

1 Law Offices
2 HINSHAW & CULBERTSON LLP
3 2375 E. Camelback Rd.
4 Suite 750
5 Phoenix, AZ 85016
6 602-631-4400
7 602-631-4404
8 stully@hinshawlaw.com

9 Stephen W. Tully (014076)

10 ALLISTER ADEL
11 MARICOPA COUNTY ATTORNEY

12 Thomas P. Liddy (019384)
13 Emily Craiger (021728)
14 Joseph I. Vigil (018677)
15 Joseph J. Branco (031474)
16 Joseph E. LaRue (031348)
17 Deputy County Attorneys
18 liddyt@mcao.maricopa.gov
19 craigere@mcao.maricopa.gov
20 vigilj@mcao.maricopa.gov
21 brancoj@mcao.maricopa.gov
22 laruej@mcao.maricopa.gov

23 CIVIL SERVICES DIVISION
24 225 West Madison Street
25 Phoenix, Arizona 85003
26 Telephone (602) 506-8541
Facsimile (602) 506-4317
ca-civilmailbox@mcao.maricopa.gov

Attorneys for Plaintiffs Maricopa County

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARICOPA COUNTY; CLINT HICKMAN,)
in his official capacity as Chairman of the)
Maricopa County Board of Supervisors; and)
JACK SELLERS, STEVE CHUCRI, BILL)
GATES, and STEVE GALLARDO, in their)
official capacities as Members of the Maricopa)
County Board of Supervisors,)

Plaintiffs,)

v.)

No. CaseNumber

**COMPLAINT
(DECLARATORY RELIEF)**

1 KAREN FANN, in her official capacity as)
President of the Arizona Senate; EDDIE)
2 FARNSWORTH, in his official capacity as)
Chairman of the Arizona Senate Judiciary)
3 Committee; RICK GRAY, in his official)
capacity as Vice Chairman of the Arizona)
4 Senate Judiciary Committee; SONNY)
BORRELLI, VINCE LEACH, LUPE)
5 CONTRERAS, ANDREA DALESSANDRO,)
and MARTIN QUEZADA, in their official)
6 capacities as the Members of the Arizona)
Senate Judiciary Committee,)

7)
8 Defendants.)

9 Come now Plaintiffs MARICOPA COUNTY; CLINT HICKMAN, in his official
10 capacity as Chairman of the Maricopa County Board of Supervisors; and JACK
11 SELLERS, STEVE CHUCRI, BILL GATES, and STEVE GALLARDO, in their official
12 capacities as Members of the Maricopa County Board of Supervisors, (together, the
13 “Plaintiff Maricopa County”), and for their Complaint state as follows:

14 **INTRODUCTION**

15 “We have seen that the tendency of republican governments is to an
16 aggrandizement of the legislative at the expense of the other departments” James
17 Madison Federalist 49.

18 1. At 3:08 p.m. on the afternoon of December 15, 2020, the Arizona Senate
19 Judiciary Committee (the “Committee”) served two subpoenas on the Maricopa County
20 Board of Supervisors (the “Subpoenas”).

21 2. Each subpoena seeks documents listed in a separate exhibit attached to the
22 subpoena. One subpoena seeks documents necessary to perform a “Full Forensic Audit”
23 of the Maricopa County 2020 election. (A copy of the Full Forensic Audit Subpoena is
24 attached as **Exhibit 1**).

1 3. The other subpoena seeks documents necessary to perform a “Scanned
2 Ballot Audit” of the ballots cast in Maricopa County in the most recent election. (A copy
3 of the Scanned Ballot Audit subpoena is attached as **Exhibit 2**).

4 4. The requests are shocking in scope and far in excess of the power of the
5 Senate President or Senate Judiciary Committee Chairman to command. The requests
6 ought to send chills down the spine of every freedom loving Arizonan as they threaten
7 one of the core tenants of our republic, the right to a secret ballot.

8 5. The Full Forensic Audit subpoena seeks access to, among other things, the
9 electronic voting machines used in Maricopa County, the software for the equipment, and
10 hardware forensic images of all the elections servers, desktops, and removable media
11 used to transfer ballots to central counting. It seeks all election log files, all usernames
12 and passwords, all encryption passwords and all security tokens. It requests a data base of
13 the voter rolls. And it requests much more. Essentially it requests full access to the entire
14 voting system. The subpoena requests this electronic information “for inspection, testing
15 or sampling thereof”.

16 6. The Scanned Ballot Audit subpoena requests the County to turn over
17 images of all mail-in ballots cast in the last election and demands that such images be
18 “uploaded to a computer drive supplied by the Senate Judiciary Committee or its agents”.

