

**FILED**

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CLERK OF SUPERIOR COURT  
BY \_\_\_\_\_  
DEPUTY

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11 **ARIZONA SUPERIOR COURT**

12 **COCHISE COUNTY**

13 KATIE HOBBS, in her official capacity as )  
14 Arizona Secretary of State, )

15 Plaintiff, )

16 v. )

17 TOM CROSBY, ANN ENGLISH, PEGGY )  
18 JUDD, in their official capacities as members )  
of the Cochise County Board of Supervisors; )  
19 and COCHISE COUNTY, a political )  
subdivision of the State of Arizona, )

20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )

No. **CV 202200553**

**VERIFIED COMPLAINT FOR  
SPECIAL ACTION RELIEF**

1  
2 **Introduction**

3 1. The Cochise County Board of Supervisors (“Board”) has, without justification,  
4 failed to fulfill its mandatory duty to meet and approve its canvass of the results of the 2022  
5 General Election by the statutory deadline of November 28, 2022.

6 2. Arizona law provides, with a limited exception inapplicable here, that the Board  
7 “shall meet and canvass the election not less than six days nor more than twenty days following  
8 the election.” A.R.S. § 16-642(A) (emphasis added). The statute’s plain language makes clear  
9 that this duty is not discretionary. The Board was thus required to meet and canvass the election  
10 by November 28th – but the Board has failed to take this required action.

11 3. Not only does the Board’s inaction violate the applicable statute, but it will  
12 potentially disenfranchise the voters of Cochise County. Arizona law requires Secretary of State  
13 Katie Hobbs (“Secretary”) to “canvass all offices” by the fourth Monday following the general  
14 election – here, December 5, 2022. *See* A.R.S. § 16-648; *see also* Ariz. Const. art. V, § 10. And  
15 while postponement of the canvass is permitted if the official canvass of any county has not been  
16 received by that deadline, this postponement is limited to no more than “thirty days from the  
17 date of the election.” *See* A.R.S. § 16-648(C). Thus, the very last day for the Secretary to  
18 complete the statewide canvass is December 8, 2022 – only three days after the Secretary’s  
19 original deadline (and 10 days from today).

20 4. Absent this Court’s intervention, the Secretary will have no choice but to complete  
21 the statewide canvass by December 8 without Cochise County’s votes included. Thus, the  
22 Board’s inaction not only violates the plain language of the statute, but also undermines a basic  
23 tenet of free and fair elections in this state: ensuring that every Arizonan’s voice is heard.

24 5. The Board’s unprecedented inaction should not disenfranchise tens of thousands  
25 of voters in Cochise County. The Secretary thus brings this action to ensure that those voters’  
26 voices are heard and their votes counted.



1           10. Defendant Tom Crosby is a member of the Cochise County Board of Supervisors  
2 and is named in his official capacity. Supervisor Crosby is a public officer subject to a writ of  
3 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S. §§  
4 12-2021 *et seq.*

5           11. Defendant Ann English is a member of the Cochise County Board of Supervisors  
6 and is named in her official capacity. Supervisor English is a public officer subject to a writ of  
7 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S. §§  
8 12-2021 *et seq.*

9           12. Defendant Peggy Judd is a member of the Cochise County Board of Supervisors  
10 and is named in her official capacity. Supervisor Judd is a public officer subject to a writ of  
11 mandamus under the common law, the Rules of Procedure for Special Actions, and A.R.S. §§  
12 12-2021 *et seq.*

13           13. Defendant Cochise County is a political subdivision of the State of Arizona and is  
14 a public body subject to a writ of mandamus under the common law, the Rules of Procedure for  
15 Special Actions, and A.R.S. §§ 12-2021 *et seq.*

16           14. Jurisdiction over this action is proper pursuant to A.R.S. §§ 12-2021 and 12-123,  
17 as well as Rule 4(a) of the Arizona Rules of Procedure for Special Actions.

18           15. Venue in this Court is proper pursuant to A.R.S. § 12-401 and Rule 4(b) of the  
19 Arizona Rules of Procedure for Special Actions.

20           16. Because this is a statutory special action and a show cause procedure is being used,  
21 “the court shall set a speedy return date” on Plaintiff’s Application for Order to Show Cause  
22 filed herewith. Ariz. R.P.S.A. 4(c); *see also* Ariz. R. Civ. P. 7.3(a) (authorizing a superior court  
23 judge to “issue an order requiring a party to show cause why the party applying for the order  
24 should not have the relief therein requested”).

1  
2 **Factual Background**

3 **I. Arizona Law Imposes Strict Statutory Duties on County Boards of Supervisors**  
4 **Regarding the Election Canvass.**

5 17. After the polls close on Election Day, county boards of supervisors and the “officer  
6 in charge of elections” in each county have certain statutory responsibilities, including  
7 tabulation, A.R.S. § 16-621, and a limited hand-count audit, A.R.S. § 16-602(B). After that  
8 process is complete, the governing body holding the election must meet and canvass the election  
9 by a statutorily prescribed deadline. *See, e.g.*, 2019 Elections Procedures Manual (“2019 EPM”)  
10 at 240 (“The Board of Supervisors has a non-discretionary duty to canvass the returns as  
11 provided by the County Recorder or other officer in charge of elections and has no authority to  
12 change vote totals or reject the election results.”).<sup>1</sup> Once the Secretary receives the canvasses of  
13 all fifteen counties in Arizona, she conducts the statewide canvass. *See* A.R.S. § 16-648(C).

