

1 Sarah R. Gonski (Bar No. 032567)  
2 **PERKINS COIE LLP**  
3 2901 North Central Avenue, Suite 2000  
4 Phoenix, Arizona 85012-2788  
5 Telephone: 602.351.8000  
6 Facsimile: 602.648.7000  
7 SGonski@perkinscoie.com

8 Marc E. Elias\*  
9 Bruce V. Spiva\*\*  
10 **PERKINS COIE LLP**  
11 700 Thirteenth Street NW, Suite 600  
12 Washington, D.C. 20005-3960  
13 Telephone: 202.654.6200  
14 Facsimile: 202.654.6211  
15 MElias@perkinscoie.com  
16 BSpiva@perkinscoie.com

17 Roy Herrera (Bar No. 032901)  
18 Daniel A. Arellano (Bar No. 032304)  
19 **BALLARD SPAHR LLP**  
20 1 East Washington Street, Suite 2300  
21 Phoenix, Arizona 85004-2555  
22 Telephone: 602.798.5400  
23 Facsimile: 602.798.5595  
24 HerreraR@ballardspahr.com  
25 ArellanoD@ballardspahr.com

26 *Attorneys for Defendants*

27 **ARIZONA SUPERIOR COURT**  
28 **COUNTY OF MARICOPA**

29 **KELLI WARD,**

30 Plaintiff,

31 vs.

32 **CONSTANCE JACKSON, et al.,**

33 Defendants.

34 Case No. CV2020-015285

35 **DEFENDANTS' MOTION TO  
DISMISS AND PRE-TRIAL BRIEF**

36 Expedited Election Matter

37 The people of Arizona have spoken. On November 3, 2020, nearly 3.4 million  
38 Arizonans cast their votes in races up and down the ballot. And once the ballots were  
counted, Joe Biden and Kamala Harris prevailed in the presidential and vice-presidential

1 races—by a margin of *over ten thousand votes*.

2 Dissatisfied with this result and unwilling to accept it, Plaintiff Kelli Ward—Chair  
3 of the Arizona Republican Party and an elector candidate for President Donald Trump—  
4 now attempts to sow doubt about the integrity of the election. Ward seeks extraordinary  
5 and unprecedented relief: she asks this Court to annul the election, thereby disenfranchising  
6 all 3.4 million Arizonans who made their voices heard in this election. She further suggests  
7 that the Court overturn the will of the people by shifting Arizona’s eleven electoral votes  
8 to President Trump.

9 Ward’s attempt fails on multiple, independent grounds. First and most importantly,  
10 this Court lacks jurisdiction to hear the case because Arizona’s election contest statute  
11 applies only to elections for state office, not presidential races. Second, Ward’s claims are  
12 barred by statutory restrictions on post-election challenges to voting procedures and by the  
13 doctrine of laches. Her inexcusable delay in challenging long-standing ballot processing  
14 and observation procedures has prejudiced Defendants, voters, and election officials—all  
15 of whom relied on these procedures in preparing for, conducting, and participating in this  
16 election.

17 Even if Ward could overcome these failures, her Complaint fails to state a claim.  
18 Arizona’s election contest statute provides the exclusive bases on which an election may  
19 be contested; Ward’s claims fall into none of the statutory categories, and she cannot  
20 shoehorn in her general complaints about Maricopa County’s election procedures. For  
21 these reasons, and because the defects in the Complaint are not curable by an amended  
22 pleading, Ward’s Complaint should be dismissed—with prejudice

23 Even setting aside all the reasons why her Complaint fails as a matter of law, Ward  
24 is not entitled to relief on the merits. Despite having unprecedented access to wide-ranging  
25 pre-trial discovery, Ward can point to no evidence that fraudulent activity or any official  
26 misconduct has thrown the integrity of the presidential election into doubt.

27  
28

1 **ARGUMENT**

2 **I. The Court lacks jurisdiction.**

3 As a threshold matter, dismissal is required because the Court does not have  
4 jurisdiction to hear Ward’s claim. “Because a court’s jurisdiction over election contests is  
5 purely statutory and not a matter of common law, if no statute exists granting jurisdiction,  
6 the court has no jurisdiction to act.” *Katan v. City of Prescott*, 223 Ariz. 179, 181 ¶ 8 (App.  
7 2009). And “[i]t is the general rule that one who would contest an election assumes the  
8 burden of showing that his case falls within the terms of the statute providing for election  
9 contests.” *Henderson v. Carter*, 34 Ariz. 528, 534 (1928).