19 7. The Subpoenas commanded the Board of Supervisors to produce this
20 extraordinarily-voluminous amount of data, electronic files, ballots, forensic images,
21 logs, paper rolls, and machines by 5:00 p.m. on December 18, 2020—*a mere three days*
22 *after the Subpoenas were served*.

23 8. The Subpoenas are unlawful.

24 9. Rather than wait for the possibility of the Senate holding the County in
25 contempt and then on an emergency basis asking the Court to rule on the legality of the
26

1 subpoenas and any contempt order, the County is asking the Court for a declaration that
2 the Subpoenas are unlawful and to quash them.

3 **JURISDICTION AND VENUE**

4 10. This Court has jurisdiction pursuant to the Uniform Declaratory Judgments
5 Act, A.R.S. § 12-1831 *et seq.*, and A.R.S. § 12-1801.

6 11. There is a present controversy, the Senate has issued the subpoenas and it
7 believes its subpoenas are legal and the Defendants refuse to comply. The subpoenas
8 contain the threat of contempt sanctions.

9 12. The events giving rise to this action happened in Maricopa County. The
10 Arizona Senate that is presided over by Defendant President Fann, and includes the
11 Defendant Committee, sits in Maricopa County. Venue is therefore proper. A.R.S. § 12-
12 401.

13 13. Pursuant to Ariz. R. Civ. P. 26.2(b)(3), this case is entitled to Tier 3 status as
14 it involves a complex issue of law.

15 **PARTIES**

16 14. Maricopa County, a Plaintiff in this action, is a jural entity with power to
17 sue and be sued, which power is exercised by the Board of Supervisors. A.R.S. § 11-
18 201(A).

19 15. Plaintiff Clint Hickman is the Chairman of the Maricopa County Board of
20 Supervisors. He brings this suit in his official capacity.

21 16. Plaintiff Jack Sellers is a Member of the Maricopa County Board of
22 Supervisors. He brings this suit in his official capacity.

23 17. Plaintiff Steve Chucuri is a Member of the Maricopa County Board of
24 Supervisors. He brings this suit in his official capacity.

25 18. Plaintiff Bill Gates is a Member of the Maricopa County Board of
26 Supervisors. He brings this suit in his official capacity.

1 30. After the Election, numerous challenges and election contests were filed in
2 superior court contesting the results, as provided for by A.R.S. § 16-671 *et seq.* Plaintiffs
3 in these cases included President Donald Trump, the Arizona Republican Party, and the
4 Chairwoman of the Arizona Republican Party, Dr. Kelli Ward.

5 31. Each of the cases alleged some form of misconduct by elections officers,
6 erroneous vote counts, unlawful voting, or deprivation of the right to vote. None of the
7 cases were successful, and no court found that any misconduct, erroneous vote counts, or
8 unlawful voting had occurred such that the results of the Election should be overturned.
9 Each legal challenge was ultimately dismissed. The cases filed in Maricopa County
10 Superior Court included:

- 11 • *Aguilera v. Fontes*, No. CV2020-014083 (voluntarily dismissed, November
12 7, 2020).
- 13 • *Donald J. Trump v. Hobbs*, No. CV2020-014248 (Min. Entry Order,
14 November 13, 2020 (after conducting an evidentiary hearing, dismissing the
15 complaint with prejudice).
- 16 • *Arizona Republican Party v. Fontes*, No. CV2020-014553 (Min. Entry
17 Order, November 18, 2020 (dismissing the complaint with prejudice and
18 ordering that the Secretary of State, who had requested her fees, could file a
19 motion pursuant to AR.S. § 12-349 (the frivolous litigation statute)).
- 20 • *Aguilera v. Fontes II*, No. CV2020-014562 (Min. Entry, November 29, 2020
21 (after conducting an evidentiary hearing, “dismiss[ing] with prejudice for
22 failing to state a claim upon which relief can be granted; or alternatively,
23 denying the relief sought by Plaintiffs given their failure to produce
24 evidence demonstrating entitlement to same).
- 25 • *Kelli Ward v. Jackson*, No. CV2020-015285 (Min. Entry Ruling, December
26 4, 2020 (after conducting an evidentiary hearing, denying the requested

1 relief and “confirming the election,” because the court found that the
2 evidence did not show fraud, misconduct, illegal votes, or an erroneous vote
3 count), *affirmed, Ward v. Jackson*, No. CV-20-0343-AP/EL (Ariz. S. Ct.
4 December 9, 2020) (“conclude[ing], unanimously, that the challenge
5 fails to present any evidence of ‘misconduct,’ ‘illegal votes’ or that the
6 Biden Electors ‘did not in fact receive the highest number of votes for
7 office,’ let alone establish any degree of fraud or a sufficient error rate that
8 would undermine the certainty of the election results”).

