by mail or in-person at various sites throughout every county. *See* Ariz. Rev. Stat. §§ 16-541, -542.

24. A ballot returned by mail may be processed only if the signature on the accompanying affidavit matches the signature on file in the putative voter's registration record. *See* Ariz. Rev. Stat. § 16-550(A).

1           25. County elections officials must conduct the signature verification  
2 immediately “[u]pon receipt” of the ballot, *id.* and all issued early ballots must be received  
3 and processed by the county recorders’ offices no later than 7:00pm on Election Day, *id.* §  
4 16-551(C).  
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6           26. In the event of discrepant signatures, the county recorder “may attempt to  
7 contact the voter to ascertain whether the voter actually voted the early ballot and any  
8 reasons why the signatures may not match,” but only “[i]f time permits.” Ariz. Sec’y of  
9 State, ELECTION PROCEDURES MANUAL (2014) at 166.  
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11           27. On information and belief, however, certain County Recorders—specifically  
12 those of Maricopa and Pima Counties—will allow voters to cure non-compliant early  
13 ballots for a period of five days *after* Election Day, a contingency that finds no statutory  
14 authorization and threatens to beget an extended period of confusion and uncertainty  
15 following the election.  
16

17           28. The remaining County Recorders, on information and belief, terminate a  
18 voter’s ability to rehabilitate an early ballot at 7:00 p.m. on Election Day—in this case, on  
19 November 6, 2018.  
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21           29. The County Recorders were notified of this discrepancy in a November 4,  
22 2018 letter from Arizona Republican Party Chairman Jonathan Lines (attached as Exhibit  
23 A). They nonetheless failed to adopt a uniform early ballot rehabilitation time period and  
24 deadline.  
25

26           30. In implementing and enforcing disparate deadlines by which to rehabilitate  
27 facially defective ballots, the County Recorders are subverting the statutory framework  
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1 securing the uniform administration of statewide elections and imperiling voters' right to  
2 the equal protection of the laws, regardless of the county in which they reside.

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4 **COUNT ONE**

5 **Equal Protection**

6 **U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

7 ***Arbitrary and Disparate Treatment of Similarly-Situated Voters (Bush v. Gore)***

8 31. Plaintiffs incorporate by reference the above allegations.

9 32. The U.S. Constitution protects the right of all qualified citizens to vote. The  
10 right to vote is fundamental. It is protected by Articles I and II of the Constitution and the  
11 Fourteenth Amendment.

12 33. The Equal Protection Clause of the Fourteenth Amendment to the United  
13 States Constitution guarantees voters a substantive right to participate equally with other  
14 qualified voters in the electoral process. The Equal Protection Clause applies to the right  
15 to vote in state elections and protects the state electoral franchise. *See Harper v. Va. Bd. of*  
16 *Educ.*, 383 U.S. 663, 665 (1966). By arbitrarily counting and rejecting ballots from  
17 identically suited voters, Defendants are systematically denying certain voters the right to  
18 vote in violation of the Equal Protection Clause.

19 34. The County Recorder arbitrarily and without explanation or justification  
20 provides some post-election opportunity for voters to rehabilitate their facially defective  
21 early ballots, but provides no opportunity for others, depending solely on where they live  
22 within the State.

23 35. To comply with the Equal Protection Clause of the Fourteenth Amendment  
24 to the U.S. Constitution, all laws that treat citizens differently must be rationally related to  
25 a legitimate state interest. Where a voter is disenfranchised due to where they live within  
26 the State, the County Recorders' actions are not rationally related to any legitimate state  
27 interest.

28 **COUNT TWO**

**Equal Protection**

**U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

*Undue Burden on the Right to Vote (Burdick v. Takushi)*

36. Plaintiffs incorporate by reference the above allegations.

37. Under the Equal Protection Clause, the County Recorder cannot utilize election practices that unduly burden the right to vote. The practices outlined above, in direct violation of Arizona law, impose a severe burden on the right of the voters to rehabilitate their facially defective early ballot if they live outside of Maricopa or Pima Counties. Refusing to allow voters in other counties to rehabilitate their early ballots following the election, while permitting the same in the State's two largest counties, does not serve any legitimate state interest.

38. A significant amount of registered voters throughout the State are suffering direct and irreparable injury from the Defendants' disparate treatment of early voters. Without relief from this Court, voters will be deprived of their right to vote in the 2018 General Election.

