**CASE NO.**

**IN THE SUPREME COURT OF THE UNITED STATES**

**TYLER BOWYER, MICHAEL JOHN BURKE, NANCY COTTLE, JAKE HOFFMAN, ANTHONY KERN, CHRISTOPHER M. KING, JAMES R. LAMON, SAM MOORHEAD, ROBERT MONTGOMERY, LORAINE PELLEGRINO, GREG SAFSTEN, SALVATORE LUKE SCARMARDO, KELLI WARD AND MICHAEL WARD**

***Petitioners,***

**v.**

**DOUG DUCEY, in his official capacity as Governor of the State of Arizona, and KATIE HOBBS, in her capacity as Secretary of State of the State of Arizona,**

***Respondents.***

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## Corporate Disclosure Statement

All of the Plaintiffs are individuals. All of the Respondents are government officials sued in their official capacities. There are no corporate interests to disclose.

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# EMERGENCY PETITION UNDER RULE 20 FOR EXTRAORDINARY WRIT OF MANDAMUS AND APPLICATION FOR PRELIMINARY INJUNCTION PENDING THE FILING OF A PETITION FOR CERTIORARI

Petitioners file this motion seeking immediate relief in anticipation of their petition for certiorari from the judgment of the District Court dated December 9, 2020, dismissing their case after denying their motion for a Temporary Restraining Order. R. 1619-1647. Petitioners filed a notice of appeal to the Ninth Circuit on December 10, 2020. Because of the exigencies of time, they have not presented their case to the Ninth Circuit but, rather, will seek certiorari before judgment in the court of appeals pursuant to S. Ct. R. 11. This motion for immediate preliminary relief seeks to maintain the status quo so that the passage of time and the actions of Respondents do not render the case moot, depriving this Court of the opportunity to resolve the weighty issues presented herein and Respondents of any possibility of obtaining meaningful relief.

## INTRODUCTION

Petitioners respectfully request an immediate injunction to compel the Respondents—the State of Arizona, Governor Doug Ducey, Secretary of State, Katie Hobbs—to de-certify the results of the November 3, 2020 General Election ("2020 General Election") and from taking any further action to perfect the certification of the results of the 2020 General Election.

Alternatively, Petitioners request that this Court issue (1) a writ of mandamus to Honorable Diane J. Humetewa, of the United States District Court, District of Arizona ("District Court") to reverse and remand the District Court's December 9, 2020 final judgment in Docket No. 2:20-cv-02321-DJH ("December 9 Order") dismissing Petitioners' December 2, 2020 complaint ("Complaint") in that proceeding; and (2) directing the District Court to grant Petitioners' December 2,

2020 "Emergency Motion for Declaratory, Emergency, and Permanent Injunctive Relief," ("TRO Motion").

The District Judge erred when she granted a Motion to Dismiss, and while she did not caption her order as granting Summary Judgment, she made factual determinations consistent with a Motion for Summary Judgement, based on the facts in Plaintiffs' 100+ page complaint supported by dozens of fact and expert witnesses.

The Court further issued its opinion less than a full day before a short scheduled evidentiary hearing that would have given Petitioners the opportunity to be heard but that hearing was vacated based on the Order granting of the Motion to Dismiss. Then the District Court dismissed the Complaint and TRO Motion for the same reasons as urged in the Respondents' filings: that Plaintiffs failed to state a claim under the Electors Clause or the Equal Protection Clause; and that the claims are barred by standing, laches, mootness, abstention, a failure to plead fraud with particularity and the Eleventh Amendment. (R. 1622 L 1 - R. 1646 L 22).

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Petitioners' Complaint to the District Court is part of a larger effort to expose and reverse an unprecedented multi-state conspiracy to steal the 2020 General Election, at a minimum in the States of Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin, and potentially others.

Petitioners and others like them seeking to expose the massive, coordinated inter-state election fraud that occurred in the 2020 General Election have been almost uniformly dismissed as "conspiracy theorists" or worse by Democrat politicians and activists, and attacked or censored by their allies in the mainstream media and social media platforms. But nearly every day new evidence comes to light, new eyewitnesses and whistleblowers come forward, and expert statisticians confirm Petitioners' core allegation: the 2020 General Election was tainted by

constitutional election fraud on a scale that has never been seen before in America, where hundreds of thousands if not millions of illegal, fraudulent, ineligible or purely fictitious ballots were cast for Biden (along with hundreds of thousands of Trump votes that were intentionally destroyed, lost or switched to Biden), and this massive fraud changed the outcome from a Biden loss to a Biden "win."

While Respondents, and their allies, have consistently tried to characterize this suit as a "conspiracy theory," the evidence presented provides a strong basis for concluding that Petitioners' claims are based on facts. On December 8, 2020 the State of Texas filed a Complaint in this Court—joined by at least 18 States in support—against Georgia, Michigan, Pennsylvania and Wisconsin, the four States where the most brazen fraud occurred. See State of Texas v. Commonwealth of Pennsylvania, et al., Motion for Leave to File a Bill of Complaint, Docket No. 220155 (Dec. 8, 2020). Though the Texas' Complaint was dismissed for lack of standing, it underscores the severity of the issues in this case.

It is the unconstitutional acts of Respondents, and their counterparts in the Defendant States, that have led to this Constitutional crisis.

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The rampant lawlessness witnessed in Arizona was part of a larger pattern of illegal conduct seen in several other states, in particular, Georgia, Michigan, Pennsylvania, and Wisconsin. Arizona State officials – administrative, executive and judicial – adopted new rules or "guidance" that circumvented, contravened or nullified the election laws enacted by the Arizona Legislature to protect election integrity and prevent voter fraud in advance of the 2020 General Election, using COVID-19 and public safety as a pretext.

Petitioners' Complaint describes how Arizona and other states have emerged at the forefront of 21st Century election fraud, combining old-fashioned 19th Century "ballot-stuffing," which has been amplified and rendered virtually invisible

by computer software created and run by domestic and foreign actors for that very purpose.

Respondents and the District Court dismissed Petitioners' requested relief as unprecedented, and hinted that granting it could undermine faith in our election system. But to use a phrase favored by the District Court in a similar complaint in Michigan: that "ship has sailed." *King v. Whitmer*, No. 20-cv-13134 at *13 (E.D. Mich. Dec. 7, 2020).