9 32. Additionally, an election contest was filed in federal district court. *Bowyer,*
10 *et al., v. Ducey, et al.*, No. CV-20-02321-PHX-DJH. Dr. Ward, the Chairwoman of the
11 Arizona Republican Party, was—once again—one of the plaintiffs. Sidney Powell, a
12 former attorney for President Trump, was one of the plaintiffs’ attorneys. This lawsuit
13 alleged fraud resulting from foreign interference in the election via offshore algorithms
14 that somehow infiltrated Maricopa County’s vote tabulation equipment, leading to
15 “injections” of votes for President-elect Biden, and ballot fraud. The plaintiffs sought to
16 decertify the election and cause Arizona’s presidential electors to be awarded to President
17 Trump. After reviewing the “evidence” submitted by the plaintiffs, Judge Humetewa
18 dismissed the case. She ruled that the “Plaintiffs failed to provide the Court with factual
19 support for their extraordinary claims[.]” Additionally, the court noted that “[a]llegations
20 that find favor in the public sphere of gossip and innuendo cannot be a substitute for
21 earnest pleadings and procedure in federal court[.]” and, “cannot be the basis for
22 upending Arizona’s 2020 General Election.” Accordingly—because plaintiffs provided
23 no actual, evidentiary support for their claims, “[t]he Court is left with no alternative but
24 to dismiss this matter in its entirety.” (Doc. 84, Order, December 9, 2020, at 28-29).

25 33. Additionally, another case challenging the result of the Election was filed in
26 Pinal County Superior Court. *Burk v. Ducey*, No. S1100CV202001869. The plaintiff in

1 this matter raised the same claims as alleged by the plaintiffs in the federal court case
2 discussed in the preceding paragraph. It, too, was dismissed. (Ruling on Motion to
3 Dismiss, December 15, 2020).

4 34. Thus, all told, there were seven separate challenges to the results of the
5 Election, and all involved accusations that wrongdoing of some sort happened in
6 Maricopa County. Six superior court judges, one federal district court judge, and seven
7 Arizona Supreme Court Justices were involved in their disposition. None found any
8 evidence of wrongdoing on the part of Maricopa County, its elections officers, or the
9 electronic voting system it uses. And, none found any basis for decertifying Arizona’s
10 election or awarding Arizona’s eleven presidential electors to President Trump.

11 35. On December 14, 2020, the Arizona Senate Judiciary Committee purported
12 to hold a “special meeting” in order to question witnesses about the Election. *See Exhibit*
13 **3** (a true and correct copy of the Notice of the Special Meeting Agenda).

14 36. Several witnesses appeared at the six-hour long special meeting to be
15 questioned by the Senators. They included the Chairman of the Maricopa County Board
16 of Supervisors, Clint Hickman; the Director of Election Day and Emergency Voting for
17 Maricopa County, Scott Jarrett; and, the Civil Division Chief of the Maricopa County
18 Attorney’s Office, Thomas Liddy, who was not a “fact witness” but provided updates on
19 litigation related to the November 3, 2020, general election (the “Maricopa County
20 Witnesses”).

21 37. No subpoenas were issued to compel these witnesses’ attendance: they
22 appeared voluntarily.

23 38. The senators in attendance at the special meeting were Senators Eddie
24 Farnsworth, Rick Gray, Sonny Borrelli, Vince Leach, Lupe Contreras, Andrea
25 Dalessandro, and Martin Quezada—all of whom are current members of the Senate
26 Judiciary Committee.

1 39. Also in attendance was Senator Michelle Ugenti-Rita—who is **not** a current
2 member of the Senate Judiciary Committee.

3 40. The Committee described the meeting as a meeting of “the Senate Judiciary
4 Committee, Plus One.”

5 41. Senator Ugenti-Rita—the “Plus One”—took an active part in the meeting,
6 actively questioning the Maricopa County Witnesses.

7 42. After the Maricopa County Witnesses testified, they were excused.