10 Arizona’s election contest statute, A.R.S. § 16-672(A), applies to only two types of  
11 elections: (1) those for “a question or proposal submitted to a vote of the people,” like an  
12 initiative or referendum, and (2) those for candidates who are “declared elected to a *state*  
13 *office*, or declared nominated to a state office at a primary election.” A.R.S. § 16-672(A)  
14 (emphasis added). The first category is obviously inapplicable here. So is the second. Ward  
15 does not—and cannot—show that the election of presidential electors is an election of a  
16 candidate to “state office.”

17 The position of presidential elector is created by federal law. Specifically, the U.S.  
18 Constitution provides that “[e]ach State shall appoint ... a Number of Electors,” U.S.  
19 Const., art. II, § 1, cl. 2. And Congress has further prescribed the (federal) requirements for  
20 electors, specifying the number allocated to each state. *See* 3 U.S.C. § 3. An office created  
21 by the U.S. Constitution and governed by federal statute is not a “state office.”

22 If more were needed, various provisions of Arizona law fortify the conclusion that  
23 the office of presidential elector in Arizona is not a “state office.” For example, A.R.S.  
24 § 16-311(E) refers to the “nomination paper of a candidate for the office of United States  
25 senator or representative in Congress, for the office of presidential elector *or for a state*  
26 *office*.” *Id.* (emphasis added). This language leaves no doubt that “presidential elector” and  
27 “state office” are two different things. Similarly, A.R.S. § 16-602(B) distinguishes between  
28 “race[s] for statewide office” and “race[s] for federal office,” including “the presidential

1 race.” *Id.* Ward’s preferred interpretation would delete the word “state” from A.R.S. § 16-  
2 672(A)’s “state office” limitation, thus violating “a cardinal principle of statutory  
3 interpretation,” which is “to give meaning, if possible, to every word and provision.” *Ariz.*  
4 *Chapter of the Associated Gen. Contractors of Am. v. City of Phoenix*, 247 Ariz. 45, 47 ¶ 9  
5 (2019).

6 Arizona courts have only twice before extended the election contest statute beyond  
7 a purely “state office,” and neither case controls here. First, in *Harless v. Lockwood*, 85  
8 Ariz. 97 (1958), the Arizona Supreme Court held that an earlier version of A.R.S. § 16-672  
9 applied to congressional candidates in primary elections. But *Harless* grounded that  
10 conclusion in the text of the Arizona Constitution, which defined state offices to include  
11 “candidates for United States Senator and for Representative in Congress.” Ariz. Const. art  
12 VII, § 10. There is no similar provision in the state constitution (or other state law) for  
13 presidential electors. Second, in *Brakey v. Reagan*, CV 2016-002889, Ruling at 10-12  
14 (Maricopa Cty. Sup. Ct. April 28, 2016), the court held that election contest procedures  
15 were available in a presidential preference election, on the basis that such an election, as a  
16 private election seeking only to ascertain voter preferences among certain candidates,  
17 “involved a statewide question that was submitted to a vote of the people.” *Id.* at 11.  
18 Respectfully, *Brakey* misinterpreted A.R.S. § 16-672. If the phrase “other question or  
19 proposal submitted to a vote of the people” encompassed the election of a person to an  
20 office, the portion of the statute explicitly addressing the election of persons would be  
21 superfluous. Applying the *ejusdem generis* canon, the phrase “other question or proposal”  
22 is best understood to capture substantive ballot measures that are similar to the earlier items  
23 in the list: “an initiated or referred measure” or “a proposal to amend the Constitution of  
24 Arizona.” See *McCall v. City of Tombstone*, 21 Ariz. 161, 164 (1919) (finding “the ‘other  
25 question [submitted to vote of the people]’ refers to a state-wide proposition”). Neither  
26 *Harless* nor *Brakey* supports the contention that the office of presidential elector in a

27  
28

1 general election is subject to the election contest procedure. A.R.S. § 16-672(A).<sup>1</sup>

