

# **EXHIBIT A**

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8 SUPERIOR COURT OF ARIZONA  
9 COUNTY OF MARICOPA

10 Kelli Ward,

11 Plaintiff,

12 v.

13 Constance Jackson; Felicia Rotellini; Fred  
14 Yamashita; James McLaughlin; Jonathan  
15 Nez; Luis Alberto Heredia; Ned Norris;  
Stephen Roe Lewis; and Steve Gallardo,

16 Defendants.

No. CV2020-015285

**THE LINCOLN PROJECT'S AMICUS  
CURIAE BRIEF IN OPPOSITION TO  
PLAINTIFF'S REQUESTED RELIEF**

(Assigned to the Honorable Randall H. Warner)

17 The Lincoln Project respectfully submits this *amicus curiae* brief in opposition of the  
18 Plaintiffs' request for relief.

19 **INTRODUCTION**

20 The Lincoln Project is an organization composed of Republicans, former  
21 Republicans and conservatives dedicated to defeating candidates who have abandoned  
22 their constitutional oath, regardless of party. To achieve that purpose, The Lincoln Project  
23 has created a broad coalition of supporters and volunteers across the country. Many of its  
24 supporters live in Maricopa County, Arizona. During the recently conducted general  
25 election, The Lincoln Project put its organization to work contacting, surveying,  
26 communicating with and mobilizing voters across the country. To those ends, The Lincoln

1 Project invested significant resources in the State of Arizona, and as the largest county in  
2 the state, Maricopa County in particular. The relief sought by Plaintiff threatens to  
3 undermine much of the work The Lincoln Project engaged in, disenfranchising not just the  
4 voters supporting their mission within Maricopa County, but all voters across the state.  
5 The Lincoln Project cannot let such injustice stand.

6 As a part of its mission to protect the integrity of elections and democracy, The  
7 Lincoln Project has also tracked and engaged in multiple lawsuits across the country  
8 including an amicus brief filed in a prior Arizona action.<sup>1</sup> This experience has given The  
9 Lincoln Project a unique perspective on the post-election challenges, and their underlying  
10 motives, brought by the presidential campaign for Donald Trump and his Republican  
11 allies.

12 While the Defendants represent a significantly different interest than The Lincoln  
13 Project, any relief granted against them would have a significant and irreparable impact on  
14 The Lincoln Project and its supporters in Arizona.

## 15 ARGUMENT

### 16 I. Background.

#### 17 A. *The Lincoln Project.*

18 Founded nearly a year ago, The Lincoln Project grew swiftly in prominence among  
19 conservatives as it harnessed the sentiments of Republicans and former Republicans  
20 disaffected by the current administration and congressional enablers. Best known for  
21 producing powerful videos and commercials, The Lincoln Project has supplemented those  
22 efforts with a substantial field operation in targeted states, including Arizona. Maricopa  
23 County has been a focal point for those efforts.

24 Founders of The Lincoln Project have run multiple Republican gubernatorial,  
25 senatorial, and presidential campaigns throughout their careers. Several have longstanding  
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<sup>1</sup> *Donald J. Trump for President, Inc. et al v. Katie Hobbs et al*, CV2020-014248.

1 ties to Arizona. For example, John Weaver, Steve Schmidt and Reed Galen each held  
2 leadership roles in Senator John McCain’s campaigns for U.S. Senate and President of the  
3 United States.<sup>2</sup> Other founders have had equally prestigious careers working as  
4 Republican operatives. That experience has made them experts in reviewing strategies  
5 taken by political operatives, including legal challenges. Founders Galen and Rick Wilson  
6 were both extensively involved in the 2000 Florida presidential race legal challenges.

7 The Lincoln Project put that expertise to work in Maricopa County over the past  
8 several months. Field staff and organizers developed leadership teams in Maricopa  
9 County working on various programs to educate voters and communicate with those who  
10 supported The Lincoln Project’s preferred candidates. Furthermore, The Lincoln Project  
11 spent substantial sums on media buys advocating for supporters to defeat President  
12 Donald Trump; specifically, it spent more than \$300,000 on television commercials and in  
13 excess of \$1,400,000 on digital advertisements and social media platforms in Arizona  
14 markets.