14 18. Arizona law sets forth strict procedures for how the county- and state-level election  
15 canvasses must be conducted. At the county level, the governing body holding the election – in  
16 this case, the Board – “shall meet and canvass the election not less than six days nor more than  
17 twenty days following the election” (here, November 28, 2022). *See* A.R.S. § 16-642(A)  
18 (emphasis added). The only exception to this rule is if returns from any polling place or vote  
19 center are found to be missing, in which case the canvass must be postponed day by day until all  
20 returns are received or six postponements have been had. *Id.* § 16-642(C).

21 19. Once completed, the Board must transmit the canvass to the Secretary, A.R.S. §  
22 16-646(B)-(C), who must then complete the statewide canvass by the fourth Monday following  
23 the general election (here, December 5, 2022). *See* A.R.S. § 16-648(A). In other words, while  
24 the counties have a significant period of time to complete their canvass, the Secretary has only

25  
26 <sup>1</sup> [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).

1 one week to compel their performance and complete her own statewide canvass by the statutory  
2 deadline if the counties fail to fulfill their statutory responsibilities.

3 20. Arizona law allows for postponement of the statewide canvass only if the official  
4 canvass of any county has not been received by the foregoing deadline. But this postponement  
5 is limited to no more than “thirty days from the date of the election” (here, December 8, 2022).  
6 *See* A.R.S. § 16-648(C).

7 21. In sum, the Board was required to meet and approve its canvass on or before  
8 November 28, 2022. *See* A.R.S. § 16-642(A). Compliance with this deadline enables the  
9 Secretary to conduct the statewide canvass by December 5, 2022. *See* A.R.S. § 16-648(A). And  
10 that December 5 deadline can be postponed – if appropriate – to no later than December 8, 2022,  
11 at which point the Secretary is required by law to conduct the canvass and “promptly” certify  
12 the election. *See* A.R.S. §§ 16-648(C), 16-650; *see also* 2019 EPM at 248.

13 22. Complying with these statutory deadlines is of particular importance this year  
14 because two statewide races (Attorney General and Superintendent of Public Instruction) and  
15 one legislative race (House of Representatives, Legislative District 13) will require mandatory  
16 automatic recounts under A.R.S. § 16-661. The Secretary cannot certify the facts necessary to  
17 obtain a court order to begin those recounts until after the statewide canvass is completed. *See*  
18 A.R.S. § 16-662 (“When the canvass shows that a recount is required, the secretary of state shall,  
19 in the case of an office to be filled by electors of the entire state, a congressional district, a  
20 legislative district or a subdivision of the state greater than a county, initiated or referred  
21 measures or proposals to amend the constitution, certify the facts requiring the recount to the  
22 superior court in Maricopa county.”) (emphasis added).

23 23. The recount process will take time and must be completed expeditiously because  
24 the terms of executive officers and the legislature begin “on the first Monday of January” (*i.e.*,  
25 January 3, 2023). *See* Ariz. Const. art. 5 § 1 (“The executive department shall consist of the  
26 governor, secretary of state, state treasurer, attorney general, and superintendent of public

1 instruction, each of whom shall hold office for four years beginning on the first Monday of  
2 January”); Ariz. Const. art. IV, pt. 2, § 22 (legislators’ terms begin on the “first Monday in  
3 January”). A delay of even a few days in these critical processes could affect the continuity of  
4 state government and interfere with the will of the people.

5 **II. The Cochise County Board of Supervisors Fails to Perform Its Duty to Timely**  
6 **Canvass the Election Results.**

7 **A. The Board Delays the Canvass Until the Eleventh Hour.**

8 24. The Board held a special meeting on the evening of November 18, 2022, where it  
9 heard statements from various conspiracy theorists – known for filing spurious lawsuits before  
10 the Arizona courts – who claimed that the vote tabulation equipment used in Cochise County  
11 was improperly certified under state and federal law.<sup>2</sup>

12 25. At the November 18 meeting, both Cochise County Elections Director Lisa Marra  
13 and State Elections Director Kori Lorick emphasized that claims of improper certification were  
14 baseless. Ms. Marra stated that the election “was conducted within the legal requirements of all  
15

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16 <sup>2</sup> See Bob Christie, *Cochise County Board Delays Certifying Election Results*, ASSOCIATED  
17 PRESS, Nov. 19, 2022, <https://apnews.com/article/arizona-election-recounts-48a744c9972da2df954afcdd73c42bde> (last visited Nov. 20, 2022). The conspiracy theorists –  
18 Daniel Wood, Brian Steiner, and Paul Rice – are known for filing multiple lawsuits challenging  
19 the 2020 election results. In September 2022, the Arizona Supreme Court issued a minute entry  
20 denying their request to compel the Attorney General, Governor, Secretary, and Chief Justice to  
21 decertify and rerun the Arizona 2020 presidential election based on purportedly improperly  
22 certified voting equipment. Noting the “strong public policy favoring stability and finality of  
23 election results,” the Supreme Court denied the challenge as untimely and observed that the  
24 petitioners lacked legal authority for their requested relief. A true and correct copy of the minute  
25 entry is attached as **Exhibit G**. Relatedly, Wood was a designated spokesman for the group “We  
26 the People of the State of Arizona,” which filed a special action petition claiming that the 2018  
and 2020 general elections were invalid because the voting machines did not follow federal  
certification requirements. The lawsuit requested that the Court remove the current “usurpers”  
holding public office – including the Secretary and Governor Doug Ducey – and allow  
petitioners to sit in their stead. The Arizona Supreme Court dismissed the petition in May 2021,  
finding “no legal basis for the relief requested.” See *People ex rel. B.J.B. v. Ducey*, No. CV-21-  
0114-SA, 2021 WL 1997667, at \*2 (Ariz. May 11, 2021) (memorandum decision).