2 That election contests are not available to Arizona’s presidential electors under  
3 A.R.S. § 16-672(A) makes sense. Under federal statutory timeframes unique to presidential  
4 contests, an election contest brought under Arizona law could jeopardize the state’s  
5 participation in the Electoral College, which, pursuant to federal law, must meet on “the  
6 first Monday after the second Wednesday in December,” 3 U.S.C. § 7—this year,  
7 December 14. The federal “safe harbor” date, which gives conclusive effect to electoral  
8 votes as to which a “final determination of any controversy or contest concerning the  
9 appointment of” the electors has been made, occurs even earlier—this year, December 8.  
10 *Id.* § 5. Hence, if presidential elections were contestable under Arizona law, any voter in  
11 the state could unilaterally threaten to deprive Arizona of the protection of the “safe harbor”  
12 by simply filing an election contest (no matter how frivolous). *See* A.R.S. § 16-672(A)  
13 (providing that any voter can file an election contest and that contests must be filed within  
14 five days after certification—this year, December 5, just three days before the safe-harbor  
15 deadline). That result would be “absurd,” and Arizona law should not be read to produce  
16 it. *Blankenbaker v. Jonovich*, 205 Ariz. 383, 387 n.4 (2003) (citing *Mail Boxes, etc., U.S.A.*  
17 *v. Indus. Comm’n of Ariz.*, 181 Ariz. 119, 122 (1995)); *see also Stein v. Cortés*, 223 F.  
18 Supp. 3d 423, 442 (E.D. Pa. 2016) (denying presidential candidate’s recount request where  
19 it jeopardized state’s ability to meet “safe harbor” deadline because such a result would  
20 “abrogate the right of millions of Pennsylvanians to select their President and Vice  
21 President” and “may thus be unconstitutional”).

22 Because “election contests are purely statutory and dependent upon statutory  
23 provisions for their conduct,” the statutory requirements are “strictly construed.” *Donaghey*  
24 *v. Attorney General*, 120 Ariz. 93, 95 (1978). And the plain statutory text does not

---

26 <sup>1</sup> *Harless* also depended on the assumption that candidates for certain races could not be  
27 left without redress in the election contest statutes. 85 Ariz. at 101. But since that decision,  
28 the Arizona Legislature has expressly done just that, providing since 1991 that legislative  
races are not subject to contest. A.R.S. § 16-678. In addition to limiting election contests  
expressly to “state offices,” then, the Legislature has made clear that it does *not* intend for  
every race for which Arizonans cast a vote to be subject to contest.

1 encompass a challenge to a presidential election. The Court must therefore dismiss the  
2 Complaint with prejudice.

3 **II. Ward cannot use an election contest to litigate claims that should have been**  
4 **raised before the election.**

5 If the Court has jurisdiction over Ward’s Complaint, then it should dismiss the  
6 Complaint as untimely because it raises procedural challenges to the election process. And  
7 “[c]hallenges concerning alleged procedural violations of the election process must be  
8 brought prior to the actual election.” *Williams v. Fink*, 2019 WL 3297254, at \*3 ¶ 11 (Ariz.  
9 App. July 22, 2019), *review denied* (Mar. 3, 2020) (citing *Sherman v. City of Tempe*, 202  
10 Ariz. 339, 342 ¶ 9 (2002)).

11 Ward’s claims center on two sets of ballot-processing procedures and the attendant  
12 observation policies, all of which were in place long before the November 2020 election.  
13 First, she challenges the process by which county election officials verify voters’ signatures  
14 on ballot envelopes. Compl. ¶¶ 13-15. Second, she alleges that the software used to process  
15 and print manually duplicated ballots may have been inaccurate and was not subject to  
16 sufficient public observation. *Id.* ¶¶ 26-27.

17 All of those concerns could have been addressed before the election—and thus had  
18 to be. For example, Arizona has used the same signature-matching procedures since at least  
19 2007. A.R.S. § 16-550 (2007). And the Duplication Board has used the same basic  
20 procedure, with the same observation rights, since at least 1980. Laws 1979, Ch. 209, § 3,  
21 eff. Jan. 1, 1980. If Ward had concerns that the software or printing vendors used by  
22 Maricopa County in 2020 lacked sufficient safeguards or observation opportunities, the  
23 time to adjudicate those issues was before the election, not after it. Again, “procedures  
24 leading up to an election cannot be questioned after the people have voted.” *Tilson v.*  
25 *Mofford*, 153 Ariz. 468, 470 (1987); *see also Zajac v. City of Casa Grande*, 209 Ariz. 357,  
26 361 ¶ 14 (2004) (collecting cases).

