

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 liddy@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
27 Facsimile (602) 506-4317
28 ca-civilmailbox@mcao.maricopa.gov

Attorneys for Maricopa County Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

CV2021-002092

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

Plaintiffs,

No. _____

COMPLAINT

1 v.

2 KAREN FANN, in her official capacity
3 as President of the Arizona Senate;
4 WARREN PETERSON, in his official
5 capacity as Chairman of the Arizona
6 Senate Judiciary Committee; WENDY
7 ROGERS, in her official capacity as Vice
8 Chairman of the Arizona Senate Judiciary
9 Committee; NANCY BARTO, SONNY
BORRELLI, LUPE CONTRERAS,
KIRSTEN ENGEL, VINCE LEACH,
and MARTIN QUEZADA, in their
official capacities as the Members of the
Arizona Senate Judiciary Committee,

Defendants.

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

17 **INTRODUCTION**

18 **1.** This case is **not** about whether the Arizona legislature has the power to issue
19 subpoenas: it does. The Maricopa County Plaintiffs respect the Arizona legislature,
20 including both the Arizona Senate and the Arizona House of Representatives, and
21 recognize their authority to issue subpoenas and to insist that all parties comply with lawful
22 subpoenas.

23 **2.** Rather, this case is about the limited power of the Arizona Senate to issue a
24 subpoena commanding the presence of a witness at a hearing that does not exist,
25 commanding the production of 2.1 million voted, secret ballots in violation of Arizona
26 statute, and commanding the inspection of certified elections equipment by a team of
27 uncertified laymen who have demonstrated a stunning lack of knowledge about election
28 processes and election security.

1 3. In short, this case is about sham legislative subpoenas.

2 4. On January 12, 2021, the President of the Arizona Senate and the Chairman
3 of that chamber’s Judiciary Committee issued subpoenas commanding the Maricopa
4 County Board of Supervisors, Maricopa County Recorder, and Maricopa County
5 Treasurer to appear for testimony before the Judiciary Committee on January 13 at 9:00
6 a.m.—fewer than twenty-four hours later—and to bring with them, among other items,
7 roughly 2.1 million voted, secret paper ballots and certified elections equipment used in
8 the 2020 general election in Maricopa County. *See Exhibit A.*

9 5. Those subpoenas did not follow a vote of the full Arizona Senate to establish
10 an investigation related to the 2020 general election in Arizona. *See, e.g., Buell v. Superior*
11 *Court*, 96 Ariz. 62, 64 (1964). Instead, the subpoenas followed a prior legal dispute about
12 similar legislative subpoenas requesting these items and months of conspiracy theories
13 debunked by the press and rejected by the courts following the 2020 general election in
14 Maricopa County.¹

15 6. In a show of good faith, the Chairman of the Maricopa County Board of
16 Supervisors, the Maricopa County Recorder, and the Maricopa County Treasurer appeared
17 with counsel at the Arizona Capitol to testify before the Judiciary Committee and discuss
18 the subject of these subpoenas, despite our stated objections to the subpoenas. *See Exhibit*
19 **B.**

20 7. But there was a problem: there was no hearing at the Arizona Senate on
21 January 13; one was never scheduled, and one was never held. Despite this obvious set-
22 up, in the days that followed—and, again, as a sign of good faith—the Maricopa County
23

24 ¹ *See, e.g.,* Madeleine Ngo, *Fact check: Arizona Senate, Maricopa County*
25 *negotiating deal on election data*, USA Today, (Jan. 21, 2021, 7:10 p.m.),
[https://www.usatoday.com/story/news/factcheck/2021/01/21/maricopa-county-](https://www.usatoday.com/story/news/factcheck/2021/01/21/maricopa-county-agreement-arizona-senate-joe-biden-inauguration/6661033002/)
26 [agreement-arizona-senate-joe-biden-inauguration/6661033002/](https://www.usatoday.com/story/news/factcheck/2021/01/21/maricopa-county-agreement-arizona-senate-joe-biden-inauguration/6661033002/) (“Trump and his
27 supporters have repeatedly alleged that Biden unfairly won the 2020 election, but these
28 claims are baseless,” and collecting some debunked conspiracy theories); *see also* Jeremy
Duda, *Fann picks Trump-allied firm with history of false election statements to audit*
Maricopa election, AZ Mirror (Feb. 3, 2021, 8:11 a.m.),
[https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-](https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-false-election-statements-to-audit-maricopa-election/)
[false-election-statements-to-audit-maricopa-election/](https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-false-election-statements-to-audit-maricopa-election/).

1 Board of Supervisors and the Maricopa County Recorder produced over 11 gigabytes of
2 data (estimated over half a million pages) requested by the Senators in their subpoenas,
3 including the Voter Registration Database (subject to the redactions of certain personal
4 information required by law) and numerous computer log files and ballot tabulation reports
5 associated with the November 3, 2020, general election. The Board also voted to perform
6 two additional audits of its elections equipment to once again confirm that the baseless
7 conspiracy theories about the 2020 general election in Maricopa County were just that—
8 baseless. These audits were in addition to the statutorily mandated hand count completed
9 on November 9, 2020 that the machines performed with 100% accuracy.

10 **8.** Rather than working with the Board to resolve this dispute, the President of
11 the Arizona Senate and the Chairman of the Judiciary Committee introduced a resolution
12 to hold the individual members of the Maricopa County Board of Supervisors in contempt.
13 *See Exhibit C.*

14 **9.** As explained in more detail below, the only one who has acted
15 contemptuously is whomever drafted the subpoenas in the name of the Arizona Senate,
16 including the demand to appear and testify at a hearing – who knew at the time of the
17 writing that there would be no hearing – that is the person who has shown contempt for
18 the Arizona Senate. Presently, the Senate intends to hold individual Maricopa County
19 Supervisors in contempt for failing to obey an **unlawful** subpoena. They ignore the fact
20 that the Chairman of the Board of Supervisors attempted to obey the subpoena despite its
21 unlawfulness but was rebuffed by the Senate; and, that Maricopa County’s elected officials
22 have produced a multitude of documents in response to the subpoenas, despite them being
23 unlawful. In sum, these Senators ignore the good-faith efforts of the Maricopa County
24 Plaintiffs to work with them. They instead choose to threaten the Board of Supervisors
25 with imprisonment and misdemeanor-prosecution, which are the possible outcomes of a
26 finding of contempt.

27 **10.** These Senators have left Plaintiff Maricopa County with no choice but to
28 ask this Court for an order quashing the Senators’ unlawful subpoena, issued to the Board

1 required by Arizona law, A.R.S. § 16-449, and in complete accordance with the
2 procedures, and testing requirements and protocols, established by the Arizona Elections
3 Procedures Manual (2019).²

4 **35.** The logic and accuracy test prescribed by law and conducted by the secretary
5 of state is an audit of the vote tabulation machines' ability to properly read and accurately
6 tabulate ballots. It consists of using the tabulation machines to tabulate pre-marked ballots
7 to ensure that the tabulation totals are correct.

8 **36.** The vote tabulation machines received a perfect score (100%) on the pre-
9 election logic and accuracy test conducted by the Arizona secretary of state on October 6,
10 2020. Stated differently, **the tabulation of the votes by the electronic tabulators was**
11 **one hundred percent (100%) accurate.** See **Exhibit D** (a true and correct copy of the
12 October 6, 2020, Logic and Accuracy Certificate of Accuracy).

13 **37.** After the Election, on November 18, 2020, the Arizona secretary of state
14 conducted a post-election logic and accuracy test of the vote tabulation machines, as
15 required by the Arizona Elections Procedures Manual. (EPM (2019) at 94-95 and 235).

16 **38.** The post-election logic and accuracy test was conducted in complete
17 accordance with the procedures, and testing requirements and protocols, established by the
18 Arizona Elections Procedures Manual.

19 **39.** The vote tabulation machines received a perfect score (100%) on the post-
20 election logic and accuracy test conducted by the Arizona secretary of state on November
21 18, 2020. Stated differently, **the tabulation of the votes by the electronic tabulators was**
22 **one hundred percent (100%) accurate.** See **Exhibit E** (a true and correct copy of the
23 November 18, 2020, Logic and Accuracy Certificate of Accuracy).

