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11 *Attorneys for Plaintiff AZGOP*

12 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 REPUBLICAN NATIONAL COMMITTEE,
15 a national political party committee;
16 REPUBLICAN PARTY OF ARIZONA; a
17 recognized political party,

18 Plaintiffs,

19 v.

20 STEPHEN RICHER, in his official capacity
21 as the Maricopa County Recorder; REY
22 VALENZUELA, in his official capacity as
23 the Maricopa County Director of Elections
24 for Election Services and Early Voting;
25 SCOTT JARRETT, in his official capacity as
26 the Maricopa County Director of Elections
27 for Election Day and Emergency Voting;
28 BILL GATES, CLINT HICKMAN, JACK
SELLERS, THOMAS GALVIN, AND
STEVE GALLARDO, in their official
capacities as members of the Maricopa
County Board of Supervisors; and
MARICOPA COUNTY,

Defendants.

No. CV2022-013185

**AMENDED VERIFIED SPECIAL
ACTION COMPLAINT**

1 The Republican National Committee (“RNC”) and Republican Party of Arizona
2 (“AZGOP”) (collectively “Plaintiffs”) allege as follows:

3
4 **SUMMARY OF THE CASE**

5 1. For more than forty years, Arizona has guaranteed the largest political parties
6 an equal number of “seats at the table” in the administration of its elections (collectively,
7 the “Equal Access Statutes”). *See e.g.*, A.R.S. §§ 16-531, -532, -549, -551, -552, -621.

8 2. The Equal Access Statutes and the corresponding portions of the 2019
9 Election Procedures Manual wisely ensure procedural and substantive fairness, and sharply
10 reduce opportunities for accusations of intentional maladministration of Arizona elections.

11 3. Maricopa County has violated, and appears likely to continue violating, the
12 requirements of the Equal Access Statutes in the 2022 election cycle.

13 4. Maricopa County’s failure inevitably breeds distrust and doubts among the
14 electorate.

15 5. The Plaintiffs bring this suit to ensure that Maricopa County meets the
16 requirements of the Equal Access Statutes, and seats members of the Republican Party in
17 appropriate election-administration positions for the remainder of the 2022 election cycle
18 and in future election cycles.

19 6. Plaintiffs submit this amended complaint for two reasons.

20 7. First, on October 19, the County informed Plaintiffs that it had now come into
21 compliance with the law requiring parity in the general labor pool for board workers. Thus,
22 the remaining issue in this case is the County’s imposition of day and hour requirements,
23 or alternatively the imposition of onerous requirements on the Party’s board Nominees (as
24 opposed to Republican election workers generally).

25 8. Secondly, Defendants have not yet decided to whether impose day and hour
26 requirements on the Nominees for central counting place boards that are presently being
27 hired for the contingency of an automatic post-canvas recount. Recent legislative changes,
28 as well as the narrowing polls of the U.S. Senate race and potentially close polling margins

1 in statewide races, make an automatic post-canvass recount much more likely than in prior
2 election cycles. Because such a recount is certain to require counting a large number of
3 ballots by hand (and potentially all ballots in the County) it would be of indefinite duration.
4 Few people that the Republican Party might nominate could make such an indefinite time
5 commitment and even the multi-week requirements that the County is requiring for other
6 boards would severely impact the Republican Party's ability to recruit nominees for this
7 serious task (as does the uncertainty of whether such commitments will be unlawfully
8 imposed).

9 9. If the County was not imposing onerous minimum day and hour requirements
10 on the Republican Party's Nominees, the Republican Party would simply schedule
11 Nominees filling its slot(s) on a given board in a rotation that would accommodate their
12 schedules. This common-sense approach to scheduling volunteers would allow the
13 Republican Party to supply the maximum number of Nominees to oversee, and participate
14 in, the Central Counting Place Boards that will administer the upcoming election as well as
15 those tasked with any automatic recount. The County's insistence on unlawfully imposing
16 such requirements on the Republican Party's Nominees makes this impossible.