The entire nation was watching Election Night when Trump led by hundreds of thousands of votes in five key swing states – Georgia, as well as Arizona, Michigan, Pennsylvania, Wisconsin – then, nearly simultaneously, counting shut down in key, Democrat-run cities in these States for hours. When counting resumed, Biden had somehow made up the difference and taken a narrow lead in Wisconsin and Michigan (and dramatically closed the gap in the others). Voters who went to bed with Trump having a nearly certain victory, awoke to see Biden somehow having overcome what should have been an insurmountable lead (which experts for Petitioners and the State of Texas have shown to be a statistical impossibility).

In the Arizona District Court, Plaintiffs alleged both manipulation of electronic voting systems in Arizona to produce faulty vote totals as well as more conventional forms of fraud such as illegal votes counted and legal votes not counted. The District Court, in its rush to rule stated, "Plaintiffs failed to provide the Court with factual support for their extraordinary claims[.]" R. 1646 L 24-25. It made this pronouncement on a motion to dismiss and without an evidentiary hearing. Additionally, the court failed to substantively engage with the latter category of alleged fraud (illegal votes counted and legal votes not counted). However, that a significant number of illegal votes from this latter category were recorded in Arizona's presidential election is not only plausible, but can be seen even from the public record. For example, merely comparing the list of voters who

voted in Arizona's election with the record of those who registered to vote in another state or filled out a Change of Address form ("COA"), that is kept in the National Change of Address Database ("NCOA"), changing their mailing address to another state yields a figure of approximately 5,800 out-of-state voters who voted in Maricopa County's presidential election. R. 45 L 15-25. Joe Biden's supposed margin of victory in Arizona was only 10,457 votes. The District Court's premature conclusion that claims of voter fraud such as this were "implausible" constitutes clear error and should be reexamined to give Arizonans confidence that the judiciary is more than a rubber stamp for the actions of state elections officials such as Respondents. This is just one category of voter fraud ignored by the District Court in dismissing the case. When combined with the others discussed *infra*, they leave little doubt that Respondents should not have certified Arizona's election.

Indeed, Petitioners presented an many sworn statements and expert reports that were disregarded in their entirety. Petitioners presented evidence of appoximately 10,000 additional votes tainted by fraud which, when added to the 5,000 illegal out-of-state ballots far exceeds Mr. Biden's margin of victory over President Trump. This evidence provides ample suport for setting aside the 2020 General Election in Arizona.

## JURISDICTION

The district court had subject matter jurisdiction under 28 U.S.C. § 1331 which provides, "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." The district court also has subject matter jurisdiction under 28 U.S.C. § 1343 because this action involves a federal election for President of the United States. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." Bush v. Gore, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); Smiley v. Holm, 285 U.S. 355, 365(1932).

The jurisdiction of the district court to grant declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202 and by Rule 57, Fed. R. Civ. P. The district court has jurisdiction over the related Arizona state-law claims under 28 U.S.C.§ 1367.

This Court has jurisdiction under 28 USC § 1254(1) because the case is in the Court of Appeals for the Sixth Circuit and petitioners are parties in the case. This Court should grant certiorari before judgment in the Court of Appeals pursuant to Supreme Court Rule 11 because "the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." The United States Constitution reserves for state legislatures the power to set the time, place, and manner of holding elections for Congress and the President, state executive officers, including but not limited to Secretary Benson, have no authority to unilaterally exercise that power, much less flout existing legislation. Moreover, some of the Petitioners are candidates for the office of Presidential Electors who have a direct and personal stake in the outcome of the election and are therefore entitled to challenge the manner in which the election was conducted and the votes tabulated under the authority of this Court's decision in *Bush v. Gore*, 531 U.S. 98 (2000).

Additionally, this Court has jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651(a) and United States Supreme Court Rule 20, Procedure on a Petition for an Extraordinary Writ. Petitioners will suffer irreparable harm if they do not obtain immediate relief. The Electors are set to vote on December 14, 2020. The issues raised are weighty as they call into question who is the legitimate winner of the 2020 presidential election. These exceptional circumstances warrant the exercise of the Court's discretionary powers.

The All Writs Act authorizes an individual Justice or the full Court to issue an injunction when (1) the circumstances presented are "critical and exigent"; (2) the legal rights at issue are "indisputably clear"; and (3) injunctive relief is "necessary or appropriate in aid of the Court's jurisdiction." Ohio Citizens for

Responsible Energy, Inc. v. NRC, 479 U.S. 1312 (1986) (Scalia, J., in chambers) (citations and alterations omitted).

A submission directly to this Court for a Writ of Certiorari, a Stay of Proceeding and a Preliminary Injunction is an extraordinary request, but it has its foundation. While such relief is rare, this Court will grant it "where a question of public importance is involved, or where the question is of such a nature that it is peculiarly appropriate that such action by this Court should be taken." Ex Parte Peru, 318 U.S. 578, 585 (1943). *See also* Cheney v. U.S. Dist. Court, 542 U.S. 367, 380–81 (2004).

Here, Petitioners and the public will suffer irreparable harm if this Court does not act without delay. Once the electoral votes are cast, subsequent relief would be pointless. In Federal Trade Commission v. Dean Foods Co., 384 U.S. 597 (1966), the Court affirmed the Seventh Circuit, finding authority under 28 U.S.C. § 1651(a) to enjoin merger violating Clayton Act, where the statute itself was silent on whether injunctive relief was available regarding an application by the FTC. "These decisions furnish ample precedent to support jurisdiction of the Court of Appeals to issue a preliminary injunction preventing the consummation of this agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible, thus rendering the enforcement of any final decree of divestiture futile." Id. at 1743. This Court rendered a similar decision in Roche v. Evaporated Milk Assn, 319 U.S. 21 (1943), granting a writ of mandamus, even though there was no appealable order and no appeal had been perfected because "[o]therwise the appellate jurisdiction could be defeated and the purpose of the statute authorizing the writ thwarted by unauthorized action of the district court obstructing the appeal."