1 state and federal laws, and the results should be certified by the Board of Supervisors.” *See*  
2 Cochise Cnty. Bd. Of Supervisors, Special Meeting General Election Canvass, Nov. 18, 2022,  
3 <https://www.youtube.com/watch?v=RvAxd054xoM> (12:58-13:07 mark). And Ms. Lorick noted  
4 that the voting machines had been “properly certified under both federal and state laws and  
5 requirements,” and that “claims that the SLI testing labs were not properly accredited [are]  
6 false.” *See id.* (1:57:05-57:48 mark).

7         26. Nonetheless, Board members Crosby and Judd voted to delay the canvass until 10  
8 a.m. on November 28 – the last day possible under Arizona law – purportedly so that someone  
9 with the requisite “expertise” could prove to them that the machines were properly certified by  
10 an accredited laboratory. *See id.* (2:11:45-2:15:55 mark). The Board also asked Ms. Lorick to  
11 provide more information attesting to the voting machines’ accuracy and reliability, which she  
12 agreed to do. *See id.* (2:16:50-2:18:35 mark).

13                 **B. The Secretary Warns the Board, to No Avail, that it Must Canvass the**  
14                 **Election by the Deadline or Face a Potential Special Action.**

15         27. On November 21, 2022, the Secretary sent a letter to the Board warning that any  
16 failure to canvass the election by the November 28, 2022 deadline violated Arizona law, re-  
17 affirming Ms. Lorick’s comments from the November 18 Board meeting, and attaching (among  
18 other things) a letter from the Elections Assistance Commission (“EAC”) confirming that  
19 Cochise County’s vote tabulation machines are properly certified and accredited. A true and  
20 correct copy of the Secretary’s letter is attached as **Exhibit A** (Nov. 21, 2022 Letter from K.  
21 Lorick). A true and correct copy of EAC’s letter is attached as **Exhibit B** (Nov. 21, 2022 Letter  
22 from M. Robbins). The Secretary warned that the Board’s failure to certify the canvass by  
23 November 28 would lead to legal action, including special action relief. *See Ex. A* at 2.

24         28. But the Board ignored the Secretary’s warning. On November 28, it met again and  
25 refused to certify the canvass by the statutory deadline. In the end, the Board voted 2-1, with  
26 Supervisors Crosby and Judd voting in the affirmative, to keep the agenda item related to the

1 certification of the canvass “on the table” until December 2, and that the item would only be  
2 removed from the table and voted on after the Board hears from a group of individuals opposing  
3 certification and representatives of the Secretary.

4 **III. The Board’s Failure to Timely Meet and Canvass the Election Violates Arizona**  
5 **Law.**

6 **A. The Board’s Duty to Timely Canvass the Election Results is Mandatory.**

7 29. The Arizona Constitution provides that “[t]he returns of the election for all state  
8 officers shall be canvassed, and certificates of election issued by the secretary of state, in such  
9 manner as may be provided by law.” Ariz. Const. art. V, § 10.

10 30. Arizona law, in turn, provides that the governing body conducting an election – in  
11 this case, the Board – “shall meet and canvass the election not less than six days nor more than  
12 twenty days following the election.” A.R.S. § 16-642(A) (emphasis added). Indeed, the  
13 governing statutory provisions prescribing the Board’s canvassing duties consistently use the  
14 words “shall” in specifying when and how the Board is to conduct the canvass. *See, e.g.*, A.R.S.  
15 §§ 16-642, 16-644, 16-645, 16-646.

16 31. It is well settled that “[t]he use of the word ‘shall’ indicates a mandatory intent by  
17 the legislature.” *Ins. Co. of N. Am. v. Superior Ct. In & For Cty. of Santa Cruz*, 166 Ariz. 82, 85  
18 (1990); *see also H CZ Const., Inc. v. First Franklin Fin. Corp.*, 199 Ariz. 361, 364 ¶¶ 10-11 (App.  
19 2001) (“Words are given their ordinary meaning unless the context of the statute requires  
20 otherwise . . . [t]he ordinary meaning of ‘shall’ in a statute is to impose a mandatory provision.”)  
21 (citations omitted).