8 43. The same day as the special meeting by the Senate Judiciary Committee
9 Plus One, members of the Arizona Legislature signed what purported to be a “Joint
10 Resolution.” It requested “that the alternate 11 electoral votes be accepted for Donald J.
11 Trump or to have all electoral votes nullified completely until a full forensic audit can be
12 conducted.” It further “resolved that the United States Congress is not to consider a slate
13 of electors from the State of Arizona until the Legislature deems the election to be final
14 and all irregularities resolved.” See **Exhibit 4** (a true and correct copy of the *Joint*
15 *Resolution of the 54th Legislature, State of Arizona, to the 116th Congress, Office of the*
16 *President of the Senate, Presiding*).

17 44. On December 15, 2020, the Committee served the Subpoenas on the
18 Maricopa County Board of Supervisors, which are the subject of this action for
19 declaratory relief.

20 45. The Subpoenas were served only on the Maricopa County Board of
21 Supervisors. No subpoena was served on the Maricopa County Recorder.

22 46. Each of the Subpoenas command the Maricopa County Board of
23 Supervisors “to produce, and permit inspection, testing or sampling of the items
24 identified in the attached Exhibit 1 on or before 5:00 p.m. on December 18, 2020 to the
25 Chairman of the Senate Judiciary Committee for inspection, testing or sampling
26 thereafter.”

1 47. The Full Forensic Audit also **seeks personally identifying information for**
2 **every registered voter in Maricopa County, including their addresses, dates of birth,**
3 **political party affiliation, whether they voted in the November 3, 2020, general**
4 **election, and if so, what type of ballot they cast.**

5 48. The Full Forensic Audit also seeks “[a]ccess to full detailed absentee
6 votes,¹ provisional votes, mail-in, and election day votes.” This means that the subpoena
7 **seeks every ballot cast** in Maricopa County in the November 3, 2020, general election.

8 49. The Full Forensic Audit also seeks information concerning “ranked choice
9 voting”. Ranked choice voting did not occur in Arizona in the 2020 General Election in
10 Maricopa County.

11 50. The Full Forensic Audit also commands “[a]ccess to physically and
12 forensically examine date and time-stamped all stored paper ballots as required.” But,
13 Arizona ballots do not contain “date” and “time-stamped” marks indicating when they
14 were voted.

15 51. The Full Forensic Audit also seeks “Dominion Specific” data. Maricopa
16 County leases the Dominion Voting System Democracy Suite 5.5-B vote tabulation
17 machines and printers from Dominion Voting Systems, Inc. *See Exhibit 5* (a true and
18 correct copy of the current contract between Dominion Voting Systems, Inc., and
19 Maricopa County).

20 52. The Scanned Ballot Audit seeks certain information in “a resolution of at
21 least 300 DPI” in TIFF, PDF, and JPG formats. The County, however, does not maintain
22 files in 300 DPI resolution. And further, the machines that it utilizes are not capable of
23 scanning in 300 DPI resolution. And further, if the County acquired new scanning
24 machines to scan ballots in 300 DPI, the machines would not retain the audit marks

25
26

¹ Arizona does not have “absentee votes.” Rather, Arizona has no excuse early voting.

1 which show how the ballot was tabulated, nor any adjudication actions, nor the new
2 adjudication audit marks that show how the contest on the ballot was ultimately counted.

3 53. The Scanned Ballot Audit seeks, among other things, “**ballot images,**” and
4 commands that “[t]he electronically stored information required to be produced herein
5 **shall be electronically uploaded to a computer drive supplied by the Senate**
6 **Judiciary Committee or its agents.**” In other words, the subpoena commands the Board
7 of Supervisors to provide images of voted ballots to the *senators, whose names appeared*
8 *on those ballots.* Or their unknown “*agents*”.

9 54. The Scanned Ballot Audit also seeks “Ranked-Choice Voting: Board of
10 Supervisors, Final Detailed Report.” But once again, ranked-choice voting did not occur
11 in Maricopa County in the 2020 General Election.

12 55. All tabulators and printers used by Maricopa County have been certified by
13 the United States Election Assistance Commission (the “EAC”), and have also been
14 certified by the Arizona Secretary of State. *See Exhibit 6* (a true and correct copy of the
15 EAC Certificate of Conformance for the Dominion Voting Systems Democracy Suite 5.5-
16 B); *Exhibit 7* (a true and correct copy of the Arizona Secretary of State’s Certification
17 Letter for the Dominion Voting Systems Democracy Suite 5.5-B).

18 56. Both certifications are required by Arizona law, and machines that have not
19 been certified—or, have been de-certified—cannot be used to conduct elections in
20 Arizona. A.R.S. § 16-442.

21 **COUNT I**

22 **The Subpoenas Are Invalid.**

23 57. Plaintiff Maricopa County incorporates by reference all of the foregoing
24 allegations as if set forth herein.