## DECISION UNDER REVIEW

The December 9, 2020, decision of the District Court of Arizona dismissing Petitioners' Complaint and TRO Motion. R. at 1619-1647.

## PARTIES TO THE PROCEEDINGS AND STANDING

All parties appear in the caption of the case on the cover page.

Each of the following Applicants are registered voters and nominees of the Republican Party to be a Presidential Elector on behalf of the State of Arizona: Tyler Bowyer, a resident of Maricopa County and a Republican National Committeeman; Nancy Cottle, a resident of Maricopa County and Second Vice-Chairman of the Maricopa County Republican Committee; Jake Hoffman, a resident of Maricopa County and member-elect of the Arizona House of Representatives; Anthony Kern, a resident of Maricopa County and a member of the Arizona House of Representatives; James R. Lamon, a resident of Maricopa County; Samuel Moorhead, a resident of Gila County; Robert Montgomery, a resident of Cochise County and Republican Party Chairman for Cochise County; Loraine Pellegrino, a resident of Maricopa County; Greg Safsten, a resident of Maricopa County and Executive Director of the Republican Party of Arizona; Kelli Ward, a resident of Mohave County and Chair of the Arizona Republican Party; and Michael Ward, a resident of Mohave County.

In addition to the above named Petitioners, there are three additional Petitioners who are registered voters in Arizona: Michael John Burke, a resident of Pinal County and Republican Party Chairman for Pinal County; Christopher M. King, a resident of Pima County and Republican Party Vice Chairman of Pima County; and Salvatore Luke Scarmardo, a resident of Mohave County and Republican Party Chairman for Mohave County.

Plaintiffs include the full slate of the Arizona Republican party's nominees for presidential electors. They have standing to bring this action as registered Arizona voters, and the Presidential Elector candidates have standing as candidates for the office of Presidential Elector under A.R.S. § 16-212(A). As such, Presidential Electors "have a cognizable interest in ensuring that the final vote tally reflects the legally valid votes cast," as "[a]n inaccurate vote tally is a concrete and

particularized injury to candidates such as the Electors." Carson v. Simon, 978 F.3d 1051, 1057 (8th Cir. 2020) (affirming that Presidential Electors have Article III and prudential standing to challenge actions of Secretary of State in implementing or modifying State election laws); see also McPherson v. Blacker, 146 U.S. 1, 27 (1892); Bush v. Palm Beach Cty. Canvassing Bd., 531 U.S. 70, 76 (2000) (per curiam).

Respondent Doug Ducey (Governor of Arizona) is named herein in his official capacity as Governor of the State of Arizona.

Respondent Katie Hobbs (Secretary of State of Arizona) is named herein in her official capacity as Secretary of State of the State of Arizona and the Chief Election Official for the State of Arizona.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves U.S. Constitution Article I, § 4, clause 1 ("Elections Clause"); U.S. Constitution Article II, § 1, clause 2 ("Electors Clause"); U.S. Constitution Amendment XIV, § 1 ("Due Process Clause" and "Equal Protection Clause"); 42 U.S.C. §§ 1983 and 1988; A.R.S. §§ 16-625 & 16-672.

## STATEMENT OF THE CASE

Petitioners bring this action under 42 U.S.C. §§ 1983 and 1988, to remedy deprivations of rights, privileges, or immunities secured by the Constitution and laws of the United States, and under A.R.S. § 16-625 for violations and A.R.S. § 16-672 to contest the election results.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators. U.S. CONST. art. I, § 4 ("Elections Clause").

With respect to the appointment of presidential electors, the Constitution provides:

> "Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector." U.S. CONST. art. II, § 1 ("Electors Clause").

None of the respondents is a "Legislature" under the Elections Clause or Electors Clause. The Legislature is "'the representative body which ma[kes] the laws of the people.'" Smiley, 285 U.S. 365. Regulations of congressional and presidential elections, thus, "must be in accordance with the method which the state has prescribed for legislative enactments." Id. at 367; see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, 576 U.S. 787, 135 S. Ct. 2652, 2668 (2015).

States are accountable to their chosen processes when it comes to regulating federal elections. *Ariz. State Legis.*, 135 S.Ct. at 2688. "A significant departure from the legislative scheme for appointing Presidential electors presents a federal constitutional question." *Bush v. Gore*, 531 U.S. 98, 113 (2000) (Rehnquist, C.J., concurring); *Smiley,* 285 U.S. at 365.

Based upon all the allegations of fraud, statutory violations, and other misconduct, as stated herein and in the attached affidavits, it is necessary for this Court to exercise its authority to grant interlocutory relief pending the filing of a petition for writ of certiorari and for a stay of the vote of the Electoral College in Arizona in order to prevent this case from becoming moot before the Court has an opportunity to resolve the monumental issues.

There was substantial evidence of illegal vote manipulation by election workers in collaboration with other employee state, county and/or city employees and Democratic poll watchers and activists. Only some of that evidence will be summarized here:

The State of Arizona used Dominion Voting Systems in Maricopa County. (R. at p. 47, L. 6). Petitioners presented substantial evidence that the Dominion system is subject to manipulation and security breaches, and was used to manipulate the voting totals during the 2020 election. What follows is an abbreviated summary of that evidence:

Dr. Eric Coomer joined Dominion in 2010, and most recently served as Voting Systems Officer of Strategy and Director of Security for Dominion Voting Systems. (R. 67: L.1-3).

In 2016, Dr. Coomer admitted to the State of Illinois that Dominion Voting machines can be manipulated remotely. He has also publicly posted videos explaining how Dominion voting machines can be remotely manipulated. (R. 67: L.9-12).

Affiant and journalist Joseph Oltmann researched ANTIFA in Colorado. (R. 69: L.21-22). "On or about the week of September 27, 2020," Joe Oltmann attended an Antifa meeting which appeared to be between Antifa members in Colorado Springs and Denver Colorado," where Dr. Coomer was present. In response to a question as to what Antifa would do "if Trump wins this … election?" Oltmann heard Dr. Eric Coomer declare, "Don't worry about the election. Trump is not going to win. I made f[**]king sure of that … Hahaha." (R. 69: L.23-28).