22 32. There is a single, narrow exception to this general rule: The word “shall” may be  
23 considered directory “when the legislative purpose can best be carried out by such construction.”  
24 *Id.* But that is not the case here.<sup>3</sup> On the contrary, the legislative history of A.R.S. §§ 16-642 –

25 <sup>3</sup> In the most frequently cited example of an Arizona court giving a permissive construction to  
26 the word “shall,” the court was acting to save the constitutionality of the statute in which the

1 and related statutory provisions setting forth the Board’s canvassing duties – makes clear that  
2 the term “shall” imposes a mandatory duty on the Board. *See, e.g.*, SB 1037 Final Amended Fact  
3 Sheet, May 1, 2006 (last accessed Nov. 18, 2022) (“Arizona law contains a general canvass of  
4 elections statute that requires the governing body holding an election to canvass the election [by  
5 the statutorily prescribed deadline]” and “specifically requires the Board of Supervisors to  
6 deliver the canvass of precinct returns to the Secretary of State” by the deadline) (emphasis  
7 added)<sup>4</sup>; SB 1492 Senate Fact Sheet, Apr. 9, 2021 (last accessed Nov. 21, 2022) (summarizing  
8 amendment to A.R.S. § 16-645 stating that the Board “must deliver the canvass to the Secretary  
9 of State . . . within 14 days after the primary election”)<sup>5</sup>; HB 2604 Amended Senate Fact Sheet,  
10 Apr. 12, 2018 (last accessed Nov. 18, 2022) (amending A.R.S. § 16-646 by “[r]equir[ing]” that  
11 certain information be included in the official canvass pursuant to a House bill aimed at  
12 increasing voter participation in elections).<sup>6</sup>

13 33. There is simply no meritorious argument that the statute’s use of the word “shall”  
14 should be deemed as anything other than mandatory.

15 **B. The Limited Exception in A.R.S. § 16-642 is Inapplicable Here.**

16 34. There is a single, limited exception to the mandate prescribed in A.R.S. § 16-  
17 642(A): the Board may postpone the canvass “from day to day until all the returns are received  
18 or until six postponements have been had” if “at the time of the meeting of the governing body,  
19 the returns from any polling place in the election district where the polls were opened and an  
20 election held are found to be missing[.]” A.R.S. § 16-642(C).

21  
22 word appeared. *See Arizona Downs v. Arizona Horsemen’s Found.*, 130 Ariz. 550, 555 1058  
23 (1981) (“[W]e believe that a reasonable and constitutional construction of the challenged  
provision is that the word “shall” is used in a directory sense rather than in a mandatory sense”).

24 <sup>4</sup> [https://www.azleg.gov/legtext/47leg/2r/summary/s.1037jud\\_asenacted.doc.htm](https://www.azleg.gov/legtext/47leg/2r/summary/s.1037jud_asenacted.doc.htm).

25 <sup>5</sup> [https://www.azleg.gov/legtext/55leg/1R/summary/H.SB1492\\_040821\\_TRANSMITTED.pdf](https://www.azleg.gov/legtext/55leg/1R/summary/H.SB1492_040821_TRANSMITTED.pdf).

26 <sup>6</sup> [https://www.azleg.gov/legtext/53leg/2R/summary/S.2604GOV\\_ASPASSEDCONFERENCE  
COMMITTEE.pdf](https://www.azleg.gov/legtext/53leg/2R/summary/S.2604GOV_ASPASSEDCONFERENCE_COMMITTEE.pdf).

1           35. Here, no returns have been “found to be missing.” Instead, the Board’s sole  
2 justification for missing the statutory deadline is that the County’s electronic voting equipment  
3 failed to satisfy state and/or federal requirements. The Court need not consider the merits of this  
4 argument, because concerns about the certification of voting equipment are not a legal basis for  
5 failing to conduct the canvass by the statutory deadline. This alone should end the Court’s  
6 inquiry.

7           **IV. The County’s Election Equipment is Properly Certified.**

8           36. But even on its merits, the Board’s frivolous argument fails because Cochise  
9 County’s election equipment was properly certified for use in the 2022 elections.

10           **A. Arizona’s Established History of Using Electronic Voting Equipment.**

11           37. Arizona counties use electronic equipment to tabulate votes, and they have done  
12 so for many decades. Arizona first authorized the use of electronic voting systems as early as  
13 1966. H.B. 204, 27th Leg., 2d. Reg. Sess. (Ariz. 1966). All electronic voting systems undergo  
14 federal and state testing and certification before being used in Arizona elections, counties  
15 perform logic and accuracy testing on all equipment before and after every election, and the  
16 Secretary separately performs logic and accuracy testing on a sample of each county’s equipment  
17 before each election with a federal, statewide, or legislative race. *See, e.g.*, A.R.S. §§ 16-442,  
18 16-449, 16-602; 2019 EPM at 76-82, 86-100, 235.

19           38. Though Arizona uses electronic equipment to tabulate votes, every vote cast in  
20 Arizona is on a paper ballot. *E.g.*, A.R.S. §§ 16-462, 16-468(2), 16-502. The Secretary has  
21 certified each electronic voting system to be used in each county in the 2022 elections, including  
22 in Cochise County. *See* Ariz. Sec’y of State, *2022 Election Cycle / Voting Equipment*,  
23 [https://azsos.gov/sites/default/files/2022 Election Cycle Voting Equipment Aug.pdf](https://azsos.gov/sites/default/files/2022_Election_Cycle_Voting_Equipment_Aug.pdf).