25 58. As all branches of government, the Senate has only those powers granted to
26 it by the Arizona constitution or authorized by statute.

1 59. A legislative subpoena is proper only if it, **first**, is authorized by ordinance
2 or similar enactment, **second**, serves a valid legislative purpose, and **third**, the witnesses
3 or material subpoenaed are pertinent to the subject matter of the investigation. *Conn.*
4 *Indem. Co. v. Superior Court*, 23 Cal. 4th 807, 813, 3 P.3d 868, 872 (citing *Wilkinson v.*
5 *United States*, 365 U.S. 399, 408-409 (1961)).

6 60. The Subpoenas at issue here fail each of these three requirements.

7 61. **First**, the Subpoenas are not authorized by any statute or other law.

8 62. Pursuant to Senate Rule 24, Parliamentary practice and procedure in the
9 Senate shall take precedence in the order listed: 1. Constitutional provisions. 2. Senate
10 Rules 3. Statutory rules and provisions. etc. (Current Senate Rules accessible at:
11 https://www.azleg.gov/alispdfs/54leg/senate/RULES_2019_2020.pdf

12 63. Senate Rule 2 lists the powers and duties of the Senate president.

13 64. With regard to subpoenas, the Senate president is authorized to sign
14 subpoenas “issued by the order of the Senate”.

15 65. The subpoenas at issue were not issued by order of the Senate, but on the
16 president’s own authority.

17 66. While state law would permit the Senate president to issue subpoenas, the
18 rules of the Senate provide her a more narrow power and by rule the Senate Rules take
19 precedence over statute. Accordingly, the subpoenas were issued in contravention of
20 Senate rule and are of no effect.

21 67. Even if the Senate rules were read broadly, the subpoena must comply with
22 statutory authority, and it does not.

23 68. The power of the legislature to issue subpoenas is located in Title 41 of the
24 Arizona Revised Statutes.

25 69. The law provides that: “A subpoena may be issued by the presiding officer
26 of either house or the chairman of any committee *before whom the attendance of a*

1 *witness is desired.* The subpoena is *sufficient* if it states *whether the proceeding is before*
2 *the senate, house of representatives or a committee,* is addressed to the witness, *requires*
3 *the attendance of the witness at a certain time and place,* and is signed by either
4 presiding officer or a committee chairman. The subpoena may be served and returned in
5 like manner as civil process. A.R.S. § 41-1151 (Emphasis added).

6 70. The law also provides that the Legislature or any of its committees may
7 subpoena a person “to attend as a witness” and “to produce, *upon reasonable notice,* any
8 material and relevant books, papers or documents in his possession or under his control . .
9 . .” A.R.S. § 41-1154 (emphasis added).

10 71. The Subpoenas do not command a witness to appear before the Senate,
11 House of Representatives, or a committee, and do not require attendance at a certain time
12 or place, as the law requires for a valid subpoena.

13 72. The Subpoenas do not provide “reasonable notice,” as the law requires for a
14 valid subpoena.

15 73. The Subpoenas command production of electronic machines and other
16 things, beyond what the law allows.

17 74. **Second,** the Subpoenas serve no valid legislative purpose.

18 75. There is no legislative authority to audit election results.

19 76. There is no legislative authority to conduct forensic audits of election
20 tabulation machines, software, and other equipment.

21 77. There is no legislative authority to examine ballots.

22 78. There is no legislative authority to conduct elections.

23 79. The authority to conduct elections lies with the various county election
24 officers and the secretary of state—not the Legislature, not the Senate Judiciary
25 Committee, and not the Senate Judiciary Committee, Plus One.

26

1 80. The power to canvass the election and certify and proclaim the results lies
2 with the governor and the secretary of state—not the Legislature, not the Senate Judiciary
3 Committee, and not the Senate Judiciary Committee, Plus One.

4 81. The law provides that if there is a dispute about the outcome of an election
5 or questions about fraud, misconduct, illegal voting, or the proper count of the votes, the
6 challenge is to be brought in court—not the Legislature, not the Senate Judiciary
7 Committee, and not the Senate Judiciary Committee, Plus One.

8 82. No law provides the Legislature the power to act as a “Court Above the
9 Supreme Court,” to hold its own investigation of an election after six superior court
10 judges, one federal district court judge, and seven Arizona Supreme Court Justices heard
11 a total of seven election-related contests and found no evidence of wrongdoing on the
12 part of Maricopa County, its elections officers, or the electronic voting system it uses, or
13 any basis for decertifying Arizona’s election or awarding Arizona’s eleven presidential
14 electors

15 83. Because the law does not provide the Legislature these powers, and/or
16 delegates them to other elected officers, there can be no proper legislative purpose to the
17 Subpoenas and they are without legal effect. *See Kilbourn v. Thompson*, 103 U.S. 168, 26
18 L.Ed. 377 (1880).