A fact witness, under oath in a declaration, confirms that Dominion workers were at the Maricopa Tabulation & Election Center on election night working on the computers: "Bruce, of Dominion, stated that "he would perform a manual daily system backup to an external hard drive, "and that "he made a daily second disk backup to a new spare hard drive[] … [that] were being physically moved off site to another building outside the MTEC [Maricopa Tabulation & Election Center] building," but would not say where. (See R. at L. 6-10).

Linda Brickman, the 1st Vice-Chair of the Maricopa County Republican Committee, oversaw the Secretary of State certification of Dominion voting machines on November 18, 2020. (R. 42, L. 21-23) in her sworn declaration she stated that she repeatedly witnessed Trump votes getting switched by the voting machines when they hit "submit the ballot" on the computer at the Maricopa County Tabulation & Election Center:

> In the Duplication room, [declarant] observed with my Democratic partner the preparation of a new ballot since the original may have been soiled, damaged, or ripped, and wouldn't go through the tabulator. (R. at p. 43, L 7-8). I read her a Trump/Republican ballot and as soon as she entered it into the system the ballot defaulted on the screen to a Biden/Democratic ballot. (R. at p. 43, L 8-9).
>
> "[Declarant] observed the problem of Trump votes with voters checking the bubble for a vote for Trump, but ALSO, writing in the name "Donald Trump" and checking the bubble next to his hand written name again, as a duplicated vote, counting as an "OVERVOTE," which means – no vote was counted at all, despite the policy having been changed to allow these overvotes. (R. at p. 43, L. 21-24).

The witness T. Maras explains that "Scytle, [the company that] contracts with the AP, receives the results tallied by SCYTL on behalf of Dominion. (R. 58, L. 12-13). This becomes highly relevant since SCYTLE is based completely offshore. (R. 58, L. 13-14).

She sets forth facts she can confirm about Dominion including the foreign relationships in the hardware used by Dominion Voting Systems and its subsidiary Sequoia and explains specifically the port that Dominion uses, which is called Edge Gateway and that is a part of Akamai Technologies based in Germany and China.

This witness also explains and sets forth the evidence for "injection" of votes using an algorithm, which can be seen from the data feed on November 3, 2020 for Maricopa and Pima counties, where spikes can be seen when a large number of votes got injected into the totals. (See R. 58, L. 25-27).

She further states, in a sworn declaration, that on the morning of "November 4, 2020, the algorithm stopped working, therefore another "block allocation" was used to remedy the failure, which was done manually when all the systems shut down to avoid detection." (R. 59, L. 15-19).

Several hundred thousand illegal, ineligible, duplicate or purely fictitious votes were included in the vote count. Declarant Russ Ramsland, graphs the Edison data on election night for Arizona, and explains that the Dominion Voting Systems user manual actually cites to the presence of an algorithm that tabulates votes to elect a winner, (quoting Democracy Suite EMS Results Tally and Reporting User Guide, Chapter 11, Settings 11.2.2, which reads in part, "RCV METHOD: This will select the specific method of tabulating RCV votes to elect a winner.") (R. at p. 47, L. 24-25).

Using the RCV method allows the operator to enter "blank ballots … into the system and treated as 'write-ins.' The operator can enter an allocation of the write-ins among candidates as he or she wishes. The result then awards the winner based on "points" that the algorithm computes, not actual voter votes." (See R. 47. 26-28).

According to Mr. Ramsland's data, "the percentage of the votes submitted in each batch that went towards candidate [Biden] remain unchanged for a series of time and for a number of consecutive batches . . ." (See R. 47 L 20-23). That the probability of such a consistent percentage in multiple consecutive batches "approaches zero," and "makes clear an algorithm is allocating votes based on a percentage."

Ramsland stated in his sworn declaration that in Arizona the election feed shows that, "Specifically, at 8:06:40 PM on November 3, 2020, there was a spike of 143,100 votes for Biden in Maricopa and Pima Counties." (R. at p. 46, L. 12- 13). And, as explained and demonstrated in the accompanying redacted declaration of a former electronic intelligence analyst under the 305th Military Intelligence Unit with experience gathering SAM missile system electronic intelligence, the Dominion

software was accessed by agents acting on behalf of China and Iran in order to monitor and manipulate elections, including the most recent US general election in 2020.

This Declaration further includes a copy of the patent records for Dominion Systems in which Eric Coomer, Dominion's security director, is listed as the first of the inventors of Dominion Voting Systems. (See Attached hereto as Ex. 12, copy of redacted witness affidavit, November 23, 2020).

A statistical expert, Brian Teasley, appearing pro bono, identified clear evidence that Dominion Voting Systems, in fact, provided a statistically significant advantage that accrued to Vice President Biden. Mr. Teasley, with a B.S. in Mathematics and an M.S. in statistics, analyzed whether any voting machines generated unusual voting results. (See R. at p.137, L.1-4). Mr. Teasley found, with clear statistical significance as shown by a p-value less than 0.00004, that Dominion voting machines generated an advantage of 3%-5.6% to Vice President Biden relative to all non-Dominion machines, and specifically estimated 3% in the state of Arizona. (See R. at p.137, L.16-17, and p.140, L. 4-7). Mr. Teasley's studied the entire population of voting machines, as opposed to analyzing a sample. (See R. at p.136, L. 5-9). Mr. Teasley calculated a p-value of .00005 showing continuing clear statistical significance and that Vice President Biden gained a 3% advantage where these Dominion voting machines were used. (See R. at p.139, L. 1-17).

The opposition retained Jonathan Rodden, a Ph.D. in Political Science, to oppose Teasley's analysis. In part, Dr. Rodden argued from selected data of those counties that did not use Dominion in 2012 but used it in 2020 to argue that counties that used Dominion in 2020 are politically different than those that did not. (R. at p.1500, L. 3-13).

As Mr. Teasley describes in his rebuttal to Dr. Rodden (R. at p. 811-814), "my analysis considers *all* machines in parallel used in the same election, enabling me to apply reliable statistical methods and find statistical significance." (R. at p.813, L.

9-11). Mr. Teasley further explains that his analysis focuses on all US counties using Dominion, not only counties that recently switched machine type." (R. at p.813, L. 9-11). "Rodden's select case suffers from a most basic trap; correlation does not infer causality, and ranging across historical elections is bound to introduce many potential causes." (R. at p.813, L. 4-7).