15 On November 3rd, 2020, the efforts of The Lincoln Project and the votes cast by its  
16 supporters helped defeat Trump’s re-election efforts in a full, free and fair election. Now  
17 Plaintiff seeks to undermine that result by both subverting the will of the people and  
18 contravening the rule of law.

19 *B. Traditional Republican history of expanding voting rights and access to the*  
20 *ballot.*

21 Beginning with the Republican Party’s first president, and The Lincoln Project’s  
22 namesake, the Republican Party historically fought to expand equal rights, particularly at  
23 the ballot box. In the aftermath of the Civil War, Republicans sponsored and passed three  
24 constitutional amendments during Reconstruction: the Thirteenth Amendment  
25 (prohibiting slavery), the Fourteenth Amendment (barring states from denying equal  
26 protection of the laws), and the Fifteenth Amendment (dictating that the right to vote

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<sup>2</sup> Our Team, *The Lincoln Project*, <https://lincolnproject.us/team/> last visited Dec. 3, 2020.

1 could not be denied on the basis of race). A half century later, Republicans were essential  
2 to passing the Nineteenth Amendment (prohibiting disenfranchisement based on sex).

3 These efforts by traditional Republicans stemmed in great part from President  
4 Abraham Lincoln’s most famous edict: “that government of the people, by the people, for  
5 the people, shall not perish from the earth.”<sup>3</sup> It is the most solemn duty of every citizen, a  
6 tenet of traditional Republican values and a guiding principle for The Lincoln Project.

7 It is in that proud tradition that The Lincoln Project engaged in their efforts to help  
8 educate and inform Arizonans who cast their ballots on November 3rd and engaged in  
9 litigation to protect democratic norms across the country. It is in that tradition of  
10 expanding and protecting access to the ballot that The Lincoln Project files this *amicus*  
11 *curiae* brief in opposition to Plaintiffs’ requested relief.

## 12 **II. Effect of Plaintiffs’ Request on Government “By the People, For the People”** 13 **and the Rule of Law.**

14 The request for relief by the Plaintiffs not only undermines the principle of  
15 government “by the people, for the people” but also the rule of law principles fundamental  
16 to the conservative belief structure held by supporters of The Lincoln Project.

17 The right to vote is fundamental to a democracy. It is the defining feature of a  
18 government “by the people” – the right for the people to select public officials by  
19 exercising the right to vote. Undermining that right presents a threat not just to an instant  
20 election, but to the democracy which relies on the right. Yet that is exactly what Plaintiffs  
21 request for relief entails.

22 In a record year for voter turnout in Arizona, Joe Biden received 1,672,143 votes to  
23 the 1,661,686 for Trump.<sup>4</sup> As reported by the *Arizona Republic*, 34,718 voters left their

24 <sup>3</sup> Abraham Lincoln Online, *The Gettysburg Address*,  
25 <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm> last visited Nov.  
10, 2020.

26 <sup>4</sup> 2020 General Election, *State of Arizona Secretary of State*,  
<https://results.arizona.vote/#/featured/18/0> last visited Dec. 3, 2020.

1 presidential ballot blank and 51,465 voted for the Libertarian candidate Jo Jorgenson even  
2 though the state has only 38,385 registered Libertarians.<sup>5</sup> The Lincoln Project believes  
3 that many of the undervotes and additional Libertarian votes were a direct result of its  
4 efforts and likely derived from Republican, former Republicans and conservative  
5 unaffiliated voters. Both the Arizona Secretary of State and Governor have since certified  
6 those results. Yet the Plaintiff asks this Court to declare the “certificate of election ... of  
7 no further legal force or effect, and that the election is annulled and set aside.”<sup>6</sup>

8 Effectively, Plaintiffs ask this Court to disenfranchise more than two million  
9 Arizonans in Maricopa County, and more than 3.3 million across the state. They would  
10 turn Lincoln’s quote on its head and require government by “none of the people.”