24 **40.** On November 4, 2020, representatives from the Republican, Democratic,

25 ² The operative version of the Arizona Elections Procedures Manual ("EPM") is the 2019
26 version. It is available on the secretary of state's website, at
27 https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP_PROVED.pdf. The Elections Procedures Manual is prepared by the secretary of state in
28 consultation with the elections officials in all fifteen counties. Once approved by the governor and attorney general, the Elections Procedures Manual has the force of law. A.R.S. § 16-452.

1 and Libertarian political parties conducted a post-election, hand count audit of all the
2 ballots cast at two percent (2%) of the vote centers used in Maricopa County, as well as
3 over 5,000 early ballots, as required by Arizona law. A.R.S. § 16-602; EPM (2019) at
4 213-33.

5 **41.** The vote centers included in the two percent sample were randomly selected
6 by the political party representatives.

7 **42.** The presidential race was included in the hand count audit.

8 **43.** There were **no** discrepancies found between the hand count audit and the
9 results tabulated by the vote tabulation machines. Stated differently, **the tabulation of**
10 **ballots by the tabulators was found to be one hundred percent (100%) accurate.** See
11 **Exhibit F** (a true and correct copy of the Hand Count Audit Report for the November 3,
12 2020, General Election).

13 **44.** Despite the various audits that demonstrated that Maricopa County's
14 election was accurately tabulated, numerous challenges and election contests were filed in
15 superior court, contesting the results, as provided for by A.R.S. § 16-671 *et seq.* Plaintiffs
16 in these cases included President Donald Trump, the Arizona Republican Party, and the
17 Chairwoman of the Arizona Republican Party, Dr. Kelli Ward.

18 **45.** Each of the cases alleged some form of misconduct by elections officers,
19 erroneous vote counts, unlawful voting, or deprivation of the right to vote. None of the
20 cases were successful, and no court found that any misconduct, erroneous vote counts, or
21 unlawful voting had occurred such that the results of the Election should be overturned.
22 Each was ultimately dismissed. The cases filed in Maricopa County Superior Court
23 included:

- 24 • *Aguilera v. Fontes*, No. CV2020-014083 (voluntarily dismissed, November
25 7, 2020).
- 26 • *Donald J. Trump v. Hobbs*, No. CV2020-014248 (Min. Entry Order,
27 November 13, 2020 (after conducting an evidentiary hearing, dismissing the
28 complaint with prejudice).

- 1 • *Arizona Republican Party v. Fontes*, No. CV2020-014553 (Min. Entry
2 Order, November 18, 2020 (dismissing the complaint with prejudice and
3 ordering that the Secretary of State, who had requested her fees, could file a
4 motion pursuant to AR.S. § 12-349 (the frivolous litigation statute)).
- 5 • *Aguilera v. Fontes II*, No. CV2020-014562 (Min. Entry, November 29, 2020
6 (after conducting an evidentiary hearing, “dismiss[ing] with prejudice for
7 failing to state a claim upon which relief can be granted; or alternatively,
8 denying the relief sought by Plaintiffs given their failure to produce evidence
9 demonstrating entitlement to same).
- 10 • *Kelli Ward v. Jackson*, No. CV2020-015285 (Min. Entry Ruling, December
11 4, 2020 (after conducting an evidentiary hearing, denying the requested
12 relief and “confirming the election,” because the court found that the
13 evidence did not show fraud, misconduct, illegal votes, or an erroneous vote
14 count), *affirmed*, *Ward v. Jackson*, No. CV-20-0343-AP/EL (Ariz. S. Ct.
15 December 9, 2020) (“conclude[ing], unanimously, that . . . the challenge
16 fails to present any evidence of ‘misconduct,’ ‘illegal votes’ or that the Biden
17 Electors ‘did not in fact receive the highest number of votes for office,’ let
18 alone establish any degree of fraud or a sufficient error rate that would
19 undermine the certainty of the election results”).

20 **46.** Additionally, an election contest was filed in federal district court. *Bowyer,*
21 *et al., v. Ducey, et al.*, No. CV-20-02321-PHX-DJH. Dr. Ward, the Chairwoman of the
22 Arizona Republican Party, was—once again—one of the plaintiffs. Sidney Powell, a
23 former attorney for President Trump, was one of the plaintiffs’ attorneys. This lawsuit
24 alleged fraud resulting from foreign interference in the election via offshore algorithms
25 that somehow infiltrated Maricopa County’s vote tabulation equipment, leading to
26 “injections” of votes for President-elect Biden, and ballot fraud. The plaintiffs sought to
27 decertify the election and cause Arizona’s presidential electors to be awarded to President
28 Trump. After reviewing the “evidence” submitted by the plaintiffs, Judge Humetewa

1 dismissed the case. She ruled that the “Plaintiffs failed to provide the Court with factual
2 support for their extraordinary claims[.]” Additionally, the court noted that “[a]llegations
3 that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest
4 pleadings and procedure in federal court[.]” and, “cannot be the basis for upending
5 Arizona’s 2020 General Election.” Accordingly—because plaintiffs provided no actual,
6 evidentiary support for their absurdly-fantastic claims, “[t]he Court is left with no
7 alternative but to dismiss this matter in its entirety.” (Doc. 84, Order, December 9, 2020,
8 at 28-29).

9 **47.** Additionally, another case challenging the result of the Election was filed in
10 Pinal County Superior Court. *Burk v. Ducey*, No. S1100CV202001869. The plaintiff in
11 this matter raised the same claims as alleged by the plaintiffs in the federal court case
12 discussed in the preceding paragraph. It, too, was dismissed. (Ruling on Motion to
13 Dismiss, December 15, 2020).

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

21 **49.** On December 14, 2020, the Arizona Senate Judiciary Committee purported
22 to hold a “special meeting” in order to question witnesses about the Election.

23 **50.** At the request of the Judiciary Committee, the Maricopa County Plaintiffs
24 voluntarily made their officers and personnel available at this hearing. The then-Chairman
25 of the Maricopa County Board of Supervisors, Clint Hickman, personally appeared and
26 testified. So did Scott Jarrett, Maricopa County’s Director of Election Day and Emergency
27 Voting. Additionally, Thomas Liddy, the Civil Division Chief for the Maricopa County
28 Attorney’s Office, appeared to answer questions about the various legal challenges to the

1 election that had been litigated.

2 **51.** All told, the Maricopa County Plaintiffs’ officers and personnel voluntarily
3 provided some six hours of testimony, answering every question put to them, before being
4 excused from the hearing.

5 **52.** The same day as the special meeting by the Senate Judiciary Committee Plus
6 One, members of the Arizona Legislature signed what purported to be a “Joint
7 Resolution.” It requested “that the alternate 11 electoral votes be accepted for Donald J.
8 Trump or to have all electoral votes nullified completely until a full forensic audit can be
9 conducted.” It further “resolved that the United States Congress is not to consider a slate
10 of electors from the State of Arizona until the Legislature deems the election to be final
11 and all irregularities resolved.”

12 **53.** Notwithstanding that the Maricopa County Plaintiffs voluntarily provided
13 the testimony referenced above and answered every question they were asked, in an
14 attempt to be helpful to the members of the Senate, President Fann and the Judiciary
15 Committee served two subpoenas on the Maricopa County Board of Supervisors the next
16 day, on December 15, 2020, at 3:08 p.m. (the “December 15, 2020, Subpoenas”).

17 **54.** Each of the December 15, 2020, Subpoenas commanded the Maricopa
18 County Board of Supervisors “to produce, and permit inspection, testing or sampling of
19 the items identified in the attached Exhibit 1”—an extremely large number of documents
20 consisting of multiple hundreds of thousands of pages, as well as all of Maricopa County’s
21 election tabulators and other election-related equipment—“on or before 5:00 p.m. on
22 December 18, 2020 to the Chairman of the Senate Judiciary Committee for inspection,
23 testing or sampling thereafter.”

24 **55.** Thus, the deadline for production provided by the December 15, 2020,
25 Subpoenas was barely three days after the subpoenas were served.