In summary, Brian Teasley provided strong and clear statistical evidence that exposes Dominion in a side-by-side comparison controlling for demographics. This evidence is central in showing how the testimony of affiants, such as Russ Ramsland that detail the means and methods of Dominion, did in fact impact the election on widespread and substantial basis and, in the case of Arizona, estimated the impact to be 62,282 votes added for Vice President Biden, more than six times the margin by which Vice President Biden purportedly won the state. (R. at p.140, L. 8-9).

Dr. William Briggs, with a Ph.D. in statistics and over a hundred peer reviewed publications, evaluated data from a survey of persons listed as not having returned or mailed back their ballots. In a short survey with only two substantive questions (Did you request your ballot? Did you mail your ballot?) (See R. at p. 101-103), a very large share of persons stated that they mailed back their ballots and yet the state documented their ballots as unreturned.

Specifically, of 518,560 unreturned ballots, with 95% confidence, Dr. Briggs found that as few as 78,714 persons mailed ballots were not counted; and as many as 94,975. (See R. at p. 96). These lost ballots exceed the margin by which Vice President Joe Biden purportedly won the state of Arizona by an approximate multiple of eight or nine times, teflecting an enormous number of disenfranchised voters.

Stephen Ansolabehere, a Ph.D. of Political Science, repeatedly criticized Dr. Briggs for stating "I assume survey respondents are representative and the data is accurate," questioning the quality of the underlying data Dr. Briggs relied on. Dr.

Briggs stated in his rebuttal that "Not only was this data entirely typical of phone surveys, . . . it was extraordinary in that calls with respondents were recorded." (See R. at p. 806, L.4-9). Criticisms found in Dr. Ansolabehere's opposition (See R. at p. 1442-1445), are not supported by data or analysis. Regarding Ansolabehere's critique of sample size, Briggs states "the mathematical extrapolations I made accounted for the size of the data." (See R. at p. 807, L. 35).

Most important is the remarkable coincidence where data shows that these missing ballots (denoted Error #2 in Dr. Briggs' model) were identified in each of the five states that Dr. Briggs analyzed (See R. at p. 96). This repeated statistical significance across the five states provides further strong statistical evidence that the disenfranchisement of voters was widespread, and in the case of Arizona, was at least 8 times more than the margin of victory calculated by Arizona.

In Arizona, to receive a ballot according to the Secretary of State, one had to either register for the Permanent Early Voting List or make a one-time request. (*See* Secretary of State for Arizona's government website, at https://azsos.gov/votebymail.)

These and other "irregularities" provide this Court grounds to set aside the results of the 2020 General Election and provide the other declaratory and injunctive relief requested herein.

## REASONS FOR GRANTING EMERGENCY APPLICATION FOR EXTRAORDINARY WRIT OF INJUNCTION

Under USCS Supreme Ct. R. 20, a petition must show that "the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court."

This writ will be in aid of the Court's appellate jurisdiction for multiple reasons. As a preliminary matter, if this writ is denied, the case may be moot,

depriving this Court of jurisdiction to consider the weighty issues presented by Petitioners' evidence of illegality and misconduct in administration of the 2020 election in Arizona. Once the Electoral College votes on December 14, 2020 it will be far more difficult, perhaps impossible, for this Court to grant effective relief. Furthermore, there are already cases regarding decertification in the 2020 General Election pending before the Supreme Court. This case will provide the Court with a broader record, documenting clear evidence of fraud, which will assist the Court in resolving those other cases.

This is a time sensitive issue, with numerous constitutional violations, that needs to be decided, as in *Bush v. Gore,* by the highest Court in the Country in order to restore public confidence in our electoral process. If this Court fails to consider the massive evidence of fraud compiled by Petitioners in this case, a dark shadow of doubt will remain on the legitimacy of this election and the candidate who is the apparent winner. More generally, wide portions of the American electorate will lose confidence in our political processes and the concept of representative democracy. Only this Court can restore that confidence by considering, and resolving once and for all, whether the 2020 election is legitimate.

## ARGUMENT

In Section I, Petitioners demonstrate that the District Court erred in dismissing Petitioners' Complaint and TRO Motion, and that this Court has jurisdiction to grant this Application and the extraordinary relief requested.

In Section II, Petitioners discuss the evidence presented in the Complaint, as well as additional evidence that has come to light since the filing of the Complaint, that justify the relief requested.

## I. THE DISTRICT COURT ERRED WHEN IT DISMISSED THE COMPLAINT AND TRO MOTION.

In the United States, voting is a sacrament that democracy cannot succeed without. Without election integrity and faith in the voting system, democracy will fail.

In their Complaint, Petitioners submitted to the District Court overwhelming evidence of widespread voter irregularities not only in the state of Arizona, but also in four other States – Georgia, Michigan, Pennsylvania, and Wisconsin – that use Dominion voting machines, show a common pattern of non-legislative State officials unilaterally weakening voter fraud safeguards, and strong evidence of voter fraud from eyewitnesses with anecdotal evidence, statistical analyses and cyber forensics. Petitioners also submitted evidence that the 2020 General Election may have been subject to interference by hostile foreign governments including China and Iran. After a general election and recount, Joe Biden has been declared the winner of Arizona's General Election for President by a difference of only 10,457 votes. But the vote count certified by defendants on November 30, 2020 fails to recognize the votes are steeped in fraud.

## II. THE OPINION BELOW

### A. The District Court Erred In Finding That Petitioners Lack Standing.

The court found that "Here, Plaintiffs have not alleged a concrete harm that would allow the Court to find Article III Standing for their vote dilution claim." (R. 1627 L.19-20) Because, in short, the court found that "[Presidential] Electors are not candidates for office as the term is generally understood." And the court relied on Arizona law to find that "the duty of an Elector is to fulfill a ministerial function, which is extremely limited in scope and duration, and that they have no discretion to deviate at all from the duties imposed by the statute." (R. 1625 L 12- 17).

