SPOFESSIONAL ASSOCIATION ATTORNEYS AT LAW

<u>INTRODUCTION</u>

- 1. This case arises from the drastic reduction in the number of polling places for the 2016 Presidential Preference Election ("PPE") in Maricopa County, which caused lines in excess of five hours at certain locations and effectively disenfranchised countless Arizonans.
- 2. Together, Maricopa County officials reduced the number of PPE polling places from 403 in 2008, to 211 in 2012, to just 60 in 2016.
- 3. This flawed decision and severe mismanagement created unendurable wait times for numerous Arizonans who were forced to leave polling places without casting a ballot.
- 4. On average, Maricopa County operated one polling place for approximately every 21,000 eligible voters, compared to an average of one polling place for approximately every 1,500 eligible voters in the rest of the State.
- 5. Maricopa County is the largest county in Arizona, containing more than 60% of Arizona's total population, and approximately 60% of Arizona's minority populations.
- 6. Were it not for the decision of the Supreme Court in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), Maricopa County would have had to obtain preclearance from the federal government before implementing this drastic reduction in polling places.
- 7. The gross mismanagement of the March 22, 2016 election is but one of a series of incidents, which have impeded the right to vote of the citizens of Maricopa County.
- 8. For the impediments to the franchise erected by the Defendants, as well as the functional disenfranchisement that occurred on account of their acts and omissions, Plaintiffs respectfully ask this Court to declare that Defendants violated the constitutional and statutory rights of Arizonans, and to issue an injunction exercising supervision over all elections leading up to and through the 2020 PPE, and to require,

in advance of those elections, that specified measures be taken to reduce and manage wait times.

PARTIES

- 9. Plaintiff Juliana Huerena is a qualified elector, registered to vote in Maricopa County.
- 10. Plaintiff Monica Cooper is a qualified elector, registered to vote in Maricopa County.
- 11. Defendant Michele Reagan is the Arizona Secretary of State (the "Secretary of State"), a public officer of this State, and is named in her official capacity. The Secretary of State is the public officer responsible for supervising, conducting, and providing regulations and guidelines for statewide elections.
- 12. Defendant Helen Purcell is the Maricopa County Recorder, an office created by the Arizona Constitution. Ariz. Const. art. XII, § 3. Defendant Purcell is named in her official capacity. The Maricopa County Recorder is responsible for conducting elections in Maricopa County.
- 13. Defendant Maricopa County Board of Supervisors ("Board of Supervisors") is the governing body of Maricopa County. The Board of Supervisors is obligated under Arizona law to designate a reasonable and adequate number of polling places for PPEs.
- 14. Defendants Denny Barney, Steve Chucri, Andy Kunasek, Clint Hickman, and Steve Gallardo are members of the Board of Supervisors and are named in their official capacities.

JURISDICTION AND VENUE

- 15. This Court has jurisdiction of this action under Ariz. Const. art. VI, § 14, as well as A.R.S. §§ 12-123, 12-1831 *et. seq.*, and 12-1801, *et. seq.*
 - 16. Venue is proper in this County under A.R.S. § 12-401.

STATEMENT OF THE CLAIM

A. Nature of the Action

- 17. Plaintiffs allege that Defendants, or several of them, caused or permitted acts amounting to a failure to: (i) provide for free and equal elections under Ariz. Const. art. II, § 21; (ii) provide for a maximum allowable wait time for any election and an effective wait time reduction method under A.R.S. § 16-411(J); (iii) designate a reasonable and adequate number of polling places for PPEs under A.R.S. § 16-248(A); (iv) adhere to the provisions of the instructions and procedures manual created under A.R.S. § 16-452 pursuant to wait time management; and (v) effectively respond to election day requests from election marshals for assistance in wait time reduction under A.R.S. § 16-535(B).
- 18. Plaintiff Juliana Huerena has been a regular voter in Maricopa for approximately ten years. She arrived at her polling place at around 4 P.M. and waited in line for approximately four and a half hours before casting her ballot.
- 19. Plaintiff Monica Cooper attempted to vote in the PPE. She has a disability and took paratransit to the polls. As paratransit requires users to schedule rides in advance, Ms. Cooper allotted herself two hours to cast a ballot. However, due to the excessively long lines, that two hour period expired before Ms. Cooper had the opportunity to cast a ballot. Her ride came and she had to leave her polling place without voting.