19 84. **Third**, the witnesses or material subpoenaed are not pertinent to the subject
20 matter of any investigation.

21 85. Currently, there is **no** open investigation.

22 86. Although the Committee, Plus One, held a hearing and took testimony on
23 December 14, 2020, no votes were taken and no follow up meeting was set.

24 87. The Chairman of the Senate Committee did not run for reelection. He is
25 unable to propose any new legislation.

26

1 101. The subpoenas command that the Board of Supervisors give the Committee
2 access to all ballots cast in the Election, and also give access to digital copies of at least
3 some of those ballots.

4 102. Arizona law requires that digital images of ballots be “protected from
5 physical and electronic access, including unauthorized copying or transfer, and that all
6 security measures are at least as protective as those prescribed for paper ballots.” A.R.S.
7 § 16-625.

8 103. Ballots are subject to great protection under Arizona law.

9 104. First, the Arizona constitution commands that ballots be kept secret, and
10 provides that Arizonans have a constitutional right to a secret ballot. Ariz. Const. art. VII,
11 § 1.

12 105. Second, the Legislature has enacted many laws protecting the secrecy of
13 voted ballots.

14 106. A.R.S. § 16-515(G) makes it illegal to take photographs within 75 feet of
15 voting locations while voters are voting. Notably, the law does not prohibit “taking
16 photographs of a voter with her ballot,” or “taking photographs that would tie a specific
17 ballot to a specific voter.” The law prohibits photography in voting locations, and so
18 taking a photograph of someone’s voted ballot—even with no voter in the photograph—
19 would be unlawful.

20 107. A.R.S. § 16-1005(H), (I), makes it unlawful to possess another’s voted
21 early ballot, unless the possessor is an election official, a United States postal worker or
22 other worker authorized to transmit the U.S. mail, or the voter’s family member,
23 household member, or caregiver. Notably, the possession of another’s voted early ballot is
24 unlawful regardless of whether the possessor knows the identity of the voter who voted
25 that particular ballot. *Id.*

26

1 114. The Subpoenas contemplate a forensic audit conducted by the Committee
2 and its (unidentified) “agents,” but does not state that the audit would be conducted by an
3 EAC-approved testing laboratory.

4 115. Were the secretary of state to de-certify Maricopa County’s election
5 equipment, the ability of Maricopa County to conduct a free and fair, safe and secure,
6 election would be substantially undermined if not compromised altogether and, thus the
7 County will suffer irreparable harm.

8 116. The Elections Procedures Manual, drafted by the secretary of state in
9 consultation with the elections officers from all fifteen Arizona counties, and approved by
10 the governor and attorney general, has the force of law. Whoever violates any of its rules
11 is guilty of a class 2 misdemeanor. A.R.S. § 16-452.

12 117. The operative version of the Elections Procedures Manual is the one drafted
13 and approved in 2019. It is available on the secretary of state’s website, at
14 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
15 [PROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

16 118. The Elections Procedures Manual makes the Maricopa County Board of
17 Supervisors responsible for ensuring the security of the ballots voted and the security of
18 the electronic voting system in Maricopa County. EPM (2019) at 95-98, 157.

19 119. The Elections Procedures Manual specifies that official ballots “may be
20 accessed by elections staff only to the extent necessary to perform their authorized task”
21 and, official ballots “must be witnessed by two or more election staff members (of
22 different political parties if possible) when being moved or transferred, which includes an
23 inventory of the ballots before and after the move or transfer.” *Id.* at 157.

24 120. Likewise, the EPM provides, specific “security protocols” that “apply to
25 any memory stick or removable electronic storage device used with the electronic voting
26

1 system” and provides a list of eight processes and procedures that must be followed. *Id.*
2 at 97. Included within those procedures are the following:

- 3 • “No physical access should be given to any person unless the election
4 officer in charge of the electronic storage media specifically grants that
5 person access.”
- 6 • “No electronic storage media shall be left unattended or in an unsecured
7 location once it has been coded for an election.”

8 121. The Subpoenas command that the Board of Supervisors produce
9 “Removable Media (such as them drives, USB, memory cards”—i.e., memory sticks—
10 and other removable memory devices, in contravention of Arizona law.