26 **56.** The Maricopa County Plaintiffs could not lawfully comply with producing
27 some of the items requested by the December 15, 2020, Subpoenas, such as voted ballots
28 from the November 3, 2020, general election.

1 **57.** Additionally, the Maricopa County Plaintiffs could not produce the full
2 amount of documents requested within the three-day time period provided by the
3 December 15, 2020, Subpoenas.

4 **58.** Accordingly, the Maricopa County Plaintiffs filed a Complaint in the
5 Superior Court, seeking to quash the December 15, 2020, Subpoenas. *Maricopa County v.*
6 *Fann*, No. CV2020-016840 (Cmplt. filed December 18, 2020).

7 **59.** The Maricopa County Plaintiffs’ Complaint alleged that the December 15,
8 2020, Subpoenas were unlawful and so due to be quashed for several reasons. First,
9 because the goal of the subpoenas was to gather data to audit the November 3, 2020,
10 general election, they were *ultra vires* and lacked a proper legislative purpose. Second, to
11 the extent that the subpoenas sought to adjudicate an election contest or re-canvass the
12 election, they violated the separation of powers doctrine. Third, the subpoenas sought
13 ballots and digital images of ballots, which violated both the Arizona Constitution and
14 statutory law. And fourth, the December 15, 2020, Subpoenas suffered from technical
15 deficiencies, such as the fact that they did not command any witness to appear at any
16 hearing, which rendered them void.

17 **60.** President Fann and then-Chairman Farnsworth responded by filing their own
18 special action against Maricopa County, No. CV2020-016904 (filed December 21, 2020),
19 and moved for a writ of mandamus that would have compelled the Maricopa County
20 Plaintiffs to immediately produce the subpoenaed data. In their application for an order to
21 show cause, President Fann and then-Chairman Farnsworth stated that they needed relief
22 “sufficiently in advance of the congressional review of the Electoral College returns on
23 January 6, 2021”—thus demonstrating that the purpose of the December 15, 2020,
24 Subpoenas, was to overturn the vote of the People of Arizona in the November 3, 2020,
25 election for president of the United States.

26 **61.** The Maricopa County Plaintiffs moved to dismiss President Fann’s and
27 then-Chairman Farnsworth’s Complaint, filed December 23, 2020, pointing out to the
28 Court that Fann and Farnsworth were not lawfully entitled to special action mandamus

1 relief to enforce legislative subpoenas. The Court agreed, ordering Fann’s and
2 Farnsworth’s claim for special action dismissed. (Min. Entry, December 23, 2020.)

3 **62.** After their loss in their special action lawsuit, Fann and Farnsworth, along
4 with the rest of the Senate Judiciary Committee, filed an Answer and Counterclaim in the
5 Maricopa County Plaintiffs’ action challenging the December 15, 2020, Subpoenas. (No.
6 CV2020-016840, Answer and Verified Counterclaim, filed December 29, 2020.) They
7 also filed a motion for preliminary injunction, again seeking an order compelling the
8 Maricopa County Plaintiffs to immediately produce the subpoenaed data. The Maricopa
9 County Plaintiffs opposed their motion, arguing that Fann and Farnsworth were not
10 entitled to injunctive relief.

11 **63.** While this motion practice was occurring, something else happened: on
12 January 11, 2021, the 54th Legislature ended, and the 55th Legislature began.

13 **64.** When the 54th Legislature ended, the December 15, 2020, Subpoenas,
14 which had been issued by the Senate President and Judiciary Committee Chairman of that
15 Legislature, became void and no longer enforceable, even had they been lawful.

16 **65.** Perhaps recognizing that fact, Senate President Fann and the new chairman
17 of the 55th Legislature’s Senate Judiciary Committee, Chairman Peterson, issued new
18 subpoenas on January 12, 2021 (the “January 12, 2021, Subpoenas”).

19 **66.** The January 12, 2021, Subpoenas were directed to the members of the Board
20 of Supervisors, the Maricopa County Recorder, and the Maricopa County Treasurer. The
21 subpoenas sought identical items from each of the elected officials.

22 **67.** The January 12, 2021, Subpoenas sought an immense amount of documents,
23 data, and equipment. The January 12, 2021, Subpoena directed to the Board of
24 Supervisors, which is at issue in this litigation, is attached as **Exhibit A**, and is
25 incorporated by reference as if fully stated herein. As evidenced by Exhibit A, the items
26 sought by the January 12, 2021 Subpoenas included:

- 27 a. all of the ballot tabulation and processing equipment (i.e., machines)
28 used in the November 3, 2020, general election;

- 1 b. numerous types of election log files, provided “in XML, EML, JSON,
2 DVD and XSLT formats;”
3 c. the Maricopa County Voter Registration Database, containing the voter
4 registration data for all of Maricopa County’s registered voters;
5 d. all 2.1 million paper ballots cast in Maricopa County in the November 3,
6 2020, general election, including early ballots, Election Day ballots, and
7 provisional ballots; and
8 e. all electronic images of the ballots cast in Maricopa County in the
9 November 3, 2020, general election.

10 **68.** The Senators served their January 12, 2021, Subpoenas on the Board of
11 Supervisors at **3:49 p.m. on January 12.** The Recorder and the Treasurer were served at
12 approximately the same time. The subpoenas commanded these elected officials to appear
13 at a Senate hearing to provide testimony the next day, **January 13, 2021, at 9:00 a.m.—**
14 **only 17 hours from when the subpoenas were served,** and also commanded the elected
15 **officials to bring with them the multitudinous volume of items listed in the subpoenas.**

16 **69.** Despite only being given 17 hours’ notice, the Chairman of the Board of
17 Supervisors, Jack Sellers, along with Maricopa County Recorder Stephen Richer and
18 Maricopa County Treasurer John Allen appeared at the Senate Building at 9:00 a.m. to
19 provide the requested testimony, and also to inform the Senate that, while they could not
20 possibly transport all the subpoenaed items to the Senate with only 17 hours’ notice, they
21 wanted to discuss how they might begin production of the subpoenaed material that they
22 could lawfully produce.

23 **70.** However, despite issuing the January 12, 2021, Subpoenas commanding the
24 Maricopa County elected officials to appear to provide testimony, the Senate had not
25 scheduled a hearing.

26 **71.** And so, despite the Maricopa County elected officials interrupting their
27 plans with extremely little notice in order to appear before the Senate to provide testimony
28 that they were commanded by subpoena to provide, the Senate held no hearing, did not

1 allow them to appear, did not take their testimony, asked them no questions, but instead
2 they sent a staffer who sheepishly informed the Chairman, the Treasurer and the Recorder
3 that there were no Senators to meet with them that day and asked them to leave.

4 **72.** Upon information and belief, the Senate is considering voting on Monday,
5 February 8, 2021, to hold the individual members of the Maricopa County Board of
6 Supervisors in contempt of the January 12, 2021, Subpoena—despite the fact that the
7 Chairman of the Board of Supervisors appeared for the hearing that the subpoena
8 commanded him to appear for, and despite the fact that the Senate did not schedule the
9 hearing.

10 **73.** Later in the day on January 13, 2021, the Maricopa County Superior Court,
11 Judge Thomason, considered the motion for preliminary injunction filed by Fann and
12 Farnsworth related to the December 15, 2020, Subpoenas—the ones at issue in *Maricopa*
13 *County v. Fann* which had been issued while the 54th Legislature had been in session,
14 before the start of the current, 55th Legislature.

15 **74.** Fann and the current Judiciary Committee Chairman, Petersen, argued that
16 despite the end of the 54th Legislature, the December 15, 2020, Subpoenas were
17 enforceable and so the Court should grant preliminary injunctive relief. The Maricopa
18 County Plaintiffs argued that the authority of the Senate to enforce subpoenas issued under
19 the 54th Legislature dissolved at the conclusion of that Legislature.