24           39. Under A.R.S. § 16-442(B), electronic voting equipment must comply with the  
25 Help America Vote Act of 2002 (“HAVA”) and be approved by an accredited laboratory, known  
26 as a voting system testing laboratory (“VSTL”). *See also* 2019 EPM Ch. 4 § I. There are two

1 VSTLs accredited by the U.S. Election Assistance Commission (“EAC”): (1) Pro V&V and (2)  
2 SLI Compliance, a Division of Gaming Laboratories International, LLC (“SLI”). HAVA also  
3 establishes standards for electronic voting equipment under 52 U.S.C. § 21081, and the EAC has  
4 promulgated voluntary guidelines for voting systems under 52 U.S.C. § 21101. *See* 2005  
5 Voluntary Voting System Guidelines (“VVSG”).<sup>7</sup>

6 40. Cochise County used the ES&S, EVS 6.0.4.0 voting system for its 2022 elections.<sup>8</sup>  
7 This voting system was tested and certified under the VVSG in 2019. U.S. Election Assistance  
8 Comm’n, ES&S EVS 6.0.4.0, <https://www.eac.gov/voting-equipment/evs-6040>; *see also* Ex. B.

9 **B. SLI’s Accreditation Was Not Revoked.**

10 41. The basis for the Board’s delay – that Cochise County’s voting machines may not  
11 have been properly certified because SLI, the VSTL that tested the system, was not properly  
12 accredited – lacks any factual basis. Instead, the fact that SLI was properly accredited during the  
13 entirety of the relevant time period is apparent from the face of SLI’s certificate of accreditation.

14 42. On January 10, 2018, the EAC issued SLI a certificate of accreditation effective  
15 until January 10, 2021. A true and correct copy of the SLI Certificate of Accreditation is attached  
16 as **Exhibit C**.

17 43. The certification application for ES&S’s EVS 6.0.4.0, the voting system used in  
18 Cochise County, was approved for testing on October 15, 2018 and the Application Approval  
19 Letter designated SLI Compliance as the lead VSTL for testing the system. A true and correct  
20 copy of the Application Approval Letter is attached as **Exhibit D**.

21 44. On May 3, 2019, EAC certified the ES&S’s EVS 6.0.4.0 voting system. A true  
22 and correct copy of the Certificate of Conformance is attached as **Exhibit E**.

23  
24  
25 <sup>7</sup> <https://www.eac.gov/voting-equipment/voluntary-voting-system-guidelines>.

26 <sup>8</sup> <https://www.eac.gov/voting-equipment/system-certification-process>.

1           45. During the entirety of the relevant time period – from application approval of  
2 ES&S’s EVS 6.0.4.0 and designation of SLI as the lead testing laboratory on October 15, 2018  
3 (Ex. D), throughout SLI’s testing of the voting system, and to the EAC’s certification of the  
4 system on May 3, 2019 (Ex. E) – SLI maintained its accreditation, as clearly evidenced by the  
5 dates on its Certificate of Accreditation (Ex. C).<sup>9</sup>

6           46. The false and inaccurate allegations that SLI’s accreditation lapsed or expired –  
7 and therefore its testing and the certification of EVS 6.0.4.0 is somehow “void” – likely stemmed  
8 from the fact that, due to an administrative error, after the January 10, 2021 expiration date on  
9 SLI’s Certificate of Accreditation, the EAC did not produce an updated Certificate of  
10 Accreditation until February 1, 2021. *See* SLI Certificate of Accreditation, Feb. 1, 2021.<sup>10</sup> Even  
11 if this slight delay in producing an updated certificate had any legal significance (as explained  
12 below, it does not), testing and certification of EVS 6.0.4.0 was completed in May 2019, almost  
13 two years before the January 10, 2021 expiration date.

14           47. And even if any part of SLI’s testing of EVS 6.0.4.0 occurred between January 10,  
15 2021 and February 1, 2021, that fact would not have “voided” the testing and certification of the  
16 voting system because SLI’s accreditation was never revoked and never expired. The EAC has  
17 directly addressed this allegation, clarifying that SLI “remained in good standing with the  
18 requirements of [the EAC’s] program and retained their accreditation,” that the “lack of  
19 generating a new certificate does not indicate that [SLI was] out of compliance,” and that “[a]ll  
20 certifications during this period remain valid as does the lab accreditation.” *See* EAC, *VSTL*  
21

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22 <sup>9</sup> As stated in the Secretary’s November 21, 2022 letter, ES&S’s EVS 6.0.4.0 was also reviewed  
23 and tested by Arizona’s Equipment Certification and Advisory Committee. *See* Ex. A at 1. It  
24 was conditionally certified by the state on November 5, 2019 and finally certified on February  
25 24, 2020. A true and correct copy of the February 2020 certification is attached as **Exhibit F**.

26 <sup>10</sup> [https://www.eac.gov/sites/default/files/voting\\_system\\_test\\_lab/files/SLI%20Certificate%20of%20Accreditation%202021.pdf](https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI%20Certificate%20of%20Accreditation%202021.pdf).