17 **JURISDICTION**

18 10. This Court has jurisdiction over this action pursuant to Article 6, § 14 of the
19 Arizona Constitution, A.R.S. §§ 12-1801 and -2021, Arizona Rules of Special Action
20 Procedure 3 and 4, the Arizona Uniform Declaratory Judgments Act, and other applicable
21 law.

22 11. Venue for this action lies in Maricopa County pursuant to A.R.S. § 12-401(7)
23 and (16) because one or more Defendants reside and/or hold office in that county.

24 **PARTIES**

25 12. Plaintiff Republican National Committee is a national political party
26 committee that is responsible for the strategic and day-to-day operation of the Republican
27 Party at the national level in collaboration with state and local party committees, and for
28

1 promoting the election of Republican candidates for federal office in Arizona and across
2 the United States.

3 13. The Republican Party in Arizona primarily operates through Plaintiff
4 Republican Party of Arizona. The AZGOP is one of the two largest political parties entitled
5 to representation pursuant to A.R.S. § 16-804 of which Republican county committees form
6 one component part. See A.R.S. § 16-821. The AZGOP is responsible for the strategic and
7 day-to-day operation of the Republican Party at the state level and for promoting the
8 election of Republican candidates for office in Arizona.

9 14. Defendant Maricopa County is political subdivision of the State of Arizona.
10 It is charged by law with conducting elections within its jurisdictional boundaries, to include
11 overseeing the operations of polling locations on Election Day, and through its Board of
12 Supervisors, appointing polling place Boards of Elections, Early Ballot Boards, and certain
13 Central Counting Place Boards. See A.R.S. §§ 11-251(3), 16-446, -447(A), -511, -531 -551,
14 -642, -645.

15 15. Defendants Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and
16 Steve Gallardo make up the Maricopa County Board of Supervisors. By law, the Board of
17 Supervisors manages various functions in Maricopa County, including various election
18 functions, and the Board of Supervisors appoints polling place Boards of Elections, Early
19 Ballot Boards, and certain Central Counting Place Boards. See A.R.S. §§ 11-251(3), 16-
20 446, -447(A), -511, -531 -551, -642, -645. These Defendants are named in their official
21 capacities only.

22 16. Defendant Stephen Richer is the Maricopa County Recorder (the
23 "Recorder"), a constitutionally created public office, see Ariz. Const. art. XII, § 3. The
24 Recorder is the principal elections officer of Maricopa County and is responsible for
25 overseeing and directing numerous components of election administration within this
26 jurisdiction, to include early voting procedures and the tabulation and auditing of votes, and
27 appointing certain Central Counting Place Boards. See A.R.S. §§ 16-541, -542, -543, -544,
28 -549, -550, -602, -621. The Recorder is named in this action in his official capacity only.

1 largest political parties, with equal representation of each party. *See* A.R.S. §
2 16-621(B).

3 d. Central Counting Place Boards oversee operations at Maricopa County’s
4 election headquarters that are not statutorily assigned to other boards. Each
5 Central Counting Place Board “is comprised of two members of different
6 political parties,” selected from nominations submitted by the Maricopa
7 County political committees representing the two largest political parties. If a
8 political party fails to nominate members of such boards, the Board or its
9 designee may identify and appoint to a Central Counting Place Board a
10 member from the appropriate political party. *See* Arizona Secretary of State,
11 *Elections Procedures Manual* (2019) (“EPM”) at 196-197.¹ The EPM has the
12 force and effect of law. *See* A.R.S. § 16-452.

13 20. Parity is not all the law requires. As further set forth below, in an effort to
14 further build confidence in the election process, the law gives political parties the right to
15 designate trusted members to be appointed to such boards. *See e.g.*, EPM at 133 (“At least
16 90 days before an election, the county chairperson of the two largest political parties may
17 designate qualified electors to serve on election boards. When the list is timely submitted,
18 it **shall** be used to appoint judges.”). *See also for e.g.*, A.R.S. § 16-531, , 549, 551, 621;
19 EPM at 66, 196-97.