11 122. Further, there is no assurance that the processes required by the Elections
12 Procedures Manual will be followed. Rather, the Subpoenas indicate only that, “the
13 electronically stored information required to be produced herein shall be electronically
14 uploaded to a computer drive supplied by the Senate Judiciary Committee or its
15 (unidentified) agents.”

16 123. Neither the members of the Committee, nor President Fann, nor their
17 unidentified “agents,” are “elections staff” of the Maricopa County Elections Department.
18 Accordingly, it is unlawful for them to access ballots. EPM (2019) at 157.

19 124. Because the members of the Committee, nor Senate President Fann, nor
20 their unidentified “agents” are “elections staff” of the Maricopa County Elections
21 Department, they cannot lawfully move or transfer ballots. *Id.*

22 125. Further, Arizona law requires Plaintiff Maricopa County, after each
23 election, to “deposit the package or envelope containing the ballots in a secure facility
24 managed by the treasurer, who shall keep it **unopened and unaltered** for twenty-four
25 months for elections for a federal office,” as these ballots are. A.R.S. § 16-624 (emphasis
26

1 added). Complying with the Subpoenas will cause Plaintiff Maricopa County to violate
2 this statutory requirement.

3 126. The only lawfully authorized reason that the package containing the ballots
4 should be opened after an election is “[i]f a recount is ordered or a contest begun within
5 six months[.] *Id.* That has not happened here.

6 127. The Legislature has many important duties and powers. But, neither it, nor
7 Senate President Fann, nor the Committee, may exceed their limited constitutional
8 authority nor unilaterally expand that authority beyond its constitutional limits.

9 128. Complying with the Subpoenas would violate the law related to ballot
10 security. Accordingly, the Subpoenas are unlawful.

11 **COUNT V**

12 **The Subpoenas Suffer Technical Deficiencies** 13 **Evidencing an Abuse of Legislative Power**

14 129. Plaintiff Maricopa County incorporates by reference all of the foregoing
15 allegations as if set forth herein.

16 130. The Legislature’s subpoena power is limited to commanding witnesses to
17 attend legislative proceedings. A.R.S. § 41-1151.

18 131. The Subpoenas did not command anyone to attend any proceeding.

19 132. Despite that, the Subpoenas threaten contempt for failing to comply with
20 their demands—demands that have no statutory basis. Specifically, each of the
21 Subpoenas state “YOU ARE HEREBY NOTIFIED THAT ANY FAILURE TO OBEY
22 THIS SUBPOENA WITHOUT ADEQUATE EXCUSE MAY BE DEEMED
23 CONTEMPT OF THE LEGISLATURE.”

24 133. A.R.S § 41-1154 provides that, “a person who, being subpoenaed to attend
25 as a witness” knowingly fails ... to produce, upon reasonable notice, any material and
26

1 relevant books, papers or documents in his possession or under his control, is guilty of a
2 class 2 misdemeanor.”

3 134. Here, no one has been subpoenaed as a witness and, even if that had
4 occurred, certainly the three days provided to respond to the onerous requests is not
5 “reasonable.”

6 135. Failing to respond to these subpoenas could not be a basis for finding
7 contempt, which is punishable by *imprisonment*. A.R.S. § 41-1155.

8 136. Arizona law establishes the circumstances that can lead to a finding of
9 contempt of the Legislature. They are “[r]efusing to attend, or to be examined as a
10 witness, either before the House or a committee, or before any person authorized by the
11 house or by a committee to take testimony in legislative proceedings.” A.R.S. § 41-
12 1155(A)(3).

13 137. A.R.S. § 41-1155(B) further provides, “[n]o term of imprisonment shall
14 extend beyond final adjournment of the session.” *See Buell v. Superior Court of*
15 *Maricopa County*, 96 Ariz. 62, 64 (1964) (noting that “[u]nder A.R.S. § 41-1155 the
16 power of the legislature to punish for contempt ends with its adjournment”).

17 138. Here, no hearing is occurring, no individual has been subpoenaed to attend
18 or testify, and neither the Arizona House of Representative nor the Arizona Senate are in
19 session.

20 139. Additionally, the Board of Supervisors is unable to comply with many of
21 the requests in the Subpoena because the documents or equipment are not in the custody
22 and control of the Board of Supervisors.

23 140. For example, the Forensic Audit Subpoena requests the Voter Rolls and
24 Daily and Cumulative Voter Records for those who voted. (**Exhibit 1** at ¶¶ 11 & 12).
25 These are maintained by the Office of the Maricopa County Recorder, not the Board of
26 Supervisors.