20 **75.** Once again, the Court agreed with the Maricopa County Plaintiffs, ruling
21 that the December 15, 2020, Subpoenas were moot. (Min. Entry, January 13, 2021.) The
22 Court also ruled that “the current dispute is moot” because the December 15, 2020,
23 Subpoenas, which were the only subpoenas at issue, were moot. (*Id.*) To be clear, the
24 Senators never sought to amend their Counterclaim to add a claim concerning the January
25 12, 2021, Subpoenas from the Senate of the 55th Legislature. The only subpoenas before
26 the Court were the December 15, 2020, Subpoenas from the 54th Legislature. Because
27 those subpoenas were moot, so was the Senators’ Counterclaim—and, so was the
28 Maricopa County Plaintiffs’ Complaint seeking to quash the December 15, 2020,

1 Subpoenas. The entire action before the Court was moot—which is what the Court stated
2 in its Minute Entry. (*Id.*).

3 **76.** The Court took the added step, however, of “encourage[ing] the parties to
4 confer to see if the issues [arising under the newly-issued, January 12, 2021, Subpoenas]
5 may be resolved.” (*Id.*)

6 **77.** None of the items subpoenaed by the January 12, 2021, Subpoenas was in
7 the custody or control of the Maricopa County Treasurer.

8 **78.** The Maricopa County Plaintiffs, along with the Maricopa County Recorder,
9 quickly began compiling the data requested by the January 12, 2021, Subpoenas, that they
10 could lawfully produce.

11 **79.** And attorneys for the Maricopa County Plaintiffs had numerous good-faith
12 discussions with attorneys for Fann and Peterson, trying to reach resolution to the January
13 12, 2021, Subpoenas.

14 **80.** On January 15, 2021, the Maricopa County Plaintiffs and the Maricopa
15 County Recorder produced 9.5 gigabytes of responsive data to the January 12, 2021,
16 Subpoenas, subject to lawfully-required redactions, as follows:

- 17 • Election Log Files for the Tabulators
- 18 • Election Log Files for the Result Files
- 19 • Provisional Votes Files (included in the Election Log Files for the Tabulators)
- 20 • Rejected Ballots Report by Reason Code
- 21 • Windows event log and Access logs
- 22 • The Administrator & Audit logs for the EMS Election Event Designer (EED)
23 and EMS Results Tally & Reporting (RTR) Client Applications.
- 24 • Early Ballot Report
- 25 • Provisional Ballot Report
- 26 • ImageCast Central Logs
- 27 • Ballot Scanning/Tabulation Machine Logs
- 28 • The Database of voter rolls
- Forensic image of computers/devices used to work with voter rolls
- Copy of media device used to transfer voter rolls
- Name and voter registration address
- Mailing address for voters
- Date of birth for voters
- Voter ID numbers for voters

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- The manner that voters voted in the 2020 general election (early by mail, early in person, in person on Election Day)
- The location at which voters voted
- The date that voters voted
- The political party affiliation of voters
- The early ballot request date for voters
- The early ballot sent date
- The Voted early ballot return or receipt date
- The Ballot canceled date
- The image of ballot envelope of pollbook entry
- Final General Election Manual – Poll worker Training (2020)
- Final November 2020 General Election Day and Emergency Voting Plan
- Hands on Activity Outline.
- Tabulator Aid (09/14/2020)
- Certified letter from Secretary of State re pre-election L&A
- Certified letter from Secretary of State re post-election L&A
- Certification letter from Secretary of State, accepting recommendation from the Certification Committee that Dominion tabulators with electronic adjudication capabilities are certified for use in Arizona elections.
- Arizona Secretary of State List of Voting Equipment by County
- Arizona Secretary of State Certified Vote Tabulating Equipment List
- Arizona Secretary of State Certification Advisory Committee Minutes
- Combined correspondence between Attorney General’s Office and Maricopa County pertaining to Sharpie Markers (3 letters) (Nov. 2020)
- Image Cast Evolution Internal Memorandum regarding approved pens dated 06/04/2015
- Maricopa County Adjudication Quick Reference Guide
- Electronic Adjudication Board Procedures
- Maricopa County General Election – November 3, 2020 Hand Count/Audit Report.
- Signature Verification Training Materials.

81. On January 21, 2021, the Maricopa County Plaintiffs provided an additional 1.82 gigabytes of data comprised of:

- The Cast Vote Record, containing raw data, in JSON format.

82. All told, the Maricopa County Plaintiffs and the Recorder provided 11.32 gigabytes of data in response to the January 12, 2021, Subpoenas.

83. The Maricopa County Plaintiffs, along with the Recorder and the Treasurer, also alerted the Senators that none of them possessed some of the data requested by the January 12, 2021, Subpoenas including:

- RTMLogs
- Result Pair Resolution
- Data and items related to “Election Systems & Software” (ESS) voting systems, which Maricopa County does not use.

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2
3 **84.** The Maricopa County Plaintiffs also asked the Senators for clarification
4 regarding some of the data requested by the January 12, 2021, Subpoena to the Board of
5 Supervisors. The Supervisors, and their employees in the Maricopa County Elections
6 Department, did not know what this requested data was, and so they asked the Senators to
7 provide clarification, as follows:

- The meaning of “Signature Checking & Sorting Machine”
- The meaning of “FTP Transfer Points Log”
- The meaning of “Windows software log”
- The meaning of “Network logs”
- The domain name “Admin.enr.dominionvoting.com” and
12 “*.dominionvoting.com domains.” With regard to this one, the
13 correspondence noted that the Board of Supervisors, their Election
14 Department Staff, and their contacts at Dominion Voting Systems are
not familiar with those URLs.

15 **85.** As of the date of the filing of this Complaint, the Senators have not
16 responded to the Maricopa County Plaintiffs’ requests for clarification.

17 **86.** The Maricopa County Plaintiffs provided all of the above-mentioned data to
18 the House of Representatives as well as to the Senate.

19 **87.** While the Maricopa County Plaintiffs were supplying this data, their
20 attorneys were continuing to talk with the Senators’ attorneys. On January 20, 2021, the
21 Senators or their representatives provided the Arizona Republic a list of terms to which
22 they were willing to agree, which included the following:

- “An audit will be performed including a logic and accuracy test on a
24 random sample of tabulation machines and a review of the source code
25 on a random sample of tabulation machines.”
- “The auditor will be certified by the U.S. Election Assistance
26 Commission and will have access to a ‘random sample of desktops,
27
28

1 servers, and routers’ in a way that wouldn’t disrupt county operations.”

- 2 • “Only authorized parties would have access to data or materials provided
3 by the county.”

4 **Exhibit G**, Jen Fifield, Arizona Republic, “Maricopa County is preparing for a new audit
5 of election results. Here’s how it might go,” January 20, 2021, *available at*
6 [https://www.azcentral.com/story/news/politics/elections/2021/01/20/maricopa-county-](https://www.azcentral.com/story/news/politics/elections/2021/01/20/maricopa-county-supervisors-respond-subpoenas-arizona-senate-demanding-election-material-so-senate-c/4222085001/)
7 [supervisors-respond-subpoenas-arizona-senate-demanding-election-material-so-senate-](https://www.azcentral.com/story/news/politics/elections/2021/01/20/maricopa-county-supervisors-respond-subpoenas-arizona-senate-demanding-election-material-so-senate-c/4222085001/)
8 [c/4222085001/](https://www.azcentral.com/story/news/politics/elections/2021/01/20/maricopa-county-supervisors-respond-subpoenas-arizona-senate-demanding-election-material-so-senate-c/4222085001/) (last visited February 4, 2021).

9 **88.** Importantly, no agreement was ever reached between the Maricopa County
10 Plaintiffs and the Senators concerning what additional data, if any, would be provided by
11 the Maricopa County Plaintiffs to the Senators. So, despite the fact that the Senators or
12 their representatives told Arizona Republic’s reporter, Jen Fifield, that the County would
13 provide images of ballots to the Senators, *id.*, the County never agreed to that, because
14 Arizona law prohibits the Maricopa County Plaintiffs from producing ballots or their
15 images absent a court order.

16 **89.** Still, in a continued good faith effort to cooperate with the Senate, the
17 Maricopa County Plaintiffs retained two U.S. Election Assistance Commission certified
18 laboratories—Pro V&V Laboratory, and SLI Compliance—to conduct an independent
19 audit of the Maricopa County tabulation machines and software.