20 **Violations of the Equal Access Statutes in the 2022 Primary Election**

21 21. In anticipation of the 2022 primary election, in or around May 2022 the
22 Chairwoman of the Maricopa County Republican Party, Mickie Niland, timely transmitted
23 to Maricopa County hundreds of Republican nominees (“Nominees”) for appointment to
24 the various Maricopa County boards for the 2022 primary election.

25
26
27 ¹ If it is “impossible” to staff each Central Counting Place Board with members of the two
28 largest political parties, the Recorder must “exercise best efforts . . . to ensure that there is a diversity
of political party affiliation (including no affiliation) on the boards and that no board is comprised
of members of only one party.” hh at 197 n.1.

1 22. Maricopa County nevertheless failed to meet the requirements of the Equal
2 Access Statutes and the equal representation requirements of the EPM during the 2022
3 primary election.

4 23. At the highest level, Maricopa County hired 857 Democratic poll workers but
5 only 712 Republican poll workers.

6 24. More specifically, the following 11 Maricopa County voting centers during
7 the 2022 primary election did not have any Republican poll workers:

- 8 a. Aguila Fire Department
- 9 b. Brophy College Prep
- 10 c. Cartwright School District Annex
- 11 d. Charles W. Harris School
- 12 e. David Crockett School
- 13 f. El Tianguis Mercado
- 14 g. Estrella Mountain Community College
- 15 h. Fowler School
- 16 i. Memorial Presbyterian Church
- 17 j. Salt River Pima Community Center
- 18 k. San Lucy District Administration Building

19 25. In comparison, only 2 Maricopa County voting centers in the 2022 primary
20 election lacked any Democratic poll workers.

21 26. The Central Counting Place Boards in Maricopa County for the 2022
22 primary election included only 88 (28%) Republican workers, but 148 (47%) Democratic
23 workers.

24 27. As of October 4, Maricopa County had approximately 836,611 active
25 registered Republican voters and 726,450 active registered Democratic voters.²

26
27 ² See Maricopa County Voter Registration Totals found at
28 https://recorder.maricopa.gov/Elections/VoterRegistration/redirect_new.aspx?view=congressional
(last accessed 10/4/2022).

1 differing political parties, the officer in charge of elections shall, at minimum,
2 exercise best efforts . . . **However, nothing in this Manual shall be**
3 **interpreted to supersede otherwise applicable statutory requirements,**
4 **including the requirement that board workers be of differing political**
5 **party affiliation.”** (emphasis supplied); *Leach v. Hobbs*, 250 Ariz. 572, 576,
6 ¶ 21 (2021) (“[A]n EPM regulation that . . . contravenes an election statute’s
7 purpose does not have the force of law.”);

- 8 b. denied any “statutory” obligation to ensure parity in Central Counting Place
9 Boards, apparently because the parity requirement for Central Counting Place
10 Boards arises in the EPM;
- 11 c. explained the facts resulting in Maricopa County’s failure to employ any
12 Republican poll workers at 4 of the 11 Maricopa County voting centers
13 described above;
- 14 d. offered **no** explanation for the remaining 7 Maricopa County voting centers
15 at which no Republican poll workers were employed for the 2022 primary
16 election; and
- 17 e. more broadly, stopped short of assuring the RNC that the Defendants would
18 meet their unambiguous and unqualified obligations under the Equal Access
19 Statutes during the 2022 general election.

20 35. The three most significant factors contributing to Maricopa County’s
21 violations of the Equal Access Statutes appear to be under Maricopa County’s direct
22 control.