1 *Certificates and Accreditation*, July 22, 2021;<sup>11</sup> see also EAC Memorandum, *SLI Compliance*  
2 *EAC VSTL Accreditation*, Jan. 27, 2021 (“Due to the outstanding circumstances posed by  
3 COVID-19, the renewal process for EAC laboratories has been delayed for an extended period.  
4 While this process continues, SLI retains its EAC VSTL accreditation.”).<sup>12</sup>

5 48. And even more to the point, under HAVA, EAC accreditation of a VSTL cannot  
6 be revoked unless the EAC Commissioners vote to revoke the accreditation. 52 U.S.C. §  
7 20971(c)(2) (“The accreditation of a laboratory for purposes of this section may not be revoked  
8 unless the revocation is approved by a vote of the Commission.”). The Commission accredited  
9 SLI on February 28, 2007, and, since then, the Commission has not revoked SLI’s accreditation.  
10 Nothing in federal or state law says a VSTL loses its accreditation if the EAC does not formally  
11 issue a new “certificate” every two years.

12 49. In sum, there was a valid certificate of accreditation for SLI throughout the testing  
13 and certification process for EVS 6.0.4.0, the voting system used in Cochise County. And even  
14 if the slight gap in the dates on SLI’s certificates of accreditation covered any relevant time  
15 period, nothing in federal or state law invalidated SLI’s EAC VSTL accreditation here. Arizona  
16 law requires that electronic voting systems comply with HAVA and be approved by an  
17 accredited VSTL. Cochise County’s ES&S voting equipment complies with those requirements.

### 18 **Claims for Relief**

#### 19 **Count I: Special Action (Mandamus)**

20 50. The Secretary incorporates all preceding paragraphs as if fully set forth herein.  
21  
22

23  
24 <sup>11</sup> [https://www.eac.gov/sites/default/files/voting\\_system\\_test\\_lab/files/VSTL%20Certificates%20and%20Accreditation\\_0.pdf](https://www.eac.gov/sites/default/files/voting_system_test_lab/files/VSTL%20Certificates%20and%20Accreditation_0.pdf).

25 <sup>12</sup> [https://www.eac.gov/sites/default/files/voting\\_system\\_test\\_lab/files/SLI\\_Compliance\\_Accreditation\\_Renewal\\_delay\\_memo012721.pdf](https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Accreditation_Renewal_delay_memo012721.pdf).  
26

1           51. Special action relief is appropriate when an officer “has failed . . . to perform a  
2 duty required by law as to which he has no discretion,” or “has proceeded or is threatening to  
3 proceed without or in excess of jurisdiction or legal authority.” Ariz. R.P.S.A. 3(a), (b).

4           52. The special action procedures are “the modern equivalent of common law writs”  
5 of certiorari, mandamus, or prohibition. *Fairness & Accountability in Ins. Reform v. Greene*, 180  
6 Ariz. 582, 584 n.1 (1994) (citing Ariz. R.P.S.A. 1(a)).

7           53. At common law, Arizona courts granted writs of mandamus “to compel an officer  
8 to perform a duty concerning which he has no discretion, and which he has refused to perform.”  
9 *Bd. of Regents of Univ. & State Colleges v. Frohmiller*, 69 Ariz. 50, 54–55 (1949).

10           54. As detailed above, Defendants had a mandatory duty to meet and canvass the  
11 election by November 28, 2022, but refused to do so. This violates A.R.S. § 16-642(A), which  
12 provides that Defendants shall meet to canvass the election by “not less than six days nor more  
13 than twenty days following the election.” (emphasis added).

14           55. There is a single, limited exception to the foregoing mandate: if “the returns from  
15 any polling place in the election district where the polls were opened and an election held are  
16 found to be missing[.]” *Id.* § 16-642(C). As discussed above, Defendants’ purported basis for  
17 failing to perform their mandatory statutory duty – the (incorrect) claim that the electronic voting  
18 equipment used in Cochise County was improperly certified – does not fall within this limited  
19 exception. Defendants thus had no basis under the law to refuse to abide by A.R.S. § 16-642(A).

20           56. Simply stated, Defendants have failed to perform a duty which they have no  
21 discretion to refuse to perform.

22           57. Because the statute gives the Board no discretion, the Board’s mandate is a purely  
23 ministerial task within the scope of a traditional writ of mandamus. *See Ponderosa Fire Dist. v.*  
24 *Coconino Cty.*, 235 Ariz. 597, 601–02 ¶ 19 (App. 2014) (“A mandamus action may only be  
25 brought if the statutory duty imposed on the public official or board is purely “ministerial.” [A  
26

1 ministerial duty is one that specifically describes the manner of performance and “leaves nothing  
2 to the discretion” of the public official or board.”) (citations omitted).

3 58. The Secretary has no other equally plain, speedy, and adequate remedy at law.

4 59. The Secretary is entitled to special action relief compelling Defendants and their  
5 agents to meet and canvass the 2022 election by no later than December 1, 2022, so that the  
6 Secretary is not forced to conduct the statewide canvass and certify the election without  
7 including the votes from Cochise County.

8 **Count II: Declaratory Judgment**

9 60. The Secretary incorporates the preceding paragraphs as if fully set forth herein.

10 61. As detailed above, Defendants have no discretion to refuse to perform the duty  
11 required of them by statute – to meet and canvass the election by November 28, 2022. *See* A.R.S.  
12 § 16-642(A).