20 **90.** The selection of only EAC-certified laboratories to conduct this audit was
21 necessary because a forensic audit conducted by a technician that is not certified by the
22 EAC could void the certification and could cause the secretary of state to de-certify the
23 equipment, meaning it could not be used in Arizona. *See* A.R.S. § 16-442(D).

24 **91.** Were the secretary of state to de-certify Maricopa County’s election
25 equipment, the ability of Maricopa County to conduct a free and fair, safe and secure
26 election would be substantially undermined if not compromised altogether and thus the
27 County and its voters would suffer irreparable harm.

28 **92.** Indeed, an election will take place in Goodyear, Arizona, on March 9, 2021.

1 Plaintiff Maricopa County must have tabulators and other election-related equipment
2 available to conduct that election; otherwise, Plaintiff Maricopa County will violate
3 Arizona law and also compromise its ability to conduct a free and fair election. *See, e.g.,*
4 A.R.S. § 16-447 (requiring the Board of Supervisors to provide at each polling location at
5 least one electronic voting device that complies with the federal Help America Vote Act).

6 **93.** The Maricopa County Plaintiffs developed a scope of work for these EAC-
7 certified firms that would comprehensively review the tabulators and software, as the
8 Senators represented they wanted, as follows:

- 9 • Verify that hash values submitted to the Arizona Secretary of State as
10 part of the testing for certification match the components in the
11 location.
- 12 • Verify that no malicious software is running on the components.
- 13 • Verify that the components are not connected to the internet.
- 14 • Conduct a logic and accuracy test of the 2020 General Election ballot
15 and program to confirm the equipment is accurately tabulating ballots.
16 As part of the logic and accuracy test, invite representatives from the
17 Arizona Legislature and Arizona’s political parties to participate in a
18 pre and post hand count of the ballots used during the logic and
19 accuracy test.
- 20 • Perform a physical security assessment of controls the County has
21 implemented to prevent unauthorized access to central count
22 processing including ballots, tabulators, servers, and software.

23 **94.** The Maricopa County Plaintiffs scheduled for this analysis of their
24 tabulation equipment to begin on February 2, 2021.

25 **95.** On January 29, 2021, Senate President Fann inexplicably issued a press
26 release titled, “Senate chooses its own qualified auditing firm to conduct forensic audit of
27 Maricopa County election results.”

28 **96.** President Fann’s press release incorrectly stated that “[w]e have now learned

1 that the EAC does not certify auditors as such[,]” despite the fact that the EAC does in fact
2 certify laboratories that conduct audits of election equipment.

3 **97.** Chairman Peterson was also quoted in the press release, stating that
4 President Fann had **already** chosen the firm that would conduct the Senate’s audit of
5 Maricopa County’s tabulation machines.

6 **98.** Currently, only two laboratories are certified by the EAC as qualified to
7 conduct analysis on election equipment—the two firms that the Maricopa County
8 Plaintiffs retained.

9 **99.** Neither EAC certified laboratory has been retained by the Arizona Senate.

10 **100.** Chairman Peterson stated in the press release that President Fann had already
11 chosen the firm that would conduct the Senate’s audit; therefore, the firm that the Senators
12 intend to use is not EAC certified.

13 **101.** Upon information and belief, the President of the Arizona Senate and the
14 Chairman of the Judiciary Committee have hired, or will hire, Allied Security Operations
15 Group (“ASOG”) to perform an audit of the County’s elections equipment if they
16 successfully gain access to this equipment. *See* Jeremy Duda, *Fann picks Trump-allied*
17 *firm with history of false election statements to audit Maricopa election*, AZ Mirror (Feb.
18 3, 2021, 8:11 a.m.), [https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-](https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-false-election-statements-to-audit-maricopa-election/)
19 [with-history-of-false-election-statements-to-audit-maricopa-election/](https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-false-election-statements-to-audit-maricopa-election/); Ben Giles & Steve
20 Goldstein, *Senate Republicans Support Resolution To Arrest Maricopa County*
21 *Supervisors For Contempt*, KJZZ (Feb. 3, 2021, 5:41 p.m.),
22 [https://kjzz.org/content/1656193/senate-republicans-support-resolution-arrest-maricopa-](https://kjzz.org/content/1656193/senate-republicans-support-resolution-arrest-maricopa-county-supervisors-contempt)
23 [county-supervisors-contempt](https://kjzz.org/content/1656193/senate-republicans-support-resolution-arrest-maricopa-county-supervisors-contempt).

24 **102.** ASOG is not accredited by the U.S. EAC as a laboratory certified to test
25 election equipment and systems.

26 **103.** Upon information and belief, ASOG’s employees are wholly unqualified to
27 audit the County’s elections equipment.

28 **104.** Upon information and belief, ASOG was founded by Russell Ramsland, and

1 also upon information and belief, the Senators intend to have Ramsland involved in
2 conducting their “audit.”

3 **105.** Ramsland has publicly claimed, among other things, that
4 George Soros helped form the “Deep State” in Nazi Germany in the 1930s—along with
5 President George H.W. Bush’s father, the Muslim Brotherhood, and “leftists.” John
6 Savage, *Texas Tea Partiers Are Freaking Out Over ‘Deep State’ Conspiracy Theories*,
7 Vice (Sept. 20, 2018), available at,
8 [https://www.vice.com/en/article/mbwgxx/texas-tea-partiers-are-freaking-out-over-deep-](https://www.vice.com/en/article/mbwgxx/texas-tea-partiers-are-freaking-out-over-deep-state-conspiracy-theories)
9 [state-conspiracy-theories](https://www.vice.com/en/article/mbwgxx/texas-tea-partiers-are-freaking-out-over-deep-state-conspiracy-theories).

10 **106.** Ramsland has been discredited for making false claims of overvoting in
11 Michigan, basing his claims on vote totals from a completely different state—Minnesota.
12 Clara Hendrickson, *Affidavit in Michigan lawsuit seeking to overturn election makes*
13 *wildly inaccurate claims about vote*,
14 PolitiFact (Dec. 4, 2020), available at,
15 [https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramslandjr/affidavit-](https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramslandjr/affidavit-michigan-lawsuit-seeking-overturn-electi/)
16 [michigan-lawsuit-seeking-overturn-electi/](https://www.politifact.com/factchecks/2020/dec/04/russell-james-ramslandjr/affidavit-michigan-lawsuit-seeking-overturn-electi/); *see also*, Louis Jacobson & Noah Y. Kim,
17 *Giuliani cites affidavit with*
18 *crucial errors in press conference*, PolitiFact (Nov. 20, 2020), available at ,
19 [https://www.politifact.com/factchecks/2020/nov/20/rudy-giuliani/giuliani-cites-affidavit-](https://www.politifact.com/factchecks/2020/nov/20/rudy-giuliani/giuliani-cites-affidavit-crucial-errors-press-conf/)
20 [crucial-errors-press-conf/](https://www.politifact.com/factchecks/2020/nov/20/rudy-giuliani/giuliani-cites-affidavit-crucial-errors-press-conf/) .

21 **107.** A Delaware judge found that Ramsland provided “materially false
22 information” in support of his claims of vote manipulation. *Rule to Show Cause, Page v.*
23 *Oath Inc.*, No. S20C-07-030 (Del. Super. Ct. Dec. 18, 2020).