11 Plaintiff’s position is not only anti-democratic, but in clear contrast to the rule of  
12 law principles that The Lincoln Project espouses. First and foremost, many of those  
13 principles can be traced back to the country’s founders. As written in The Federalist #78  
14 by Alexander Hamilton, the “intention of the people” must be preferred over “the  
15 intention of their agents.”<sup>7</sup> In this instance, the intention of 3.3 million Arizonans should  
16 not be cast aside over the speculative arguments made by Plaintiff.

17 Second, rule of law principles require matters be individually adjudicated and  
18 based on concrete factual allegations.<sup>8</sup> Disenfranchising 3.3 million voters based on  
19 entirely speculative allegations – or even a small sample of reviewed ballots or envelopes  
20 – is not just. Such an outcome is a gross violation of the rights to vote and self-govern  
21 afforded the people of Arizona.

22 \_\_\_\_\_  
23 <sup>5</sup> *More than 32,000 in Arizona voted but left the presidential race blank. That’s*  
24 *significant*, The Arizona Republic, November 6, 2020,  
[https://www.azcentral.com/story/opinion/op-ed/joannaallhands/2020/11/06/thousands-](https://www.azcentral.com/story/opinion/op-ed/joannaallhands/2020/11/06/thousands-arizona-voters-refused-choose-trump-biden-jorgensen/6194635002/)  
25 [arizona-voters-refused-choose-trump-biden-jorgensen/6194635002/](https://www.azcentral.com/story/opinion/op-ed/joannaallhands/2020/11/06/thousands-arizona-voters-refused-choose-trump-biden-jorgensen/6194635002/) last visited Dec. 3,  
26 2020.

<sup>6</sup> *Verified Amended Complaint*, p. 9, Prayer for Relief § B.

<sup>7</sup> *The Federalist Papers: No. 78*, [https://guides.loc.gov/federalist-papers/text-71-80#s-lg-](https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493470)  
26 [box-wrapper-25493470](https://guides.loc.gov/federalist-papers/text-71-80#s-lg-box-wrapper-25493470) last visited Dec. 3, 2020.

<sup>8</sup> *Overview- Rule of Law*, United States Courts, [https://www.uscourts.gov/educational-](https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law)  
[resources/educational-activities/overview-rule-law](https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law) last visited Dec. 3, 2020.

1 **III. Plaintiff’s Requested Relief Would Disenfranchise the Right of Arizonans to**  
2 **Engage in the Presidential Election.**

3 Delay caused by this action could have dire consequences to the right of Arizonans  
4 right to vote in presidential elections. First, delay past December 8, 2020 would forfeit the  
5 “safe harbor” provision enacted by Congress in 3 U.S.C. § 5. Second, and most  
6 concerning, failure to resolve the matter by December 14, 2020 – the date set for the  
7 meeting and vote of electoral college electors in 3 U.S.C. § 7 – would likely lead to no  
8 electoral college votes cast for Arizona. Consequently, every voter in the state would be  
9 disenfranchised from the right to participate and vote in the presidential election.

10 Federal law places a “premium on states resolving post-election disputes by the  
11 safe harbor date.”<sup>9</sup> As explained by Tokaji, failure to abide by the safe harbor date leads to  
12 a domino-effect that ends in a constitutional crisis. Specifically, failure to reach a final  
13 determination between competing slates of electors would be debated by the two houses  
14 of Congress.<sup>10</sup> Because in a disputed election “party-line votes in Congress are likely,”<sup>11</sup>  
15 any tie would be sent back to the governor given that the two chambers of Congress are  
16 controlled by opposing parties.<sup>12</sup> This outcome threatens to both introduce partisan  
17 political pressure into the decision (governors are no less likely to act in a party-line  
18 manner than members of Congress) and undermine important and fundamental democratic  
19 norms,<sup>13</sup> and ignore the will of the people. Effectively, if the safe harbor date passes  
20 without resolution of this conflict, the only vote in the state that will count will be that of  
21 Governor Doug Ducey. All other Arizonans will be disenfranchised.  
22

23 <sup>9</sup> Daniel P. Tokaji, *An Unsafe Harbor: Recounts, Contests, and the Electoral College*, 106  
24 Mich. L. Rev. First Impressions 84 (2008). Available at

[https://repository.law.umich.edu/mlr\\_fi/vol106/iss1/14](https://repository.law.umich.edu/mlr_fi/vol106/iss1/14)

25 <sup>10</sup> 3 U.S.C. § 15.