27 Moreover, A.R.S. § 16-552 establishes that challenges to mail ballots have to be  
28 made prior to the opening of the ballot envelope. *Id.*; *see also* Elections Procedure Manual

1 (hereafter “Manual”) at 67-68.<sup>2</sup> This is for good reason: because Arizonans enjoy a  
2 constitutional right to a secret ballot, Ariz. Const. art. VII, § 1. Ballots removed from their  
3 envelope cannot later be re-matched back to the original envelope. Ward cannot use the  
4 procedural vehicle of an election contest to do an end-run around the explicit procedures  
5 and timelines set forth in A.R.S. § 16-552.

6 Because Ward’s claims “should have been—and could have been—addressed  
7 before the vote,” they are not appropriate grounds for an election contest. *Williams*, 2019  
8 WL 3297254, at \*3. Her attempt to press the claims at this late date prejudices Defendants,  
9 Arizona election officials, and voters, who lose the benefit of a “strong public policy  
10 favoring stability and finality of election results.” *Donaghey*, 120 Ariz. at 95.

11 **III. Ward’s allegations are not cognizable under the contest statute.**

12 Although her Complaint appears to challenge the election on grounds of  
13 misconduct, illegal votes, or erroneous votes, Compl. ¶¶ 30-31, Ward does not adequately  
14 allege that she is entitled to relief on any of the three grounds.<sup>3</sup>

15 When considering a motion brought under Arizona Rule of Civil Procedure  
16 12(b)(6), the court shall “assume the truth of the well-pled factual allegations and indulge  
17 all reasonable inferences therefrom.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419  
18 ¶ 7 (2008); *see also Griffin v. Buzard*, 86 Ariz. 166, 170 (1959) (applying same  
19 considerations to a dismissal of an election contest). A court should dismiss only if the  
20 plaintiff “would not be entitled to relief under any facts susceptible of proof in the statement  
21 of the claim.” *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). But  
22 “mere conclusory statements are insufficient to state a claim upon which relief can be  
23 granted.” *Cullen*, 218 Ariz. at 419 ¶ 7.

24 Under A.R.S. § 16-672, an elector may challenge the results of an election based on  
25 one or more of five specified statutory grounds: (1) official misconduct, (2) ineligibility of

---

26 <sup>2</sup> Available at [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES)  
27 [\\_MANUAL\\_APPROVED.pdf](#).

28 <sup>3</sup> The Complaint does not explicitly specify the grounds for the contest, but paragraphs 30  
and 31 reference misconduct, illegal votes, or erroneous votes, so Defendants assume that  
Ward intends to contest the election on those grounds.

1 the person whose right to office is being contested, (3) bribery or other offenses against the  
2 franchise, (4) illegal votes, or (5) the count of erroneous votes. To succeed, the contestant  
3 bears the burden of proving either fraud or that the alleged irregularity affected *enough*  
4 *votes to change the outcome* of the election. *Moore v. City of Page*, 148 Ariz. 151, 159-60  
5 (App. 1986).

6 **A. The Complaint fails to state a cognizable claim based on misconduct.**

7 Ward's assertion that the election should be voided for "misconduct" lacks both a  
8 factual and a legal basis. A.R.S. § 16-672(A)(1) authorizes an election challenge "[f]or  
9 misconduct on the part of election boards or any members thereof in any of the counties of  
10 the state, or on the part of any officer making or participating in a canvass for a state  
11 election." Arizona courts have long held that "honest mistakes or mere omissions on the  
12 part of the election officers, or irregularities in directory matters, even though gross, if not  
13 fraudulent, will not void an election, unless they affect the result, or at least render it  
14 uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). In other words, courts "will not  
15 set aside an election unless the effect of the noncompliance altered the outcome or clouded  
16 the reliability of the results." *Wenc v. Sierra Vista Unified Sch. Dist. No. 68*, 210 Ariz. 183,  
17 186 ¶ 10 (App. 2005).