24 **108.** Indeed, extensive public reporting since the November 3, 2020 general
25 election indicates that ASOG has peddled debunked conspiracy theories and error-riddled
26 analyses in its quixotic quest to prove that election fraud occurred. *See, e.g.*, Louis
27 Jacobson & Noah Y. Kim, *Rudy Giuliani cites affidavit about Michigan that erroneously*
28 *includes Minnesota locations*, Detroit Free Press (Nov. 21, 2020, 9:02 p.m.),

1 [https://www.freep.com/story/news/local/michigan/2020/11/21/fact-check-rudy-giuliani-](https://www.freep.com/story/news/local/michigan/2020/11/21/fact-check-rudy-giuliani-affidavit-errors/6366011002/)
2 [affidavit-errors/6366011002/](https://www.freep.com/story/news/local/michigan/2020/11/21/fact-check-rudy-giuliani-affidavit-errors/6366011002/) (reporting on errors in affidavit of ASOG employee Russell
3 Ramsland); Clara Hendrickson, *Affidavit in Michigan lawsuit makes wildly inaccurate*
4 *claims about voter turnout in state*, Detroit Free Press, (Dec. 4, 2020, 5:06 p.m.),
5 [https://www.freep.com/story/news/local/michigan/detroit/2020/12/04/michigan-lawsuit-](https://www.freep.com/story/news/local/michigan/detroit/2020/12/04/michigan-lawsuit-makes-wild-claims-voter-turnout/3829654001/)
6 [makes-wild-claims-voter-turnout/3829654001/](https://www.freep.com/story/news/local/michigan/detroit/2020/12/04/michigan-lawsuit-makes-wild-claims-voter-turnout/3829654001/) (reporting on errors in a different affidavit
7 of ASOG employee Russell Ramsland); Paul Egan, *State, company officials dispute report*
8 *claiming Antrim County tabulators bungled results*, Detroit Free Press, (Dec. 14, 2020,
9 11:48 a.m.), [https://www.freep.com/story/news/politics/elections/2020/12/14/michigan-](https://www.freep.com/story/news/politics/elections/2020/12/14/michigan-company-officials-dispute-report-antrim-county-voting/6538325002/)
10 [company-officials-dispute-report-antrim-county-voting/6538325002/](https://www.freep.com/story/news/politics/elections/2020/12/14/michigan-company-officials-dispute-report-antrim-county-voting/6538325002/) (reporting on
11 ASOG’s flawed report in Antrim County, MI); Mardi Link, *State officials: Texas firm’s*
12 *report relies on false claims in Antrim County election lawsuit*, Traverse City Record
13 Eagle, (Dec. 14, 2020), [https://www.record-eagle.com/news/local_news/state-officials-](https://www.record-eagle.com/news/local_news/state-officials-texas-firms-report-relies-on-false-claims-in-antrim-county-election-lawsuit/article_28b45918-3e2c-11eb-a281-8faf2b0daa1d.html)
14 [texas-firms-report-relies-on-false-claims-in-antrim-county-election-](https://www.record-eagle.com/news/local_news/state-officials-texas-firms-report-relies-on-false-claims-in-antrim-county-election-lawsuit/article_28b45918-3e2c-11eb-a281-8faf2b0daa1d.html)
15 [lawsuit/article_28b45918-3e2c-11eb-a281-8faf2b0daa1d.html](https://www.record-eagle.com/news/local_news/state-officials-texas-firms-report-relies-on-false-claims-in-antrim-county-election-lawsuit/article_28b45918-3e2c-11eb-a281-8faf2b0daa1d.html) (reporting on ASOG’s
16 flawed report in Antrim County, MI); Paul Egan & Clara Hendrickson, *Trump tweet*
17 *wrongly suggests there were defects with Michigan voting machines*, Detroit Free Press,
18 (Dec. 15, 2020, 6:41 p.m.),
19 [https://www.freep.com/story/news/politics/elections/2020/12/15/trump-fact-check-](https://www.freep.com/story/news/politics/elections/2020/12/15/trump-fact-check-defect-voting-machines-michigan/3902951001/)
20 [defect-voting-machines-michigan/3902951001/](https://www.freep.com/story/news/politics/elections/2020/12/15/trump-fact-check-defect-voting-machines-michigan/3902951001/) (reporting on ASOG’s flawed report in
21 Antrim County, MI); Todd Spanger, *Former election security chief for Trump knocks*
22 *down Antrim County report*, Detroit Free Press, (Dec. 16, 2020, 1:40 p.m.),
23 [https://www.freep.com/story/news/politics/elections/2020/12/16/antrim-county-report-](https://www.freep.com/story/news/politics/elections/2020/12/16/antrim-county-report-debunked-by-former-trump-election-official/3923499001/)
24 [debunked-by-former-trump-election-official/3923499001/](https://www.freep.com/story/news/politics/elections/2020/12/16/antrim-county-report-debunked-by-former-trump-election-official/3923499001/) (“The former acting director of
25 the EAC’s Voting System Testing and Certification Program, Ryan Macias, said the
26 [ASOG Antrim County] report showed “a grave misunderstanding” of the voting system
27 used in Antrim County as well as “a lack of knowledge of election technology and
28 process.”).

1 **109.** Further, at a November 2020 “hearing” in Arizona, ASOG employee and
2 self-proclaimed “information warfare officer” and “expert on ‘how to get in and corrupt
3 these machines to conduct strategic influence operations’” Phil Waldron “claimed Arizona
4 voting machines were connected to the internet while they were being used, which is
5 inaccurate” and “repeatedly — and falsely — suggested that signatures on mail-in ballots
6 are not verified.” Ryan Randazzo & Maria Polletta, Arizona GOP lawmakers hold meeting
7 on election outcome with Trump lawyer Rudy Giuliani, Arizona Republic, (Nov 30, 2020,
8 6:59 p.m.),
9 [https://www.azcentral.com/story/news/politics/elections/2020/11/30/republican-](https://www.azcentral.com/story/news/politics/elections/2020/11/30/republican-lawmakers-arizona-hold-meeting-rudy-giuliani/6468171002/)
10 [lawmakers-arizona-hold-meeting-rudy-giuliani/6468171002/](https://www.azcentral.com/story/news/politics/elections/2020/11/30/republican-lawmakers-arizona-hold-meeting-rudy-giuliani/6468171002/) (reporting on Arizona
11 “hearing” testimony of ASOG employee Phil Waldron;; Aila Slisco, Trump Campaign
12 Witness Can’t Back Up Claims in Georgia Election Fraud Hearings, Newsweek, (Dec. 3,
13 2020, 6:15 p.m.), [https://www.newsweek.com/trump-campaign-witness-cant-back-](https://www.newsweek.com/trump-campaign-witness-cant-back-claims-georgia-election-fraud-hearings-1552257)
14 [claims-georgia-election-fraud-hearings-1552257](https://www.newsweek.com/trump-campaign-witness-cant-back-claims-georgia-election-fraud-hearings-1552257) (reporting on Georgia hearing testimony
15 of ASOG employee Phil Waldron); Craig Mauger, Why 8 claims from Rudy Giuliani’s
16 Michigan witnesses don’t add up, The Detroit News, (Dec. 4, 2020, 4:26 p.m.),
17 [https://www.detroitnews.com/story/news/politics/2020/12/04/why-8-claims-rudy-](https://www.detroitnews.com/story/news/politics/2020/12/04/why-8-claims-rudy-giulianis-michigan-witnesses-dont-add-up/3824210001/)
18 [giulianis-michigan-witnesses-dont-add-up/3824210001/](https://www.detroitnews.com/story/news/politics/2020/12/04/why-8-claims-rudy-giulianis-michigan-witnesses-dont-add-up/3824210001/) (reporting on Michigan hearing
19 testimony of ASOG employee Phil Waldron). As stated above, upon information and
20 belief, the County’s elections equipment would be “audited” by Ramsland and Waldron if
21 obtained through the subpoena. *See Duda, supra.*

22 **110.** Additionally, Senate President Fann and her attorney, Kory Langhofer, gave
23 an interview indicating that the true purpose of the January 12, 2021, Subpoenas is to audit
24 the November 3, 2020, general election for president of the United States. *See* Howard
25 Fisher, Capitol Media Services, Tucson.com, “Arizona Senate to conduct own audit of
26 2020 election results after all,” (n.d.), [https://tucson.com/news/state-and-regional/arizona-](https://tucson.com/news/state-and-regional/arizona-senate-to-conduct-own-audit-of-2020-election-results-after-all/article_9bfb83c9-f60d-5a4e-b81f-36afc5577c7a.amp.html?_twitter_impression=true)
27 [senate-to-conduct-own-audit-of-2020-election-results-after-all/article_9bfb83c9-f60d-](https://tucson.com/news/state-and-regional/arizona-senate-to-conduct-own-audit-of-2020-election-results-after-all/article_9bfb83c9-f60d-5a4e-b81f-36afc5577c7a.amp.html?_twitter_impression=true)
28 [5a4e-b81f-36afc5577c7a.amp.html?_twitter_impression=true.](https://tucson.com/news/state-and-regional/arizona-senate-to-conduct-own-audit-of-2020-election-results-after-all/article_9bfb83c9-f60d-5a4e-b81f-36afc5577c7a.amp.html?_twitter_impression=true)