<sup>11</sup> Tokjai, 86.

26 <sup>12</sup> *Id.*, see also 3 U.S.C. § 15. Foretelling, Tokjai’s example cites a fictional contested  
election in the State of Arizona.

<sup>13</sup> *Resources*, National Task Force on Election Crises available at  
<https://www.electiontaskforce.org/resources> last visited on Dec. 3, 2020.

1 Even more dire, if the Court fails to make a final determination in this matter  
2 before the December 14, 2020 date set for the meeting and vote of electoral college  
3 electors under 3 U.S.C. § 7, it is possible that *no* electoral votes from Arizona would be  
4 counted. There is no provision in the constitution or in statute for electoral college  
5 members to meet and vote after the date set by Congress. Taking a vote after that date  
6 would be akin to individual citizens attempting to vote after Election Day.<sup>14</sup> The votes  
7 would be both fraudulent and void.

8 Furthermore, no constitutional or statutory mandate requires every vote, or any  
9 vote, from a state to be cast in the electoral college. To the contrary, the country has a  
10 history of electoral college voters casting deviant votes, including one abstention and  
11 multiple ballots uncast due to illness.<sup>15</sup> For example, in both 1808 and 1832 electoral  
12 votes were not cast when the electors fell ill and were unable to attend the electoral  
13 college meeting. Should no electors for Arizona be approved and attend the meeting on  
14 December 14, 2020, they would be unable to cast ballots or transmit their vote to the  
15 officials required by law. In that circumstance, it may be the likely outcome that the  
16 electoral votes for Arizona simply will not be counted, the right of the people of Arizona  
17 to participate in their self-governance will be undermined, and “government by the  
18 people” will have perished for Arizonans in this election.

19 **IV. Plaintiff’s Complaint Represents a Concerted Plan to Undermine the**  
20 **Presidential Election Outcome.**

21 While taken by itself the Plaintiff’s arguments in this matter may simply be  
22 unpersuasive and overbroad, viewed in conjunction with similar complaints directed by  
23 Trump, his campaign and enablers across the country it paints the picture of concerted  
24 plan to undermine the outcome of the presidential election won by Biden on November 3,  
25 2020.

26 <sup>14</sup> Election Day is set in statute by 3 U.S.C. § 1.

<sup>15</sup> *Faithless Electors*, FairVote, [https://www.fairvote.org/faithless\\_electors](https://www.fairvote.org/faithless_electors) last accessed Dec. 3, 2020.

1 First, post-election lawsuits brought by Trump or Trump allies have been filed  
2 exclusively in states where Trump lost. These states include Pennsylvania, Nevada,  
3 Georgia, Michigan, Wisconsin and Arizona.<sup>16</sup> Neither Trump nor anyone associated with  
4 him or his campaign have filed similar suits in states he won or is winning by narrow  
5 margins such as Florida, North Carolina or Ohio. This pattern makes it apparent that the  
6 complaints are political in nature rather than a true attempt to vindicate the rights of  
7 voters. Plaintiff, the Arizona Republican Party Chair, is engaged in the same bad faith  
8 efforts to overturn the election and deny “government by the people.”

9 Second, the majority of claims have been brought either devoid of evidence, based  
10 on incompetent evidence (e.g. hearsay) or grounded in pure speculation. Time and again,  
11 arguments by Trump allies have failed to provide courts with even cursory evidence,  
12 much less that necessary to overturn the most fundamental right in a democratic  
13 government, the right to vote, for millions of people. As one judge recently stated, to “halt  
14 the certification at literally the 11th hour would breed confusion and disenfranchisement  
15 that I find have no basis in fact or law.”<sup>17</sup>

16 This case is no different. As noted by Arizona Secretary of State Katie Hobbs in  
17 her brief in opposition to the Plaintiff’s Rule 27 petition, Plaintiff did not file this action  
18 until well after voting and, importantly, the vote count, had begun, ended, been recounted  
19 and audited in several jurisdictions and certified by counties. Plaintiff did not wait until  
20 the 11th hour to file her complaint – she waited until one second before midnight.