B. Maricopa County Demographics

- 20. According to the U.S. Census Bureau, Maricopa County is the fourthmost populous county in the United States. As of July 2015, the County had an estimated population of 4,167,947.
- 21. According to the U.S. Census Bureau, as of July 2014, the County's population is 57.0% white not Hispanic or Latino, 30.3% Hispanic or Latino, 5.7% African American, and 4.1% Asian.

C. Preclearance Requirement Under the Voting Rights Act and Shelby County Decision

- 22. Section 5 of the Voting Rights Act of 1965 ("VRA") prevents certain jurisdictions ("covered jurisdictions") with a history of racial discrimination from implementing changes that affect voting unless and until the jurisdiction demonstrates to federal authorities that the change will not have the purpose or effect of abridging or denying the right to vote on account of race, color, or membership in a language minority group. Under the coverage formula contained in Section 4 of the VRA, Maricopa County was a covered jurisdiction.
- 23. On June 25, 2013, in *Shelby County, Alabama v. Holder*, 133 S. Ct. 2612 (2013), the U.S. Supreme Court held Section 4 of the VRA unconstitutional, and thus that its coverage formula could no longer be used as a basis for subjecting jurisdictions, including Maricopa County, to preclearance requirements.
- 24. Because *Shelby County* effectively removed the preclearance barrier, Maricopa County was not required to submit its plan to reduce the number of polling stations for the 2016 PPE to the DOJ for preclearance.

D. Factual Background of the 2016 PPE

- 25. On February 17, 2016, Defendant Purcell proposed, and Defendant Board of Supervisors approved, reducing the number of 2016 PPE election day polling places to 60 locations.
- 26. The number of polling places represented a significant reduction from the number in prior PPEs. In 2008, a year in which both major parties had multiple candidates competing for nominations, the County operated 403 polling places. In 2012, when there was no notable contest for the Democratic nomination due to the incumbency of President Obama, the County operated 211 polling places.
- 27. As a result of the reduction, in 2016, on average, the County operated one polling place for approximately every 21,000 eligible voters.

- 28. In contrast to Maricopa, Pima County operated 130 polling places, despite having approximately one-fourth of the total eligible voters in Maricopa County.
- 29. Aside from Maricopa, on average, all other counties in the state operated one polling place for approximately every 1,500 voters.
- 30. On March 22, 2016, numerous eligible voters in Maricopa waited in line in excess of five hours to cast a ballot.
- 31. Though the polls were scheduled to close at 7 P.M., some voters who were in line by that time waited until past midnight to vote.
- 32. On information and belief, five polling places stayed open past midnight, while 20 of the 60 locations were open until after 10 P.M.
- 33. Many voters could not endure such long waits for a variety of reasons, including, without limitation, family or work responsibilities, or physical limitations. Those voters who were unable to endure the excessive wait times at Maricopa County polling places were effectively disenfranchised.
 - 34. Others who waited in line for hours ran short on water and food.
- 35. In addition, many Arizonans without a party affiliation were not fully aware, and were not properly informed, of their inability to participate in the PPE.
- 36. As a result of the failure to properly inform voters about their eligibility for the PPE, over 18,000 unaffiliated voters cast provisional ballots that were not counted.
- 37. Maricopa County estimated that it takes a minimum of five minutes per voter to issue a provisional ballot.
- 38. Thus, Maricopa County concluded that with approximately 24,000 total provisional ballots cast, poll workers spent approximately 2,000 hours processing provisional voters on election day.

39.

County.

March 9, just 13 days before the PPE.