1 **111.** President Fann stated that she wants to determine “whether the results” of
2 the November 3, 2020, election for president, “were accurate.” *Id.*

3 **112.** Mr. Langhofer stated that “[t]he Senate also wants a review of ‘spoiled’
4 ballots and what was done by election workers to determine the voter intent.” *Id.*

5 **113.** Further, the Senate’s proposed scope of work for ASOG includes performing
6 a hand count audit of approximately 550,000 ballots. Jeremy Duda, AZMirror, “Fann picks
7 Trump-allied firm with history of false election statements to audit Maricopa election,”
8 (February 3, 2021), [https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-
9 with-history-of-false-election-statements-to-audit-maricopa-election/](https://www.azmirror.com/2021/02/03/fann-picks-trump-allied-firm-with-history-of-false-election-statements-to-audit-maricopa-election/) (embedded “Scope
10 of Work” document).

11 **114.** The scope of work also states that ASOG will scan images of these ballots
12 onto an electronic drive or drive. (*Id.*) The scope of work does not require, however, that
13 the ballot images be destroyed when the Senate’s so-called analysis is completed.

14 **115.** Allowing ASOG or any other laboratory that is not certified by the EAC to
15 “audit” Plaintiff Maricopa County’s tabulation machines and other election equipment
16 risks causing those machines to be decertified for use in Arizona; infringing on the
17 constitutional guarantee to the People of Maricopa County to have fair and free elections;
18 and, sowing distrust and confusion in the electorate.

19 **COUNT I**

20 **The January 12, 2021, Subpoena is Invalid Because**

21 **It Compelled Witnesses to Attend a Non-existent Hearing.**

22 **116.** Plaintiff Maricopa County incorporates by reference all of the foregoing
23 allegations as if set forth herein.

24 **117.** The Legislature’s subpoena power is limited to commanding witnesses to
25 attend legislative proceedings. A.R.S. § 41-1151. Specifically, the statue says: “A
26 subpoena may be issued by the presiding officer of either house or the chairman of any
27 committee before whom the attendance of a witness is desired.”
28

1 **118.** The January 12, 2021, Subpoena purported to command the Maricopa
2 County Supervisors to attend a hearing at the Senate, to provide testimony, at 9:00 a.m. on
3 January 13, 2021.³

4 **119.** The Maricopa County Supervisors complied with the subpoena—they sent
5 Chairman Jack Sellers and their attorney to appear at the designated hearing.

6 **120.** But there was no hearing noticed or scheduled, and the Senate would not let
7 Chairman Sellers testify.

8 **121.** The Senators apparently only want access to the data and items listed in the
9 subpoena. But that is not how legislative subpoenas work. Rather, the law provides that a
10 lawful subpoena must require a witness to attend and testify at a specific time and place.
11 A.R.S. § 41-1151. *See also* A.R.S. § 41-1153 (stating that contempt proceedings may be
12 brought against “a witness neglects or refuses to obey a legislative subpoena, or,
13 appearing, neglects or refuses to testify,” thereby recognizing that refusing to *attend* or
14 *testify* are the actions that can lead to contempt charges).

15 **122.** For a legislative subpoena to be lawful, there must actually be a hearing at
16 which the witness is commanded to attend in order to provide testimony.

17 **123.** Despite the subpoena purporting to require attendance at a hearing on
18 January 13, 2021, at 9:00 a.m., there was in fact no hearing at that time, and the subpoenaed
19 witness—the Chairman of the Board of Supervisors—was not allowed to provide
20 testimony, even though he appeared at the proper time and place designated by the
21 subpoena.

22 ³ As noted in Exhibit A, the subpoena stated in pertinent part:

23 YOU ARE COMMANDED TO APPEAR at the time, date and place set
24 forth below to provide testimony concerning the items set forth in Exhibit A
25 attached hereto. You must designate one or more of your officers, agents or
representatives who consent to testify on your behalf about the same.

26 **Date & Time:** January 13, 2021 at 9:00 a.m.

27 **Place:** Arizona Senate
28 Arizona State Capitol
1700 West Washington Street
Phoenix, Arizona 85007

1 **124.** Accordingly, the January 12, 2021, Subpoena directed to the Board of
2 Supervisors is unlawful and unenforceable. This Court should quash it.

3 **COUNT II**

4 **The January 12, 2021, Subpoena is Invalid**

5 **Because it Lacks a Proper Legislative Purpose but is *Ultra Vires*.**

6 **125.** Plaintiff Maricopa County incorporates by reference all of the foregoing
7 allegations as if set forth herein.

8 **126.** As all branches of government, the Legislature has only those powers
9 granted to it by the Constitution or authorized by statute.

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

15 **128.** The January 12, 2021, Subpoena fails each of these three requirements.

16 **129.** The power of the legislature to issue subpoenas derives from Title 41 of the
17 Arizona Revised Statutes.

18 **130.** The law provides that: “A subpoena may be issued by the presiding officer
19 of either house or the chairman of any committee *before whom the attendance of a witness*
20 *is desired*. The subpoena is *sufficient* if it states *whether the proceeding is before the*
21 *senate, house of representatives or a committee*, is addressed to the witness, *requires the*
22 *attendance of the witness at a certain time and place*, and is signed by either presiding
23 officer or a committee chairman. The subpoena may be served and returned in like manner
24 as civil process. A.R.S. § 41-1151 (Emphasis added).

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

1 **132.** Thus, to be valid, a legislative subpoena must, **first**, command a witness to
2 appear and provide testimony at a hearing scheduled at a specific time and place.

3 **133.** The January 12, 2021, Subpoena to the Board of Supervisors purported to
4 command a witness to appear before the Senate, at a specific time and place some 17 hours
5 after the subpoena was served, but no hearing had been noticed or scheduled at that time
6 and place, no hearing occurred, and the witness who appeared in response to the
7 subpoena—Chairman Jack Sellers—was not allowed to testify.

8 **134.** No law authorizes a legislative subpoena that does not require a witness to
9 testify at a specific time and place.

10 **135.** Because the January 12, 2021, Subpoena did not comport with the
11 requirement that a lawful legislative subpoena compel a witness to appear and provide
12 testimony at a specific time and place, it failed the first requirement for a lawful legislative
13 subpoena.

14 **136.** Even were that not so, the January 12, 2021, Subpoena provided 17 hours’
15 notice before the (non-existent) hearing at which Chairman Sellers was supposed to testify,
16 and also produce, among other things, all of Maricopa County’s tabulation machines and
17 some 2.1 million paper ballots.

18 **137.** A.R.S. § 41-1154 does not define what constitutes the “reasonable notice”
19 that must be provided witnesses before the hearing at which they must testify. But
20 regardless, 17 hours cannot be “reasonable notice” as the law requires for a legislative
21 subpoena to be valid.

22 **138. Second,** the Subpoenas serve no valid legislative purpose.

23 **139.** The January 12, 2021, Subpoena to the Board of Supervisors seeks the 2.1
24 million paper ballots, tabulators, and source code necessary to conduct a recount-audit of
25 the November 3, 2020, general election, as well as an audit of the machines, software, and
26 ballots.

27 **140.** President Fann, and counsel for the Senate, has admitted that the purpose of
28 the subpoena is to conduct a recount-audit of the election, as well as an audit of the

1 machines, software, and ballots.

2 **141.** There is no legislative authority to audit election results.

3 **142.** There is no legislative authority to conduct forensic audits of election
4 tabulation machines, software, and other equipment.