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22  
23 <sup>16</sup> McCoy, Kevin, Slack, Donovan, Wagner, Dennis, *Most Republican lawsuits*  
24 *challenging election results in battleground states haven’t gone far*, USA Today, Nov. 10,  
25 2020 <https://www.usatoday.com/story/news/politics/elections/2020/11/09/republican-lawsuits-challenging-election-pennsylvania-arizona-nevada-havent-gone-far-heres-why/6227596002/> last visited Dec. 3, 2020.

26 <sup>17</sup> Zach Montague and Alan Feuer, *Trump Campaign Lawyers Step Up but Are Swiftly Knocked Down*, The New York Times, Nov. 20, 2020 available at <https://www.nytimes.com/2020/11/20/us/politics/trump-election-lawsuits.html?action=click&module=Top%20Stories&pgtype=Homepage> last visited Dec. 3, 2020.

1 Yet Plaintiff asks this Court to jeopardize the franchise rights of millions of  
2 Arizonans in order for her to engage in a discovery fishing expedition.

3 The probability of the Plaintiff succeeding at all, much less on a widespread basis,  
4 needs to be put into context. Her arguments regarding misconduct, illegal votes and  
5 erroneous count of votes effectively boil down to fraud claims. However, election fraud is  
6 exceedingly rare, particularly in the State of Arizona. The conservative Heritage  
7 Foundation has tracked election fraud cases for decades and notes only nine cases in  
8 Arizona since 2016.<sup>18</sup> Only one case since 2009 involves “fraudulent use of absentee  
9 ballots.”<sup>19</sup> These findings jibe with recent statements by U.S. Attorney General William  
10 Barr that he has “not seen fraud on a scale that could have effected a different outcome in  
11 the election”<sup>20</sup> and the opinion of the esteemed Republican election law attorney  
12 Benjamin Ginsberg.<sup>21</sup> Consequently, it is exceedingly unlikely that even a full review of  
13 all ballots and envelopes would lead to discovery of any election fraud, much less on basis  
14 significant enough to overturn the Arizona election results.

### 15 CONCLUSION

16 For the reasons argued above, The Lincoln Project respectfully urges this Court to  
17 rule against the relief sought by the Plaintiff.

21 <sup>18</sup> *Election Fraud Cases*, The Heritage Foundation available at  
22 [https://www.heritage.org/voterfraud/search?combine=&state=](https://www.heritage.org/voterfraud/search?combine=&state=AZ&year=&case_type=All&fraud_type=All&page=0)  
[AZ&year=&case\\_type=All&fraud\\_type=All&page=0](https://www.heritage.org/voterfraud/search?combine=&state=AZ&year=&case_type=All&fraud_type=All&page=0) last visited Dec. 3, 2020.

23 <sup>19</sup> *Id.*

24 <sup>20</sup> Matt Zaposky, Devlin Barrett and Joseph Dawsey, *Barr says he hasn't seen fraud that*  
*could affect the election outcome*, The Washington Post, Dec. 1, 2020 available at  
25 [https://www.washingtonpost.com/national-security/barr-no-evidence-election-](https://www.washingtonpost.com/national-security/barr-no-evidence-election-fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839_story.html)  
[fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839\\_story.html](https://www.washingtonpost.com/national-security/barr-no-evidence-election-fraud/2020/12/01/5f4dcaa8-340a-11eb-8d38-6aea1adb3839_story.html) last visited Dec. 3,  
2020.

26 <sup>21</sup> Ginsberg, Benjamin L., *Republicans have insufficient evidence to call elections 'rigged'*  
*and 'fraudulent'*, The Washington Post (Sep. 8, 2020, 4:12 PM)  
[https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-](https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/)  
[evidence-call-elections-rigged-fraudulent/](https://www.washingtonpost.com/opinions/2020/09/08/republicans-have-insufficient-evidence-call-elections-rigged-fraudulent/) last visited Dec. 3, 2020.

1 DATED this 3<sup>rd</sup> day of December, 2020.

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10 Electronically filed this 3<sup>rd</sup> day of  
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