39. Based on the foregoing, Defendants, acting under color of state law, have deprived and will continue to deprive voters of equal protection under the law secured to them by the Fourteenth Amendment to the U.S. Constitution and protected by 42 U.S.C. § 1983.

**COUNT THREE**

**Due Process**

**U.S. Const. Amend. XIV, 42 U.S.C. § 1983**

40. Plaintiffs incorporate by reference the above allegations.

41. The Due Process Clause of the Fourteenth Amendment of the United States Constitution provides that no state "shall deprive any person of life, liberty, or property, without due process of law." This provision guarantees substantive due process and prohibits a state from depriving a person of "life, liberty, or property": without an appropriately compelling government interest.

42. The liberties protected by the Due Process Clause include the right to vote and to be free from disparate treatment in the exercise of the electoral franchise.





1 rehabilitate a facially invalid early ballot, and, therefore, disparate opportunities to vote.

2 52. The balance of equities and considerations of public policy strongly support  
3 the issuance of injunctive relief.

4 53. Accordingly, the Plaintiffs are entitled to injunctive relief enjoining the  
5 County Recorder Defendants from implementing disparate deadlines before which a voter  
6 may rehabilitate his or her facially invalid early ballot.

7 **REQUEST FOR RELIEF**

8 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants  
9 as follows:

10 A. Declare that the County Recorder Defendants must enforce a uniform  
11 deadline before which a voter may rehabilitate his or her facially invalid early ballot;

12 B. Enter an injunction enjoining the County Recorder Defendants from  
13 implementing and enforcing disparate deadlines before which a voter may rehabilitate his  
14 or her facially invalid early ballot;

15 C. Enter other injunctive relief that is necessary and appropriate to ensure  
16 compliance with the foregoing constitutional and statutory provisions;

17 D. Enter an order awarding Plaintiffs' attorney's fees and nontaxable expenses  
18 incurred in this action under:

19 1. the private attorney general doctrine as established in *Arnold v. Ariz.*  
20 *Dep't of Health Servs.*, 160 Ariz. 593 (1989), because the rights sought  
21 to be vindicated here benefit a large number of people, require private  
22 enforcement, and are of societal importance;

23 2. any other applicable law or common law authorizing the award of  
24 attorney's fees and nontaxable expenses to Plaintiffs;

25 E. Enter an order awarding Plaintiffs their taxable costs; and

26 F. Award such other relief as the Court deems proper.

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# EXHIBIT A



November 4, 2018

Edison Wauneka  
Apache County Recorder  
P.O. Box 425  
St. Johns, AZ 85936

David Stevens  
Cochise County Recorder  
1415 Melody Lane Bldg. B  
Bisbee, AZ 85603

Patty Hansen  
Coconino County Recorder  
110 East Cherry Ave.  
Flagstaff, AZ 86001

Sadie Jo Bingham  
Gila County Recorder  
1400 East Ash St.  
Globe, AZ 85501

Wendy John  
Graham County Recorder  
P.O. Box 747  
Safford, AZ 85546

Berta Manuz  
Greenlee County Recorder  
P.O. Box 1625  
Clifton, AZ 85533

Shelly Baker  
La Paz County Recorder  
1112 Joshua Ave., Ste. 201  
Parker, AZ 85344

Adrian Fontes  
Maricopa County Recorder  
111 South 3rd Ave., #103  
Phoenix, AZ 85003

Kristi Blair  
Mohave County Recorder  
P.O. Box 7000  
Kingman, AZ 86402

Doris Clark  
Navajo County Recorder  
P.O. Box 668  
Holbrook, AZ 86025

F. Ann Rodriguez  
Pima County Recorder  
P.O. Box 3145  
Tucson, AZ 85702

Virginia Ross  
Pinal County Recorder  
P.O. Box 848  
Florence, AZ 85132

Suzanne Sainz  
Santa Cruz County Recorder  
2150 North Congress Dr.  
Nogales, AZ 85621

Leslie M. Hoffman  
Yavapai County Recorder  
1015 Fair St., Room # 228  
Prescott, AZ 86305

Robyn S. Pouquette  
Yuma County Recorder  
197 South Main St.  
Yuma, AZ 85364

**Re: Early Voting Practices in Connection with the November 6, 2018 General Election**

To the County Recorders of Arizona:

A uniform and impartial adherence to the law is vital to public confidence in the electoral system and the outcomes it produces. In this vein, troubling reports have emerged of at least two early voting practices in certain counties that not only are inconsistent with the governing statutes and regulatory directives from the Secretary of State, but undermine the constitutional guarantee that all Arizonans are entitled to cast a ballot on equal terms, irrespective of their geographic location within the state.