Petitioners are not simply voters seeking to vindicate their rights to an equal and undiluted vote, as guaranteed by Arizona law and the Equal Protection Clause of the U.S. Constitution, as construed by this Court in Reynolds v. Sims, 377 U.S. 533 (1964) and its progeny. Rather, "on the first Tuesday after the first Monday in November, 1956, and quadrennially thereafter, there shall be elected a number of presidential electors equal to the number of United States senators and representatives in Congress from this state." A.R.S. § 16-212(A). The District Court instead uses her own language to conclude they are merely "ministerial" because the statute allows then to be replaced if they fail to carry out their duty intentionally.

But all government officers are subject to removal, impeachment or recall. The fact that they do not have the right to rule forever, like monarchs, does not make them any less government officials. This office carries specific responsibilities defined by law, namely voting in the Electoral College for President and Vice-President. A.R.S. § 16-212 (B). Arizona Law makes it clear that the votes cast by voters in the presidential election are actually votes for the presidential electors nominated by the party of the presidential candidate listed on the ballot along with the electors. *Id.*

The District Court broadly found that "Absent from the Complaint is an allegation that Plaintiffs (or any registered Arizona voter for that matter) were deprived of their right to vote." (R. 1627 L. 9-12). Yet the standing of presidential electors to challenge fraud, illegality and disenfranchisement in a presidential election rests on a constitutional and statutory foundation—as if they are candidates—not voters. Theirs is not a generalized grievance, one shared by all other voters; they are particularly aggrieved by being wrongly denied the responsibility, emoluments and honor of serving as members of the Electoral College, as set forth by the Constitution.

Petitioners have the requisite legal standing, and the District Court must be reversed on this point. As in the Eighth Circuit held in Carson v. Simon, 978 F.3d 1051 (8th Cir. 2020), "[b]ecause Minnesota law plainly treats presidential electors as candidates, we do, too." Id. at 1057. And this Court's opinion in Bush v. Gore, 531 U.S. 98 (2000) (failure to set state-wide standards for recount of votes for presidential electors violated federal Equal Protection), leaves no doubt that presidential candidates have standing to raise post-election challenges to the manner in which votes are tabulated and counted. Nominees for the office of Presidential Elector stand in the shoes of the candidate for President, and suffer the same injury from any illegal conduct affecting the manner in which votes are tabulated or counted.

The District Court instead relies upon *Bognet v. Sec'y of Commonwealth of Pa.*, 980 F.3d 336, 351 n.6 (3d Cir. 2020) however, it is clearly distinguishable. The plaintiffs therein were four private individuals, of which one was a former candidate, and under a specific Pennsylvania law, the Third Circuit emphasized the lack of Article III standing because of a failure to plead a particularized injury. *Id.* (*citing Ariz. State Legislature*, 576 U.S. 787, 824 (2015)(the Court cited to the principle that '*standing "often turns on the nature and source of the claim asserted," but it "in no way depends on the merits" of the claim*.") (further citations omitted). This was a pre-election lawsuit and the *Bognet* court held that the injury to the candidate was speculative because no election (and hence no injury) was imminently impending. In this case, by contrast, the election has taken place and Petitioners who are Presidential Elector candidates have suffered a concrete injury.

The District Court and Respondents also appeared to place great weight on the Eleventh Circuit's recent decision in Wood v. Raffensperger, 2020 WL 7094866 (11th Cir. Case No. 201-14418 Dec. 5, 2020) for their argument that Applicant Electors present only non-justiciable generalized grievances. While Wood applies this rule to a citizen elector, it expressly distinguished the case of a candidate – like

the Pretitioners who are candidates for Presidential Electors – he would have had standing. Id. at *4.

The claims of prejudice to the Defendants and to lawful voters who cast their legal votes in the election presume the point in controversy – whether the election was lawful or fraudulent. No Defendant, no candidate, no intervenor, no political party and no citizen can claim a legally protectable interest in a fraudulent election result. In legal contemplation, there can be no prejudice to anyone from invaliding such an election. The District Court and the Defendants would have us believe there is no cognizable legal, equitable or constitutional remedy for an election that has been won through fraudulent means. The governor argued his job in certifying the election is merely ministerial. This notion is obnoxious to his statutory authority, history, law, equity, the Constitution and common sense. Elections are regularly invalidated for fraud and illegality. There is no reason this one cannot also be invalidated if the evidence is sufficient to support that remedy.

### B. The District Court Erred To The Extent It Held Petitioners' Claims Are Barred By Laches.

While the District Court's ruling invokes "laches" finding that "Plaintiffs filed their Complaint and request for TRO seeking to "de-certify" the election results on December 2, 2020, nearly a month after the General Election on November 3, 2020. Without explaining the dates, times or events on which it based its laches conclusion, the court isummarily found that "Plaintiffs' Complaint includes a hodge-podge of alleged misconduct by Arizona elections officials, occurring on various dates over the past weeks, months, and even years." (R. 1686: L. 5-6). Misconduct that only becomes a pattern of evidence that shows a plan, when it comes together on election night and the voting that continues after election night.

Here there is no unreasonable delay in asserting Plaintiffs' rights and no resulting prejudice to the defending party. Plaintiffs could not file a lawsuit claiming the election was stolen by fraud and illegality, fraudulent ballots, non-

resident voting, unrequested absentee ballots, absentee ballots returned but not counted, politically discriminatory counting, illegal tabulation, scanning the same ballots multiple times, and apparent fraudulent electronic manipulation of votes until the election actually was stolen through those means.

The election was certified on November 30, 2020. Plaintiffs filed their Complaint on December 2, 2020, two business days later, and well within the state law limitations period for election contests of five days. Plaintiffs seek de-certification. De-certification presumes prior certification. The claim was not ripe until then. Moreover, much of the misconduct identified in the Complaint was not apparent on Election Day, as the evidence of voting irregularities was not discovered until weeks after the election and through very careful expert analysis.

**C. Abstention.**

Once again, it is difficult to determine the District Court's rationale for dismissal where Judge Humetewa stated that Petitioners' constitutional election fraud claims should be brought in State court. In finding that the Plaintiffs claims are barred by the doctrine of Abstention, the District Court stated that "[t]o begin, this federal forum is less convenient than the state forum, considering the state election law violations alleged, the claims are brought against state actors, and the interplay of state election law." (R. 1631 L. 18-21).