40. According to an informal survey by the Arizona Republic, the longest reported wait time outside of Maricopa was 40 minutes at one location in Coconino

regarding the election, including whether unaffiliated voters could participate, until

Defendant Purcell admitted that she did not adequately publicize details

- 41. While Arizonans were outraged by their government's failures on election day, Defendant Purcell initially pointed the finger at voters themselves for the long lines. When asked who was to blame for the fiasco, Defendant Purcell responded, "The voters, for getting in line."
- 42. Defendants' mismanagement has continued past the PPE. The Spanish language version of early ballots mailed to 1.3 million Maricopa County voters for the May 17, 2016 special election mistakenly repeated the title of Proposition 123 as the title for Proposition 124. While Proposition 124 is a proposal to change pensions of police and firefighters, the title of Proposition 124 described it as a proposal concerning education funding. Defendants did not address the error until after early voting began on April 20, 2016.
- 43. Additionally, the Secretary of State admitted that it failed to send publicity pamphlets, which describe the initiatives on the May 17, 2016 special election ballot, outline the pro and con arguments, and show voters where they can cast their ballots, to 200,000 households in the State. The Secretary of State discovered the error on April 22, 2016, after early voting commenced, but did not notify the public until May 6, 2016.

E. Violations of Arizona Law

44. Under A.R.S. § 16-241(C), "[e]xcept as otherwise provided [], the presidential preference election shall be conducted and canvassed in the same manner as prescribed in this title for the primary election held pursuant to § 16-201. All

provisions of other laws that govern elections and that are not in conflict with this article apply to a presidential preference election "

- 45. Because Defendant Board of Supervisors approved the grossly inadequate number of only 60 polling places, it failed to "designate a reasonable and adequate number of polling places" in violation of A.R.S. § 16-248(A).
- 46. The provisions of Section 16-248(A) are not in conflict with the provisions of Section 16-241, and therefore apply to PPE.
- 47. Defendant Secretary of State violated Arizona law by failing to provide for a maximum allowable wait time for the PPE. A.R.S. § 16-411(J) requires the Secretary of State to "provide through the instructions and procedures manual adopted pursuant to § 16-452 the maximum allowable wait time for any election that is subject to § 16-204..."
- 48. According to the instructions and procedures manual, the maximum allowable wait time for elections subject to Section 16-204 is one hour.
- 49. The Secretary of State, as alleged herein, failed to provide for the maximum allowable wait time for the March 22 PPE in the instructions and procedures manual.
- 50. Defendant Secretary of State was also required, and, as alleged herein, failed to, provide for a method to reduce voter wait times for PPEs. Under A.R.S. § 16-411(J):

The secretary of state shall . . . provide for a method to reduce voter wait time at the polls in the primary and general elections [and] shall consider at least all of the following for primary and general elections in each precinct: (1) The number of ballots voted in the prior primary and general elections. (2) The number of registered voters who voted early in the prior primary and general elections. (3) The number of registered voters and the number of registered voters who cast an early ballot for the current primary or general election. (4) The number of election board members and clerks and the number of rosters that will reduce voter wait time at the polls.

51. The provisions of Section 16-411(J) are not in conflict with the provisions of Section 16-241, and, therefore, apply to PPEs.

- 52. Under A.R.S. § 16-535(B), election marshals "shall also periodically measure the length of waiting times at that polling place throughout the day, and if the waiting time is thirty minutes or more, the marshal shall inform the officer in charge of elections and shall request additional voting machines, voting booths and board workers, as appropriate."
- 53. That wait times were inordinately long at polling places in Maricopa County on March 22 was highly publicized throughout the day, and Defendant Purcell knew or should have known that wait times at many polling places were thirty minutes or more.
- 54. The "officer in charge of elections" in Maricopa County is Defendant Purcell. On information and belief, Defendant Purcell failed to effectively respond to election day requests from election marshals for assistance in wait time reduction and/or from public reports of the excessively long wait times. Defendant Purcell's actions or inactions violated A.R.S. § 16-535(B).
- 55. The provisions of Section 16-535(B) are not in conflict with the provisions of Section 16-241, and, therefore, apply to PPEs.
- 56. Together, the acts or omissions of the Defendants violated Ariz. Const. art. II, § 21, which guarantees that, "[a]ll elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

FIRST CLAIM FOR RELIEF (Declaratory Judgment Relief)

- 57. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.
- 58. There exists a real and justiciable controversy between the parties regarding whether Plaintiffs rights under Ariz. Const. art. II, § 21, A.R.S. § 16-248(A), A.R.S. § 16-411(J), A.R.S. § 16-452, and A.R.S. § 16-535(B) were violated.