**I. Misuse of "Emergency" Early Voting**

Arizona has constructed an early voting regime that is far more permissive than those enacted in other states. Every elector may cast an early ballot, either by mail or in-person at various sites throughout every county. *See* Ariz. Rev. Stat. §§ 16-541, -542. Additionally, voters who, by reason of illness or disability, are unable to physically travel to an early voting site and do not wish to vote by mail may have ballots personally delivered to them by elections officials. *See id.* § 16-549. This exceptionally accommodating framework, however, is cabined by one modest limitation. The Legislature has directed in no uncertain terms that in-person early voting must terminate "no later than 5:00 p.m. on the Friday preceding the election," *i.e.*, Friday, November 2, 2018. Ariz. Rev. Stat. § 16-542(E).

A dispensation from this categorical deadline is permissible only “[a]s a result of an emergency occurring between 5:00 p.m. on the second Friday preceding the election and 5:00 p.m. on the Monday preceding the election.” *Id.* § 16-542(H). An “emergency” consists of “any unforeseen circumstances that would prevent the elector from voting at the polls.” Ariz. Rev. Stat. § 16-542(H). In other words, mere inconvenience is not a permissible predicate for a reprieve from the November 2 early voting deadline; the voter must be burdened with exigencies that would “prevent”—*i.e.*, make it impossible—for him or her to vote on Election Day, and that were not known or reasonably foreseeable.

It has come to our attention that the Maricopa County Recorder’s office may be systematically permitting electors to cast in-person early ballots between Saturday, November 3 and Monday, November 5, irrespective of whether such individuals have cited any articulable “emergency.” If true, this practice impermissibly circumvents the statutory deadline and constitutes a *de facto* extension of general early voting. The resulting variation among counties also unfairly disadvantages voters in jurisdictions that enforce the Legislature’s mandate that a *bona fide* emergency is a necessary prerequisite to belated in-person early voting. See generally *Bush v. Gore*, 531 U.S. 98, 106, 107 (2000) (emphasizing the importance of “specific rules designed to ensure uniform treatment of voters” and that “arbitrary and disparate treatment to voters in . . . different counties” inflicts a constitutional injury).

## II. Post-Election Rehabilitation of Facially Defective Early Ballots

A ballot returned by mail may be processed only if the signature on the accompanying affidavit matches the signature on file in the putative voter’s registration record. See Ariz. Rev. Stat. § 16-550(A). County elections officials must conduct the signature verification immediately “[u]pon receipt” of the ballot, *id.* and all issued early ballots must be received and processed by the county recorders’ offices no later than 7:00pm on Election Day, *id.* § 16-551(C). In the event of discrepant signatures, the county recorder “may attempt to contact the voter to ascertain whether the voter actually voted the early ballot and any reasons why the signatures may not match,” but only “[i]f time permits.” Ariz. Sec’y of State, ELECTION PROCEDURES MANUAL (2014) at 166. Certain county recorders’ offices, however, reportedly will allow voters to cure non-compliant early ballots for an unspecified period of time *after* Election Day, a contingency that finds no statutory authorization and threatens to beget an extended period of confusion and uncertainty following the election. In contriving *ad hoc* post-election “grace periods” to rehabilitate facially defective ballots, these counties are subverting the statutory framework securing the uniform administration of statewide elections and imperiling voters’ right to the equal protection of the laws, regardless of the county in which they reside.

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Accordingly, to ensure that courts can effectively adjudicate any future litigation concerning these practices, I respectfully request that you identify and segregate all ballots that were either:

1. cast in-person on November 3, November 4 or November 5, 2018 by any individual who has not asserted the existence of an “emergency,” within the meaning of Ariz. Rev. Stat. § 16-542(H); or

2. returned by mail and contained affidavit signatures that did not match the signatures on the corresponding voter registration forms but were processed as valid on the basis of extrinsic information provided by the putative voters after 7:00pm on November 6, 2018.

We believe that failure to comply with this request would constitute the intentional spoliation of evidence relevant to claims and defenses in anticipated litigation.

Thank you for your attention to this matter of important public concern.

Respectfully,

*/s Jonathan Lines*  
Jonathan Lines, Chairman  
Arizona Republican Party