18 Ward's Complaint pleads nothing that indicates the outcome of the election could  
19 be altered or is even uncertain. The whole of her allegations is that "election officials  
20 completely failed and/or refused to allow legal observers to fully observe the verification  
21 of signatures," Compl. ¶ 21, because observers were placed "at least ten to twelve feet  
22 away from the majority of the computer monitors and screens," many of which were angled  
23 away from the observers and others which were so far away that they were difficult to read.  
24 *Id.* ¶¶ 22-23. And although observers who complained that they were not able to effectively  
25 observe were allowed to use binoculars, Ward alleges that the screens remained difficult  
26 to read. *Id.* ¶ 23. Based on these alleged facts, Ward concludes that "[e]lection officials'  
27 failure and/or refusal to allow legal observers to observe signature verification constitutes  
28 misconduct [for the purposes of] A.R.S. § 16-672(A)(1)." *Id.* ¶ 37.



1 But Ward does not identify any action taken by any election official that violated  
2 any law, policy, or practice. The Complaint cites no authority governing “legal  
3 observers”—a term that appears nowhere in Arizona’s election statutes or in the Election  
4 Procedures Manual—much less any authority conferring on them any right to observe  
5 ballot tabulation. Ward does cite four provisions elsewhere in her Complaint, but none  
6 were plausibly violated even under an exceedingly generous reading of the facts alleged.

7 First, she points to A.R.S. § 16-621, which provides that “proceedings at the  
8 counting center” shall be conducted “under the observation of representatives of each  
9 political party and the public.” That statute does not say anything about where observers  
10 must be placed or whether they are entitled to view specific computer screens. Ward next  
11 points to A.R.S. § 16-552, which provides that “party representatives and alternates *may*  
12 *be* appointed” to observe early ballot counting. But the word “may” plainly indicates  
13 discretion, and in any event Ward does not allege that any party representative observers  
14 wanted to be appointed as observers but were denied. Lastly, Ward points to two provisions  
15 in the Election Procedures Manual that (1) discuss observation rights and (2) state that  
16 “political party representatives are permitted to observe” tabulation “subject to the  
17 procedures” set forth in the Manual. Compl. ¶¶ 34-35; *see also* Manual at 139, 141. None  
18 of the cited provisions provide any basis for concluding that any election official committed  
19 “misconduct” by placing “legal observers” in a location in the tabulation facility where  
20 observers could see some, but not all, of the digital screens. Indeed, the Manual repeatedly  
21 recognizes that the right of observation is not ironclad, providing that “[o]bservers may not  
22 interfere with or impede the election procedures or staff,” and that “failure to comply with  
23 a request to cease an activity that interferes with the election process” is grounds for  
24 removal. Manual at 140.

25 Finally, even if the facts alleged in the Complaint could constitute misconduct,  
26 Ward’s claim would still fail for the independent reason that she does not allege that the  
27 failure to appropriately accommodate observers changed the outcome of the election.  
28 Without that, she has failed to state a claim. *See Williams*, 2019 WL 3297254, at \*3 ¶ 15

1 (affirming dismissal of election contest complaint where plaintiff “failed to show how the  
2 election results were affected or uncertain” due to alleged misconduct).

3 **B. The Complaint fails to state a cognizable claim based on the contention**  
4 **that illegal or erroneous votes were counted.**

5 To the extent that the Complaint’s vague allusions to illegal or erroneous votes can  
6 be construed as a claim for relief, those allegations are insufficient to support Ward’s goal  
7 of voiding the election.

8 First, Ward fails to adequately plead illegal voting. To contest an election for illegal  
9 voting, the challenger has the burden to show both that (1) the votes were cast by  
10 individuals who were not eligible to vote in the election, *and* (2) sufficient illegal votes  
11 were cast to change the result. *See Clay v. Town of Gilbert*, 160 Ariz. 335, 338 (App. 1989).  
12 Ward does not allege any facts supporting a claim that even one illegal vote was cast in the  
13 2020 general election, much less that enough illegal votes were cast that it actually swayed  
14 the results of the presidential election—where, as noted, the Democratic presidential ticket  
15 won by over 10,000 votes. Without any facts to support the claim of sufficient illegal votes  
16 to change the election, she has failed to state a claim. *See Jeter v. Mayo Clinic Ariz.*, 211  
17 Ariz. 386, 389 ¶ 4 (App. 2005) (“[W]e do not accept as true allegations consisting of  
18 conclusions of law, inferences or deductions that are not necessarily implied by well-  
19 pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal  
20 conclusions alleged as facts.”).