The Court has held that "[t]he doctrine of abstention, however, contemplates that deference to state court adjudication only be made where the issue of state law is uncertain." *Harman v. Forssenius*, 380 U.S. 528, 534-535, 85 S. Ct. 1177, 1182, 14 L. Ed. 2d 50, 55, (1965) (citations omitted). The Court explained that "[i]f the state statute in question, although never interpreted by a state tribunal, is not fairly subject to an interpretation which will render unnecessary or substantially modify the federal constitutional question, it is the duty of the federal court to exercise its properly invoked jurisdiction." *Id.*

Respondents' actions in unilaterally and materially modifying, or violating, the Arizona's Legislature's election laws—for example, eliminating the signature requirement for absentee ballots or authorizing county election officials to process absentee ballots prior to election day or certifying Dominion Voting Systems when its certifications were lacking in compliance requirements—amounts to "[a] significant departure from the legislative scheme for appointing Presidential electors," which "presents a federal constitutional question." Bush v. Gore, 531 U.S. 98, 112, 121 S.Ct. 525, 533-534 (2000) (Rehnquist, Scalia and Thomas concurring).

While the District Court also made a finding that Plaintiffs failed to plead fraud with particularity, the standard for ballot and election fraud under controlling Arizona Supreme Court precedent is clear and unambiguous. *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180, 877 P.2d 277, 279, (S. Ct.1994).

The Supreme Court of Arizona explained that election fraud occurs where there are "non-technical" violations of election law that affected the result of the election: "*We therefore hold that a showing of fraud is not a necessary condition to invalidate absentee balloting. It is sufficient that an express non-technical statute was violated, and ballots cast in violation of the statute affected the election." Id.* The *Miller* Court went on to explain:

> In the context of this case, affect the result, or at least render it uncertain, means ballots procured in violation of a non-technical statute in sufficient numbers to alter the outcome of the election.

*Id*. Specifically, of 518,560 unreturned ballots, with 95% confidence, Dr. Briggs found that as few as 78,714 persons mailed ballots were not counted; and as many as 94,975. (See R. at p. 96). These lost ballots exceed the margin by which Vice President Joe Biden purportedly won the state of Arizona by an approximate multiple of eight or nine times and reflect an enormous number of disenfranchised voters.

### D. Mootness.

It is well-settled that the mere occurrence of an election does not moot an election-related challenge, nor does certification necessarily moot a post-election challenge. The Eleventh Circuit squarely addressed this precise issue in Siegel, which involved a post-certification challenge in connection with the 2000 General Election recount. The Siegel court first noted that neither of the requirements for mootness had been met post-certification because "[i]n view of the complex and ever-shifting circumstances of the case, we cannot say with any confidence that no live controversy is before us." Siegel, 234 F.3d at 1172-73. The Eleventh Circuit's recent Wood decision also would not support the District Court's position because the plaintiff there requested only a delay in certification from the district court, Wood, 2020 WL 7094866 at *6, rather than de-certification and other prospective relief that Petitioners requested from, but rejected by, the District Court.

### E. Defendants violated multiple standards and requirements in this election.

1. That the electronic security of the Dominion system is so lax as to present a "extreme security risk" of undetectable hacking, and does not include properly auditable system logs. R. 33 L. 2-13; R.169-175. Judge Totenberg's decision in *Curling v. Raffensperger*, 2020 WL 5994029 (N.D. Ga. 10/11/20) sheds important light on this issue.

1. The process of uploading data from memory cards to the Dominion servers is fraught with serious bugs, frequently fails and is a serious security risk. R. 172-174.

2. At the election place there was no inventory control over USB sticks, which were regularly taken back and forth from the Dominion server to the Fulton County managers' offices, another extreme security risk. R. 174-175.

3. "The security risks outlined above – operating system risks, the failure to harden the computers, performing operations directly on the operating systems, lax control of memory cards, lack of procedures, and potential remote access, are extreme and

destroy the credibility of the tabulations and output of the reports coming from a voting system." R. 175.

4. The Dominion voting system ballots marked by Ballot Marking Devices are not voter-verifiable or auditable in a software-independent way. Complaint ¶¶ 13 & 110(a); Doc. 1-5, ¶ 7; Doc. 1-8 *passim*). This issue has been litigated and decided against the State Defendants in *Curling v. Raffensperger*, 2020 WL 5994029 (N.D.Ga. 10/11/20).

The Arizona Secretary of State appoints a committee of three people to test different voting systems. The committee is required to submit its recommendations to the Secretary of state who then makes the final decision on which voting system(s) to adopt. A.R.S. § 16-442(A) and (C). The Arizona Court of Appeals explained that "In summary, [the court] rejected the Secretary's argument that her certification of voting machines for use in Arizona is **a** political question that is inappropriate for judicial review." In doing so, the court explained the application of HAVA, because states like Arizona are required to ensure that its voting systems are HAVA compliant -which includes accreditation pursuant to HAVA. *Chavez v. Brewer*, 222 Ariz. 309, 317, 214 P.3d 397, 405, (Ariz. Ct. App. 2009). During the subsequent four years, the Arizona Legislature amended and enacted several statutes to effectuate HAVA. Among these changes, the legislature amended Arizona Revised Statutes (A.R.S.) section 16-442(A) to require that the secretary of state determine the voting machines that are "certified for use" in elections. 2003 Ariz. Sess. Laws, ch. 260, § 9 (1st Reg. Sess.). The legislature also amended the process for selecting electronic voting machines by requiring that the secretary of state certify only voting machines that "comply with [HAVA]" and requiring that all election machines or devices be "tested and approved by **a** laboratory that is accredited pursuant to [HAVA]." *Id.;* A.R.S. § 16-442(B) (2006). The legislature also authorized the secretary of state to revoke the certification of any voting system that fails to meet the new standards. 2003 Ariz. Sess. Laws, ch. 260, § 9; 2005 Ariz. Sess. Laws, ch. 144, § 2; A.R.S. § 16-442(C), (D).