- 23 a. On information and belief, Maricopa County informs Republican board
24 Nominees that they will be required to work long hours (*i.e.*, up to 14-hour
25 workdays) throughout the early voting period, including all weekends. Such
26 onerous day and hours requirements naturally deter earnest and civic-minded
27 citizens who would, under ordinary conditions, make temporary sacrifices in
28 order to help administer Arizona’s elections; the Defendants’ day and hours

1 requirements foreseeably exclude virtually all persons who wish to participate
2 but cannot abandon all other personal and professional obligations in October
3 and November. They prohibit the Republican Party from rotating its board
4 representatives to create reasonable work schedules for its Nominees.

5 b. On information and belief, Maricopa County maintains unduly difficult
6 working conditions such that, by Mr. Jarett's admission, "well over 500"
7 election workers quit their positions before the 2022 primary election. This
8 level of attrition is abnormal and suggests that Maricopa County does not
9 make earnest efforts to attract and retain citizens in the administration of
10 Arizona elections.

11 c. On information and belief, Maricopa County does not maintain a "bullpen"
12 of election workers sufficient to backfill foreseeable attrition arising from
13 inhospitable work conditions. Although Maricopa County has admitted "well
14 over 500" defections and therefore can reasonably anticipate absences of or
15 resignations by board appointees, the Defendants have not adopted a practice
16 of hiring and training enough election workers to backfill such vacancies and
17 ensure compliance with the Equal Access Statutes and the equal
18 representation requirements of the EPM.

19 36. There are approximately 836,611 active registered Republicans in Maricopa
20 County—an enormous labor pool from which to draw, particularly given the eagerness of
21 the federal, state, and county committees of the Republican Party to assist with recruiting
22 and placement efforts. The Defendants cannot establish onerous day and hours
23 requirements, or create unduly inhospitable working conditions, that deter Republican
24 workers from participating in the administration of Arizona elections—and then claim that
25 compliance with the Equal Access Statutes was impossible. At bottom, if the Defendants'
26 hours requirements and working conditions cannot be maintained absent violations of the
27 Equal Access Statutes, the Equal Access Statutes must win out.

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1 37. In addition, Defendants have no authority to impose any requirements on the
2 Republican Party’s direct board appointees.

3 38. For example, the EPM provides that: “At least 90 days before an election, the
4 county chairperson of the two largest political parties may designate qualified electors to
5 serve on election boards. When the list is timely submitted, it **shall** be used to appoint
6 judges.” EPM at 133 (emphasis added). *See also for e.g.*, A.R.S. § 16-531(A) (“If not less
7 than ninety days before the election the chairman of the county committee of either of the
8 parties designates qualified voters of the precinct, or of another precinct if there are not
9 sufficient members of that party available in the precinct to provide the necessary
10 representation on the election board as judge, such designated qualified voters **shall** be
11 appointed.”), (E) (same rule for write-in tally boards), -551(A) (same rule for early election
12 boards), -621(B)(2) (same rule for electronic vote adjudication boards).

13 39. Even if it were the case that Defendants had discretion to impose requirements
14 (they don’t), these and similar laws would indicate that the scope of their discretion, if any
15 is tightly constrained. The purpose of these laws is not efficiency. Rather, the purpose is to
16 allow for third-party oversight of, and participation in, the elections process by
17 independently appointed board members that the political parties themselves deem
18 trustworthy. Though Board Members are paid a nominal amount, they are essentially
19 volunteers. Telling such potential board members that they will not be appointed unless
20 they agree to lengthy and onerous day and hour commitments screens out anyone with full-
21 time employment or family commitments and thus many of the individuals the Republican
22 Party has nominated.