21 Second, Ward likewise fails to plead that enough erroneous votes were counted to  
22 change the outcome of the race. Ward’s allegations in this regard do nothing more than  
23 allege that the Novus 6.0.0.0 software’s attempt to “pre-fill” a ballot prior to being  
24 duplicated by the Duplication Board was “highly inaccurate, and it often flipped the vote—  
25 leaving it up to county workers on on-site observers to catch it or else effectively reverse  
26 the person’s vote.” Compl. ¶ 27. But even accepting as true Ward’s assertion that the pre-  
27 fill software was inaccurate and selected the Democratic presidential ticket “twice as often”  
28 as it selected the Republican one, *id.*, it does not follow that any such pre-fill errors resulted

1 in a change in the outcome of the election. Nor is such an inference appropriate in light of  
2 the allegations in the Complaint itself, which acknowledge that the Board is a bipartisan  
3 review panel consisting of three workers who carefully review ballots according to specific  
4 and lengthy procedures. *See* A.R.S. § 16-621(A); *see also* Manual at 202 (describing  
5 duplication process). To prevail on her theory that pre-fill errors justify an election contest,  
6 Ward would have to allege both that a significant number of errors remained uncorrected  
7 after the bipartisan duplication process *and* that enough errors occurred to Trump’s  
8 detriment to actually change the results of the election. She does neither, and thus fails to  
9 state a claim for relief on these grounds.

10 **IV. There is no evidence that fraudulent activity has thrown the integrity of the**  
11 **election into doubt.**

12 Even if Ward’s Complaint properly stated a claim entitling her to some relief, Ward  
13 cannot produce evidence sufficient to override the will of Arizona voters. To successfully  
14 contest the results of the election, Ward must provide clear and convincing evidence that  
15 the election was affected by fraud or irregularity to such an extent that the results of the  
16 election must be doubted. *See Moore*, 148 Ariz. at 159-60. Evidence of fraud “may not be  
17 predicated on speculation and conjecture.” *Buzard*, 89 Ariz. at 50. Far short of providing  
18 clear and convincing evidence, Ward has not offered a single shred of evidence, by  
19 declaration or otherwise, that any ballot was fraudulently cast. Although Ward had an  
20 opportunity to inspect a sample of duplicated ballots and ballot envelope affidavits, she has  
21 not proven by clear and convincing evidence that any of those ballots contains any hint of  
22 fraudulent activity.

23 Regarding the ballot envelope affidavits, Ward cannot point to evidence of  
24 fraudulent signatures because no such evidence exists. Defendants’ forensic document  
25 examiner expert, Dr. Linton Mohammed, will testify that none of the 100 signatures on  
26 inspected ballots had any sign of forgery or fraud. In her motion for continued inspection,  
27 Ward suggested that even her own expert, Laurie Hoeltzel, was not able to conclude that  
28 any of the signatures were “invalid or fraudulent.” Mot. at 2 n.2. To the extent that Hoeltzel

1 attempts to testify that any of those signatures do not match, that testimony should be  
2 rejected. Courts have previously rejected Hoeltzel’s conclusions that signatures do not  
3 match as unpersuasive. *See, e.g., Suttongate Holdings Ltd. v. Laconm Mgmt. N.V.*, No.  
4 652393/2015, 2020 WL 2621707, at \*11 (N.Y. Sup. May 22, 2020) (“Hoeltzel simply  
5 compared a few . . . [signatures] and concluded that they differed enough to believe the  
6 iterations on the Loan Agreement are not Iglesias’s. This is as unscientific as it gets.”). In  
7 doing so, they heavily criticized her credentials, even noting that she falsely reported  
8 having a doctoral degree. *See Sunnyside Group v. Jong Kuk Lee*, No. BC696357, 2019 Cal.  
9 Super. LEXIS 6636, at \*5 (Dec. 13, 2019) (“Hoeltzel claims to have expertise in such  
10 unusual and fringe fields such as ‘psychoneurology,’ ‘Amazonian Herbology,’ ‘Angel  
11 Readings,’ ‘Swish patterns’ and ‘Ericksonian Therapudic (sic) Hypnotic Metaphors.’ . . . .  
12 Even more of concern is that she has falsely represented herself to have a doctoral degree.  
13 Hoeltzel’s substantive testimony was not very persuasive either.”).