2. A District Judge found that Dominion's Ballot Marking Devices (Dominion Voting Machines) ballots are not voter verifiable, and they cannot be audited in a software independent way. The credibility of a BMD ballot can be no greater than the credibility of Dominion's systems, which copious expert analysis has shown is deeply compromised. Similar to the issues in Arizona and Wisconsin, Judge Totenberg of the District Court of Georgia for the Northern District in *Raffensperger* held:

> Georgia's Election Code mandates the use of the BMD system as the uniform mode of voting for all in-person voters in federal and statewide elections. O.C.G.A. § 21-2-300(a)(2). The statutory provisions mandate voting on "electronic ballot markers" that: (1) use "electronic technology to independently and privately mark a paper ballot at the direction of an elector, interpret ballot selections, ... such interpretation **for elector verification**, and print **an elector verifiable paper ballot**;" and (2) "produce paper ballots which are marked with the elector's choices **in a format readable by the elector**" O.C.G.A. § 21-2-2(7.1); O.C.G.A. § 21-2-300(a)(2).
>
> Plaintiffs and other voters who wish to vote in-person are required to vote on **a system that does none of those things**. Rather, the evidence shows that the Dominion BMD system does **not produce a voter-verifiable paper ballot or a paper ballot marked with the voter's choices in a format readable by the voter because the votes are tabulated solely from the unreadable QR code**.

See Order, pp. 81-82. (Emphasis added). R. 51 L.15-25.

"When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." Bush v. Gore, 531 U.S. 98, 104 (2000) (emphasis added). The evidence shows not only that Respondents failed to administer the November 3, 2020 election in compliance with the manner prescribed by Arizona's Election Code, but that a wide-spread scheme and artifice to fraudulently and illegally manipulate

the vote count occurred. Respondents' actions also disenfranchised Republican voters in violation of the U.S. Constitution's "one person, one vote" requirement by:

- Republican Ballot Destruction: "1 Person, 0 Votes." Fact and witness expert testimony alleges and provides strong evidence that tens or even hundreds of thousands of Republican votes were destroyed, thus completely disenfranchising that voter.

- Republican Vote Switching: "1 Person, -1 Votes." Petitioner's fact and expert witnesses further alleged and provided supporting evidence that in many cases, Trump/Republican votes were switched or counted as Biden/Democrat votes. Here, the Republican voter was not only disenfranchised by not having his vote counted for his chosen candidates, but the constitutional injury is compounded by adding his or her vote to the candidates he or she opposes.

- Dominion Algorithmic Manipulation: For Republicans, "1 Person, 0.5 Votes," while for Democrats "1 Person, 1.5 Votes. Petitioner presented evidence in the Complaint regarding Dominion's algorithmic manipulation of ballot tabulation, such that Republican voters in a given geographic region received less weight per person, than Democratic voters in the same or other geographic regions. *See* ECF No. 6, Ex. 104. This unequal treatment is the 21st century of the evil that the Supreme Court sought to remedy in the apportionment cases beginning with Baker v. Carr, 369 U.S. 186 (1962), and Reynolds v. Sims, 377 U.S. 533 (1964). Further, Dominion has done so in collusion with State actors, including Respondents, so this form of discrimination is under color of law.

The Complaint alleges and provides supporting evidence that the number of illegal votes is potentially multiples of Biden's 10,457 margin in Arizona.

- Unreturned mail ballots unlawfully ordered by third parties (average for Dr. Briggs Error #1): 219,135

- Returned ballots that were deemed unreturned by the state (average for Dr. Briggs Error #2): 86,845

- "Excess votes" to historically unprecedented, and likely fraudulent turnout levels of 80% or more in over half of Maricopa and Pima County precincts: 100,724.

- As Brian Teasley explains, Mr. Biden received a statistically significant advantage, based on fraud, from the use of Dominion Machines in a nationwide Study, which conservatively estimates Biden's advantage at 62,282 votes in Arizona.

(R. 35: L.24 - 36 L.10)

This Court, in considering Petitioners' constitutional and voting rights claims under a "totality of the circumstances" should consider the cumulative effect of the various categories of Respondents' voter dilution and disenfranchisement claims. Taken together, these destroyed or shifted tens or hundreds of thousands of Trump votes, and illegally added tens or hundreds of thousands of Biden votes, changing the result of the election.

New forms of voting dilution and disenfranchisement are made possible by new technology. The potential for voter fraud inherent in electronic voting was increased as a direct result of Respondents' efforts to transform traditional in-person paper voting – for which there are significant protections from fraud in place – to near universal absentee voting with electronic tabulation – while at the same time eliminating through legislation or litigation – traditional protections against voting fraud (voter ID, signature matching, poll books, counting votes inside precincts and not on foreign shores, witness and address requirements, etc.).

Thus, while Petitioners' claims include novel elements due to changes in technology and voting practices, that does not nullify the Constitution or Petitioner's rights thereunder. Respondents have implemented policies that allowed the most wide-ranging and comprehensive scheme of voting fraud yet devised,

integrating new technology with old fashioned urban machine corruption and skullduggery. The fact that this scheme is novel does not make it legal, or prevent this Court from fashioning appropriate injunctive relief to protect Petitioners' rights and prevent Respondents from enjoying the benefits of their illegal conduct.

## CONCLUSION

WHEREFORE, the Petitioner respectfully requests this Honorable Court grant this Emergency Application for Writ of Injunction Pending the Filing and Disposition of a Petition for a Writ of Certiorari and a Writ of Mandamus to reverse the December 9 Judgment of the United States District Court for the District of Arizona.

Petitioner seeks an emergency order instructing Respondents to decertify the results of the General Election for the Office of President. Enjoin the Biden slate of Electors from casting their votes in the Electoral College pending resolution of this case.

Petitioners seek an emergency order prohibiting Respondents from including in any certified results from the General Election the tabulation of absentee and mailing ballots which do not comply with the Arizona Election Code.

Petitioners further request that this Court direct the District Court to order production of all registration data, ballots, envelopes, etc. required to be maintained by Arizona state and federal law.

**Respectfully submitted,**

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Date: December 12, 2020

**CERTIFICATE OF COMPLIANCE**

The attached Writ of Certiorari complies with the type-volume limitation. As required by Supreme Court Rule 33.1(h), I certify that the document contains 8,984 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

Respectfully submitted,

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