13 62. An actual and justiciable controversy exists regarding the Board’s failure to act  
14 within the prescribed deadline, including because, on information and belief, the Board has no  
15 intention of canvassing the election before the Secretary’s December 8, 2022 final deadline to  
16 conduct the statewide canvass. Not only is this unlawful, but delaying the canvass from  
17 December 5 may create serious administrative hurdles. Statute requires that the Secretary  
18 canvass the statewide election in the presence of the governor, the attorney general, and the chief  
19 justice of the supreme court. A.R.S. § 16-648(A)-(B). While all three individuals are available  
20 on December 5, they have not confirmed whether they will be able to attend a later date.  
21 Additionally, three state level contests from the 2022 General Election fall within the margin for  
22 an automatic recount, which cannot be initiated until the official statewide canvass is complete.  
23 A.R.S. § 16-661(A). Any delay in canvassing will delay the recount process and, subsequently,  
24 final results and issuance of certificates of election for these recounted contests.  
25  
26



1 December 1, 2022 to allow the Secretary sufficient time to meet the final December 8 deadline  
2 for completing the statewide canvass;

3 B. Alternatively, grant the Secretary's request for a declaratory judgment and  
4 injunction declaring the Board's actions to be unlawful and compelling Defendants and their  
5 agents to meet and canvass the countywide election by December 1, 2022;

6 C. Enter an order directing Defendants to pay the Secretary's reasonable attorneys'  
7 fees and costs pursuant to A.R.S. §§ 12-341, 12-348.01, 12-2030, Rule 4(g) of the Arizona Rules  
8 of Procedure for Special Actions, or any other applicable provision of law or equitable principle;  
9 and

10 D. Grant the Secretary such other and further relief as the Court deems just and proper.  
11 Respectfully submitted this 28th day of November, 2022.

12 **COPPERSMITH BROCKELMAN PLC**

13 By   
14 D. Andrew Gaona

15 **STATES UNITED DEMOCRACY CENTER**  
16 Sambo (Bo) Dul

17 *Attorneys for Plaintiff Arizona Secretary of State*  
18 *Katie Hobbs*

1 **VERIFICATION**

2 I, Kori Lorick, do state and swear under penalty of perjury and as permitted by Rule 80(c),  
3 Ariz. R. Civ. P., as follows:

4 I am the State Elections Director in Arizona Secretary of State Katie Hobbs' office. I have  
5 read the foregoing Verified Complaint for Special Action Relief and, to the best of my  
6 knowledge, information and belief, the statements made therein are true and correct.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed this 28<sup>th</sup> day of November, 2022.

9 *Kori Lorick*

10  
11 \_\_\_\_\_  
12 Kori Lorick  
13 Arizona State Elections Director  
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# Exhibit A

Exhibit A



**KATIE HOBBS**  
SECRETARY OF STATE

November 21, 2022

*Via Email*

Cochise County Board of Supervisors  
Tom Crosby, [tcrosby@cochise.az.gov](mailto:tcrosby@cochise.az.gov)  
Ann English, [aenglish@cochise.az.gov](mailto:aenglish@cochise.az.gov)  
Peggy Judd, [pjudd@cochise.az.gov](mailto:pjudd@cochise.az.gov)

**Re: 2022 General Election Canvass**

Dear Cochise County Board of Supervisors,

The Board of Supervisors has a non-discretionary duty under Arizona law to canvass the County's 2022 General Election and transmit the canvass to the Secretary of State by November 28, 2022. If you fail to do so, the Secretary will use all available legal remedies to compel compliance with Arizona law and protect Cochise County voters' right to have their votes counted.

At your public meeting on November 18, 2022, you voted to delay certification of the County's 2022 General Election canvass and requested more information about false claims concerning the County's election equipment. These claims are derived from baseless conspiracies about Arizona's equipment certification process. Cochise County's election equipment was properly certified and remains in compliance with state and federal requirements. Cochise County uses Election Systems & Software (ES&S) Voting System (EVS) version 6.0.4.0 (ESSEVS6040), which was certified by the U.S. Election Assistance Commission (EAC) on May 3, 2019. SLI Compliance, the federal lab that conducted the testing for ESSEVS6040, was an accredited lab at all times during the testing process. Additionally, pursuant to Arizona's certification requirements, the ESSEVS6040 was reviewed and tested by the state's Equipment Certification Advisory Committee then certified by the state on November 5, 2019. Please see the attachments that support these facts.

We also requested that the EAC, the federal agency that accredits the voting system testing laboratories, provide confirmation specifically in response to the concerns raised at the Board's meeting. The EAC unequivocally confirmed in the attached letter that SLI Compliance, the lab that tested the election equipment that Cochise uses, was properly accredited throughout the certification process.

A.R.S. § 16-642 requires each county board of supervisors to meet and canvass the election no later than 20 days after the election. For the November 8, 2022 General Election, boards of supervisors therefore must canvass no later than November 28. The board of supervisors then must transmit the certified canvass to the Secretary, who is required to conduct the statewide canvass on December 5, 2022. A.R.S. § 16-648(A). These strict statutory deadlines make clear that the duty to canvass is not discretionary. In fact, the 2019 Elections Procedures Manual (“EPM”) explicitly provides that the Board “has a non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals or reject the election results.” 2019 EPM at 240. Because the Board has no authority to change or reject the results, the canvass is a purely ministerial act.