59. Pursuant to A.R.S. § 12-1831 *et. seq.*, Plaintiffs – as parties whose rights, status or other legal relations are affected by the following constitutional and statutory provisions – are entitled to a declaration from this Court that their rights under Ariz. Const. art. II, § 21, A.R.S. § 16-248(A), A.R.S. § 16-411(J), A.R.S. § 16-452, and A.R.S. § 16-535(B) were violated during the 2016 Arizona PPE.

SECOND CLAIM FOR RELIEF (Injunctive Relief)

- 60. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.
- 61. Pursuant to A.R.S. § 12-1801, et seq., Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendants from conducting future elections, up to and through the 2020 PPE, in the absence of judicial supervision, and requiring, in advance of such elections, that specified measures be taken to reduce and manage wait times.
- 62. As alleged in this Complaint, the Defendants violated Plaintiffs' statutory and constitutional rights, and, given the scope of those violations and the proven inability to operate elections effectively, will continue to violate those rights absent judicial intervention.
- 63. Given the nature of the claims in this Complaint, Plaintiffs do not have an adequate remedy at law, and, therefore, injunctive relief is appropriate.
- 64. The threatened injury to Plaintiffs is irreparable and substantial, and granting injunctive relief will not cause Defendants to suffer any harm.
- 65. Granting the requested injunctive relief will promote the public interest by ensuring the free and fair administration of future elections.

THIRD CLAIM FOR RELIEF (Attorneys' Fees)

66. Plaintiffs incorporate into this claim all the foregoing allegations as if fully set forth herein.

67. Plaintiffs are entitled to an award of attorneys' fees under the Arizona private attorney general doctrine, as adopted in *Arnold v. Ariz, Dep't of Health Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989), because the vindication of rights in this action "(1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." As a result, this action meets all the conditions of the private attorney general doctrine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court:

- A. Issue an order declaring that Defendants, or several of them, caused or permitted acts related to the 2016 PPE that amounted to a failure to: (i) provide for free and equal elections under Ariz. Const. art. II, § 21; (ii) provide for a maximum allowable wait time for any election and an effective wait time reduction method under A.R.S. § 16-411(J); (iii) designate a reasonable and adequate number of polling places for PPEs under A.R.S. § 16-248(A); (iv) adhere to the provisions of the instructions and procedures manual created under A.R.S. § 16-452 pursuant to wait time management; and (v) effectively respond to election day requests from election marshals for assistance in wait time reduction under A.R.S. § 16-535(B).
- B. Grant Plaintiffs preliminary and permanent injunctive relief providing for court supervision over all elections leading up to and through the 2020 PPE, and providing that:
 - (a) The Board of Supervisors create a polling place plan for each election sufficiently ahead of the election to allow for court review and approval;
 - (b) The Secretary of State and the County Recorder provide sufficient notice to all voters as to their eligibility to cast a regular ballot in presidential preference and other elections;
 - (c) The Secretary of State provide a maximum allowable wait time for presidential preference elections;

1		(d)	The Secretary of State, the County Recorder, and the Board of
2			Supervisors develop a comprehensive plan to reduce wait times
3			for all elections; and
4		(e)	The Secretary of State regularly train county election officials on
5			the details and execution of that plan.
6	C.	Awar	d attorneys' fees under the private attorney general doctrine.
7	D.	Awar	d of costs of litigation in favor of Plaintiffs.
8	E.	Grant	Plaintiffs such other and further relief as may be just and
9	equitable.		
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11			Respectfully submitted,
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