23 40. Such requirements also screen out even many elderly and disabled people
24 who would otherwise be willing to serve. For example, in a 2018 interview, Gila County’s
25 election director noted as follows with respect to poll workers: “Most of the county’s poll
26 workers are 65 or older, he said, and “they experience a lot of medical issues ... so, they
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1 come out and try to do a job for us, but then they find out that the length of day is (it's) just
2 incredibly difficult for them and so we lose a lot of them.”³

3 41. Further, even if the EPM purported to license a violation of the Equal Access
4 Statutes (and it cannot, *see Leach*, 250 Ariz. at 576, ¶ 21), the Defendants cannot claim that
5 they satisfy any “best efforts” standard. Given the ineffectiveness of the Defendants’
6 recruiting strategy and the alarmingly high attrition rate in the Defendants’ workforce, the
7 Defendants must revisit their hours requirements and working conditions rather than blindly
8 adhere to failed employment practices that foreseeably result in violations of the Equal
9 Access Statutes and the equal representation requirements of the EPM. “Best efforts”
10 requires no less.

11 **Defendants’ Conduct Threatens Serious Consequences in the Event of an Automatic**

12 **Recount**

13 42. The law provides for two types of automatic hand recounts to take place after
14 an election.

15 43. The first type, a pre-canvass hand count audit conducted using a limited
16 sample size, is performed as a matter of course in every election by one of the Central
17 Counting Place Boards⁴ (the “Hand Count Board”). The Republican Party has the right to
18 designate Nominees to such boards whom Defendants must appoint. *See* ARS 16-602(B).

19 44. The second type of automatic hand recount is the post-canvass recount, which
20 is automatically triggered in close races. *See* 16-661 – 16-667.

21 45. Earlier this year, the Arizona legislature passed SB 1008. This bill
22 substantially increased the likelihood that an automatic recount would be required
23 subsequent to the canvass of the 2022 general election by expanding the margin of victory

24 _____
25 ³ Brendan Campbell, *Long hours, low pay, but poll workers are still signing up – for now*,
26 CRONKITE NEWS (available at: <https://cronkitenews.azpbs.org/2018/10/30/arizona-poll-workers-sign-up-for-long-hours-low-pay/>) Oct. 30, 2018.

27 ⁴ It is also possible that hand count boards would be classified as “Election Boards”. *See* ARS 16-
28 602(B)(7) (“The county chairman of each political party shall designate and provide the number
of election board members as designated by the county officer in charge of elections who shall
perform the hand count under the supervision of the county officer in charge of elections.”). For
the purposes of this suit, the distinction does not appear to be particularly relevant.

1 that triggers such a recount, pursuant to ARS 16-661(A), from the lesser of 200 votes or
2 one-tenth of one percent to one-half of one percent. Had SB 1008 been in effect in 2020,
3 an automatic post-canvass hand recount would have been triggered in the presidential
4 race.⁵ By way of example, if three million votes are cast in a 2022 General Election race,⁶
5 the threshold for a recount would be changed by SB 1008 from 200 votes to 15,000 votes.

6 46. A post-canvass automatic recount, if triggered, would require recounting, by
7 hand, an extremely large number of ballots for a statewide race. Under certain
8 circumstances, a hand-recount of a substantially larger number of ballots, or even all of the
9 ballots cast in Maricopa County, could be required. *See* ARS 16-602(B-F),⁷ 16-663(B).

10 47. The Hand Count Board is also responsible for such recounts. *Id.*

11 48. The Republican Party continues to recruit members to the Central Counting
12 Place Boards. The increasing possibility of the post-canvass hand recount adds new urgency
13 to the Republican Party's continued efforts to recruit members to participate in and oversee
14 the Central Counting Place Boards. Given this increased possibility, far more Nominees
15 must be recruited than in a normal year. Under the best of circumstances, this would be
16 difficult. However, the County's requirements make it impossible.

17 49. Recent document production made in a parallel public records suit between
18 the parties to this case has failed to reveal a comprehensive written policy for the days and
19 hours that the Nominees must work for the various Central Counting Place Boards.

20 50. Communications that have been produced from the County's recruiters shows
21 that onerous day and hour time commitments are being required of the Nominees and
22 indicates that the County is requiring Nominees to commit to working full days each and
23 every day their board is in operation.