1 141. Additionally, the Board of Supervisors is unable to comply with many of
2 the requests in the subpoena because the timeframe provided is grossly insufficient.

3 142. For example, the Board needs sufficient time to consider whether the
4 County may be contractually prohibited from complying with many of the requests,
5 including but not limited to Requests 1, 2 and 3 of the Full Forensic Audit Subpoena,
6 because doing so may be considered a “prohibited act” as defined in the Dominion
7 Contract. (See **Exhibit 5**).

8 143. Several of the requests are simply physically impossible to comply with in
9 just three days.

10 144. For example, Requests 1(a)(b) &(c) of the Scanned Ballot Audit Subpoena,
11 for separate and distinct images of all mail-in and absentee ballots in a resolution of at
12 least 300 DPI in TIFF, PDF and JPG image, would take weeks to comply with, if it were
13 possible at all. This request alone would require re-scanning all the original 1.9 million
14 mail-in ballots (absentee ballots do not exist in Arizona) because they were scanned at a
15 resolution of 200 DPI. And the Board of Supervisors does not have any equipment and
16 certainly none that is EAC certified that is capable of scanning at this resolution.

17 145. In addition, if the Plaintiff Maricopa County complied with the Subpoenas
18 by producing its election-related machines and equipment, it would risk causing the
19 County and its elected officers to violate both federal and state law.

20 146. Pursuant to the federal Uniformed and Overseas Citizens Absentee Voting
21 Act (“UOCAVA”), codified at 52 U.S.C. § 20301 *et seq.*, the County Recorder must
22 transmit ballots to overseas citizens. To meet the statutory deadlines, the Recorder must
23 provide the ballot design to the printer by January 13, 2021, if ballots are to be sent in
24 time for the March, 2021, election. See also A.R.S. § 16-543.

25 147. Before the ballots can be transmitted, they must first be prepared and
26 printed.

1 148. In order to prepare and print the ballots, the County needs access to its
2 election-related equipment and machines—the subjects of the Subpoenas.

3 149. Were the machines to be de-certified because of actions taken by the
4 Legislature or its agents, they would be unavailable to Maricopa County.

5 150. Were the machines to be unavailable to Maricopa County, because the
6 Legislature or its agents were conducting tests or audits upon them, the County would not
7 be able to comply with its legal requirement to prepare and send ballots to overseas
8 voters, which would lead to those voters' disenfranchisement.

9 151. Finally, many of the requested items do not exist at all.

10 152. For example, Request 5 of the Forensic Audit Subpoena request “Ranked
11 Profiles and entire change history Audit Trail logs”, and “Ranked Contests and entire
12 change history Audit Trail Logs” simply do not exist, because Arizona (including
13 Maricopa County) does not used ranked voting.

14 153. The same is true for the “Vote-by-Mail Ballot Report” and “Provisional
15 Ballot Report; no such documents exist. (**Exhibit 2** at 2(d) & (e)).

16 154. These issues further evidence the impropriety of the Judicial Committee's
17 actions in issuing these unprecedented subpoenas and, worse yet, threatening contempt
18 for noncompliance. Nothing in these subpoenas is consistent with the Arizona State
19 Senate Judiciary Committee's limited power to call a witness to testify at a hearing and
20 request documents, with reasonable notice, in conjunction with that testimony.

21 155. These deficiencies, the unreasonable notice, and the unsupported threat of
22 contempt—and the implicit threat of imprisonment that comes with it—evidences a
23 draconian abuse of power in an attempt to obtain the personal information of voters,
24 voting records, ballots, and tabulation machines. These are all things that the Senate has
25 no right to possess, and some of which would be illegal for them to possess. This is
26

1 further evidence of the Committee's clearly improper purpose and abuse of power in
2 issuing these subpoenas.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Maricopa asks this Court:

- 5 1. To declare that the Subpoenas are unlawful;
6 2. To order that the Subpoenas are quashed; and,
7 3. For any other relief that the Court deems appropriate

8 DATED this 18th day of December, 2020.

9 HINSHAW & CULBERTSON LLP

10 /s/ Stephen W. Tully
11 Stephen W. Tully
12 *Attorneys for Plaintiffs Maricopa County*

13 ALLISTER ADEL
14 MARICOPA COUNTY ATTORNEY

15 BY: /s/Thomas P. Liddy
16 Thomas P. Liddy
17 Emily Craiger
18 Joseph I. Vigil
19 Joseph J. Branco
20 Joseph E. LaRue
21 *Attorneys for Plaintiffs Maricopa County*