14       Even if Ward could convincingly point to a single irregularity in the signatures  
15 contained on these ballot envelopes, the examination of ballots conducted here cannot  
16 meaningfully undermine the integrity of the election results. Ward’s analysis of these  
17 ballots is fundamentally flawed. She is not conducting a controlled experiment—her  
18 analysis does not involve a validated measure or a control group. Instead, Ward is simply  
19 examining ballots and searching for an entirely subjective feature. The results of such an  
20 analysis cannot be considered clear and convincing evidence of anything.

21       Regarding the duplication process, although the initial inspection did identify some  
22 mis-duplicated ballots, Ward cannot show that those irregularities are the result of fraud.  
23 As explained, “honest mistakes or mere omissions on the part of the election officers, or  
24 irregularities in directory matters, even though gross, if not fraudulent, will not void an  
25 election, unless they affect the result, or at least render it uncertain.” *Findley*, 35 Ariz. at  
26 269. Ward has not pointed to any evidence suggesting that any mis-duplicated ballot is  
27 anything more than an honest mistake on the part of election officers.

28       In any event, in order to prevail in a contest on the basis of fraud, Ward must show

1 that the integrity of the election is in doubt. She cannot possibly do so here. Only 27,869  
2 ballots were duplicated in Maricopa County. The review of 1,626 duplicated ballots found  
3 just nine erroneously duplicated ballots, seven of which favored President Trump, but two  
4 of which favored President-elect Biden, for a net Trump gain of six votes. (One vote for  
5 President Trump was given to President-elect Biden; six votes for President Trump were  
6 given to no candidate; and two votes for President-elect Biden were given to no candidate.)  
7 Even on the generous assumption that the 0.369% error rate held steady across all  
8 duplicated ballots in Maricopa County, President Trump would net only 103 additional  
9 votes. Even adopting Ward’s highly improbable extrapolation from the first 100 duplicated  
10 ballots reviewed—that a full two percent of those ballots involved duplication errors, and  
11 that *all* of those errors resulted in the wrongful cancellation of votes for President Trump—  
12 the number of ballots implicated would be 558, far fewer than the 10,457 vote margin by  
13 which Joe Biden and Kamala Harris prevailed in the presidential and vice-presidential  
14 races. Accordingly, Ward has not met her burden to show that the entire election should be  
15 overturned. *Findley*, 35 Ariz. at 269.

16 **CONCLUSION**

17 For the foregoing reasons, the Court should dismiss Ward’s Complaint with  
18 prejudice and deny all relief.

19

20 DATED: December 2, 2020

21

22

By: /s/ Sarah R. Gonski  
Sarah R. Gonski (Bar No. 032567)  
**PERKINS COIE LLP**  
2901 North Central Avenue, Suite 2000  
Phoenix, Arizona 85012-2788  
Telephone: 602.351.8000  
Facsimile: 602.648.7000  
SGonski@perkinscoie.com

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Marc E. Elias\*  
Bruce V. Spiva\*\*  
**PERKINS COIE LLP**  
700 Thirteenth Street NW, Suite 600  
Washington, D.C. 20005-3960  
Telephone: 202.654.6200  
Facsimile: 202.654.6211  
MElias@perkinscoie.com  
BSpiva@perkinscoie.com

Roy Herrera (Bar No. 032901)  
Daniel A. Arellano (Bar No. 032304)  
**BALLARD SPAHR LLP**  
1 East Washington Street, Suite 2300  
Phoenix, Arizona 85004-2555  
Telephone: 602.798.5400  
Facsimile: 602.798.5595  
HerreraR@ballardspahr.com  
ArellanoD@ballardspahr.com

*\*Pro hac application to be filed*

*\*\*Admitted pro hac vice*

*Attorneys for Defendants*