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25
26 ⁵ *President: Arizona*, CNN (available at:
<https://www.cnn.com/election/2020/results/state/arizona/president>) (updated Nov. 30, 2020).

27 ⁶ There were 3,387,326 votes cast for the office of President in 2020 in Arizona.

28 ⁷ ARS 16-663(B) requires the use of the procedures outlined in ARS 16-602(C-F) for a post-
canvass recount. However, ARS 16-602(F) incorporates by reference the use of the procedures in
ARS 16-602(B).

1 51. A post-canvass recount could take an extremely prolonged and indefinite
2 period of time. “The last statewide recount, for a proposition in 2010, examined about 1.8
3 million ballots. It took between one and two weeks, and was ‘like having a second election,’
4 according to former Secretary of State Ken Bennett.”

5 52. Upon information and belief, the County has not yet decided its day and hour
6 requirements for the Central Counting Place Boards that will deal with post-canvass re-
7 counts and whether it will unlawfully seek to apply these requirements to the Republican
8 Party’s appointees.

9 53. However, if the County acts consistently with other boards, the Republican
10 Party’s Nominees to the Hand Count Board will be required to commit to work long hours
11 every day “for the duration” (or be subjected to other onerous day and hour requirements)
12 and the Republican Party will not be able to rotate its board representatives to create
13 reasonable work schedules for its Nominees.

14 54. Few volunteers can commit to working such a prolonged and indefinite
15 schedule.

16 55. It is extremely difficult for the Republican Party to recruit Nominees when it
17 cannot even tell them for how long Defendants may attempt to require them to report for
18 duty.

19 56. The County knows it is logistically impossible to wait to find out whether a
20 post-canvass recount will be required to begin its own recruitment efforts for this
21 contingency.

22 57. The County has, upon information and belief, already begun such efforts.

23 58. By the time anyone knows whether a post-canvass recount would be
24 necessary, it would likewise be impossible for the GOP to recruit hundreds of volunteers.

25 59. As a consequence, Defendants are depriving the Republican Party of the
26 ability to meaningfully participate in and oversee any post-canvass automatic recount which
27 threatens an avoidable yet potentially chaotic post-election recount process.

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1 work conditions. Such remedies to apply to the 2022 General Election
2 and all future elections.

- 3 B. A declaration, pursuant to the Arizona Uniform Declaratory
4 Judgments Act, that Defendants' current policies and practices violate
5 the Equal Access Statutes and the EPM.
- 6 C. Injunctive or mandamus remedies requiring Defendants to appoint the
7 Republican Party's board Nominees.
- 8 D. A declaration, pursuant to the Arizona Uniform Declaratory
9 Judgments Act that Defendants may not impose requirements on the
10 Republican Party's board Nominees in either the 2022 General
11 Election or in future elections. Alternatively, for a declaration that the
12 current requirements imposed upon the Republican Party's board
13 Nominees constitute an abuse of discretion.
- 14 E. An award of fees, costs, and other expenses pursuant to A.R.S. §§ 12-
15 348, 12-2030, the private attorney general doctrine, and other
16 applicable law.
- 17 F. Such other relief as the Court deems necessary, equitable, proper, or
18 just.

19 DATED this 20th day of October, 2022.

20
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I hereby certify that on October 20, 2022, I caused the foregoing document to be filed with the Maricopa County Superior Court Clerk via the Turbo Court E-file system.

I hereby certify that on October 20, 2022, I caused the following parties or persons to be served via email:

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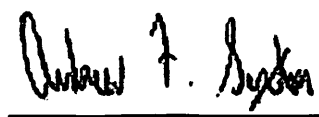
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Verification

I, Andrew Sexton, have read the foregoing First Amended Verified Special Action Complaint and know the contents thereof by personal knowledge. I know the allegations of the First Amended Verified Complaint to be true, except the matters stated therein on information and belief, which I believe to be true.

Executed under penalty of perjury this 20th day of October, 2022.



Andrew Sexton

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