5 **143.** There is certainly no legislative authority to investigate an election after six
6 superior court judges, one federal district court judge, and seven Arizona Supreme Court
7 Justices heard a total of seven election-related contests and found no evidence of
8 wrongdoing on the part of Maricopa County, its elections officers, or the electronic voting
9 system it uses, or any basis for decertifying Arizona's election or awarding Arizona's
10 eleven presidential electors to President Trump.

11 **144.** Because the law does not provide the Senate these powers, there can be no
12 proper legislative purpose to the January 12, 2021, Subpoena.

13 **145. Third,** the witnesses or material subpoenaed are not pertinent to the subject
14 matter of the investigation.

15 **146.** Upon information and belief, there is not currently an open investigation in
16 the Senate related to the November 3, 2020 general election.

17 **147.** Accordingly, the Subpoenas were issued without proper authority, are
18 improper on their face, and serve no legislative purpose—and so, are invalid.

19 **148.** Rather, the subpoena seeks to further an *ultra vires* act of the Senate, i.e., the
20 recount audit of an election and the audit of tabulators, software, and ballots—something
21 the Senate lacks authority to do.

22 **149.** Accordingly, the January 12, 2021, Subpoena directed to the Board of
23 Supervisors is unlawful and unenforceable. This Court should quash it.

24 **COUNT III**

25 **Legislative Subpoenas Cannot Lawfully Compel**

26 **Production of Machines and Equipment.**

27 **150.** Plaintiff Maricopa County incorporates by reference all of the foregoing
28 allegations as if set forth herein.

1 **151.** The legislative subpoena power is limited to commanding witnesses to
2 appear at hearings to testify, and to produce at those hearings “material and relevant books,
3 papers or documents[.]” A.R.S. § 41-1154.

4 **152.** No law gives the Senate authority to use a legislative subpoena to command
5 a witness to produce tabulators, computers, routers, and other electronic machines.

6 **153.** To the extent that the January 12, 2021, Subpoena to the Board of
7 Supervisors commands the production of items beyond “material and relevant books,
8 papers or documents[.]” it is unlawful and invalid.

9 **COUNT IV**

10 **Ballots and Ballot Images Cannot Lawfully be Produced in Response to the**
11 **January 12, 2021, Subpoena.**

12 **154.** Plaintiff Maricopa County incorporates by reference all of the foregoing
13 allegations as if set forth herein.

14 **155.** The January 12, 2021, Subpoena commands that the Board of Supervisors
15 produce ballots cast in the Election, as well as digital images of ballots.

16 **156.** Arizona law prohibits the Board of Supervisors from complying with this
17 command.

18 **157.** The Constitution commands that ballots be kept secret, and provides that
19 Arizonans have a constitutional right to a secret ballot. Ariz. Const. art. VII, § 1.

20 **158.** Some voters have been known to sign their names on their ballots, or
21 otherwise write identifying information on their ballots.

22 **159.** Disclosing voted ballots would therefore jeopardize the constitutional
23 guarantee of a secret ballot.

24 **160.** This threat to voter secrecy is made even worse by the fact that the recipient
25 of the ballots, who might be able to determine for whom individual voters voted, will be
26 members of the Senate who themselves were on the ballot in 2020.

27 **161.** In addition to the Constitution, the laws that the Arizona Legislature has
28 enacted prevent the Board of Supervisors from producing voted ballots.

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

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

13 **164.** A.R.S. § 16-1018(4) makes it unlawful to “[s]how another voter’s ballot to
14 any person after it is prepared for voting in such a manner as to reveal the contents[.]”
15 There are only two exceptions: one may show her own ballot to someone assisting her
16 with voting, and one may post to the internet a picture of her own early vote-by-mail ballot.
17 *Id.* Otherwise, if one shows another’s voted ballot to someone—the very thing that this
18 subpoena commands the County to do—she has broken the law.

19 **165.** Turning over ballots and ballot images to the Committee unquestionably
20 compromises the secrecy of the ballots, which would be a violation of the Arizona
21 constitution and statutory law. The purpose for the request and the intent of the committee
22 is entirely unknown. Moreover, once ballots are provided to the committee and are no
23 longer within the custody and control of Maricopa County, they will no longer be protected
24 and, arguably, will be subject to disclosure pursuant to any public records request made to
25 the Judiciary Committee—a further violation of the Constitution and statutory law.
26 Accordingly, the Subpoenas are unlawful.

27 **166.** Additionally, the ballots are currently under seal, and cannot be unsealed
28 absent a court order, which can only be granted in limited circumstances not applicable

1 here. A.R.S. § 16-624.

2 **167.** The law commands that “after the canvass has been completed, the officer
3 in charge of elections shall deposit the package or envelope containing the ballots in a
4 secure facility managed by the county treasurer, who shall keep it unopened and unaltered
5 for twenty-four months for elections for a federal office or for six months for all other
6 elections, at which time he shall destroy it without opening or examining the contents.”

7 A.R.S. § 16-624(A).

8 **168.** The Arizona Elections Procedure Manual,⁴ which has the force of law,
9 A.R.S. 16-452, cites to A.R.S. 16-624(A) and commands that “[a]fter the county canvass
10 is complete, the officer in charge of elections must seal the voted ballots and deliver these
11 ballots and official returns to the County Treasurer (or a secure facility contracted by the
12 County Treasurer) for secure storage.”

13 **169.** Thus, the law is that the ballots are *sealed* as soon as the canvass is complete,
14 and remain sealed from that point until they are destroyed by the treasurer. The only way
15 they can be unsealed is with a court order because of a recount or contest, upon which
16 time they come under the custody and control of the court. A.R.S. 16-624(D).

17 **170.** Here, there is no recount or election contest. Accordingly, the Court should
18 not order the ballots unsealed.

19 **171.** Further, the law’s command to protect the secrecy of the ballot, and to seal
20 the ballots and prevent their inspection after elections except in times of recounts or
21 contests, applies equally to digital images of ballots. The law expressly provides that “[t]he
22 officer in charge of elections shall ensure that electronic data from and electronic or digital
23 images of ballots are protected from physical and electronic access, including
24 unauthorized copying or transfer, and that all security measures are at least as protective
25 as those prescribed for paper ballots.” A.R.S. § 16-625.

26 **172.** Thus, there is no lawful mechanism by which the Senate can obtain ballots

27 ⁴ The current edition of the Arizona Elections Procedures Manual is available at
28 [https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP
PROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_AP
PROVED.pdf).

1 or ballot images via a legislative subpoena. To the extent that the January 12, 2021,
2 Subpoena commands the production of ballots or ballot images, it must be quashed.

3 **DEMAND FOR RELIEF**

4 WHEREFORE, Plaintiff Maricopa County asks this Court to:

5 1. Declare that the January 12, 2021, Subpoena to the Board of Supervisors is
6 unlawful and so invalid;

7 2. Order that the January 12, 2021, Subpoena to the Board of Supervisors is
8 quashed;

9 3. Award the Plaintiff Maricopa County its attorney fees under the Private
10 Attorney General Doctrine, because by having the subpoena quashed Plaintiff Maricopa
11 County acted to vindicate the rights of the citizens of Maricopa County by protecting the
12 secrecy of their ballots, as guaranteed by Arizona constitutional and statutory law. *See*
13 *Meyer v. State*, 246 Ariz. 188, 436 P.3d 511 (Ct. App. 2019), *review denied* (Aug. 27,
14 2019) (recognizing that legislators were entitled to attorney fees under Private Attorney
15 General Doctrine where their lawsuit against the state was successful and vindicated the
16 rights of citizens of the state).

17 4. Grant any other relief that the Court deems appropriate.

18 Respectfully submitted this 5th day of February, 2021.

19 HINSHAW & CULBERTSON LLP

20
21 BY: /s/Stephen W. Tully
22 Stephen W. Tully
23 *Attorneys for Plaintiff Maricopa County*

24 ALLISTER ADEL
25 MARICOPA COUNTY ATTORNEY

26 BY: /s/Thomas P. Liddy
27 Thomas P. Liddy
28 Emily Craiger
Joseph I. Vigil
Joseph J. Branco
Joseph E. LaRue
Attorneys for Plaintiff Maricopa County