Bad faith attempts to derail Arizona’s democracy will not go unaddressed. If the Board refuses to certify the canvass by November 28, the Secretary will take all available legal action, including filing a special action to compel the Board’s compliance.<sup>1</sup> If the Board still has not certified by the state canvass deadline, the state canvass will proceed regardless, as is required under Arizona’s law, and your refusal to certify will only serve to disenfranchise Cochise County voters. Please let me know if you need any additional information prior to your November 28 meeting to certify Cochise’s election results.

Sincerely,



Kori Lorick  
State Elections Director  
Arizona Secretary of State Katie Hobbs  
[klorick@azsos.gov](mailto:klorick@azsos.gov)

cc

Tim Mattix, Clerk of the Board  
[tmattix@cochise.az.gov](mailto:tmattix@cochise.az.gov)

Christine Roberts, Chief Civil County Attorney  
[croberts@cochise.az.gov](mailto:croberts@cochise.az.gov)

Richard Karwaczka, County Administrator  
[rkawaczka@cochise.az.gov](mailto:rkawaczka@cochise.az.gov)

Sharon Gilman, Deputy County Administrator,

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<sup>1</sup> An official canvass may only be postponed past the statutory deadline if returns from a polling place are missing. A.R.S. § 16-642(C). Because this is not the case for Cochise County’s 2022 results, the Board must comply with the 20-day deadline specified in A.R.S. § 16-642(A).

# Exhibit B

Exhibit B



U.S. ELECTION ASSISTANCE COMMISSION  
633 3rd St. NW, Suite 200  
Washington, DC 20001

November 21, 2022

Arizona Secretary of State  
1700 W Washington St Fl 7  
Phoenix AZ 85007

Dear Secretary Hobbs,

The Election Systems & Software (ES&S) Voting System (EVS) version 6.0.4.0 (ESSEVS6040) was certified by the U.S. Election Assistance Commission (EAC) on May 3, 2019.<sup>1</sup> Details and documentation regarding the testing and certification of ESSEVS6040 are publicly available on the EAC's website at <https://www.eac.gov/voting-equipment/evs-6040>.

ES&S's application for certification of EVS 6.0.4.0 was approved for testing on October 15, 2018. In accordance with the EAC's Testing and Certification Manual,<sup>2</sup> the October 15, 2018, Application Approval Letter<sup>3</sup> designated SLI Compliance, an EAC-accredited voting system testing laboratory (VSTL), as the lead VSTL for this testing engagement.

During the testing of the ESSEVS6040, from application approval on October 15, 2018, to certification on May 3, 2019, SLI Laboratory complied with the EAC's Voting System Testing Laboratory Manual<sup>4</sup> and maintained its accreditation, as shown by the dates on its Certificate of Accreditation.<sup>5</sup>

For additional information on the EAC Testing and Certification Program, please see the [How a Voting System Becomes Certified: Overview of the EAC Certification Process](#) document located in the EAC FOIA Reading Room. The [Declaration of Mark A. Robbins](#) document located in the EAC FOIA Reading Room also discusses in greater detail the EAC Testing and Certification Program.

Sincerely,

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Mark A. Robbins, Interim Executive Director  
U.S. Election Assistance Commission

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<sup>1</sup> [https://www.eac.gov/sites/default/files/voting\\_system/files/EVS6040\\_Cert\\_Scope%28FINAL%29.pdf](https://www.eac.gov/sites/default/files/voting_system/files/EVS6040_Cert_Scope%28FINAL%29.pdf)

<sup>2</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/Cert%20Manual%207%208%2015%20FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/Cert%20Manual%207%208%2015%20FINAL.pdf)

<sup>3</sup> [https://www.eac.gov/sites/default/files/voting\\_system/files/Application.Approval.Letter3.pdf](https://www.eac.gov/sites/default/files/voting_system/files/Application.Approval.Letter3.pdf)

<sup>4</sup> [https://www.eac.gov/sites/default/files/eac\\_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/28/VSTLManual%207%208%2015%20FINAL.pdf)

<sup>5</sup> [https://www.eac.gov/sites/default/files/voting\\_system\\_test\\_lab/files/SLI\\_Compliance\\_Certificate\\_of\\_Accreditation\\_011018.pdf](https://www.eac.gov/sites/default/files/voting_system_test_lab/files/SLI_Compliance_Certificate_of_Accreditation_011018.pdf)

# Exhibit C

Exhibit C



United States Election Assistance Commission

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**Certificate of Accreditation**

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**SLI Compliance,  
Division of Gaming Laboratories International, LLC  
Wheat Ridge, Colorado**

*is recognized by the U.S. Election Assistance Commission for the testing of voting systems to the 2002 Voting Systems Standards, the Voluntary Voting Systems Guidelines versions 1.0 and 1.1 under the criteria set forth in the EAC Voting System Testing and Certification Program and Laboratory Accreditation Program. SLI Compliance is also recognized as having successfully completed assessments by the National Voluntary Laboratory Accreditation Program for conformance to the requirements of ISO/IEC 17025 and the criteria set forth in NIST Handbooks 150 and 150-22.*

*Effective Through*

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January 10, 2021

A handwritten signature in blue ink, appearing to read "B. Newby", is written over a horizontal line.

Date: 1/10/18

*Brian Newby,  
Executive Director, U.S. Election Assistance Commission*

EAC Lab Code: **0701**

# Exhibit D



**U. S. ELECTION ASSISTANCE COMMISSION**  
**VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM**  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

**SENT VIA EMAIL**

October 15, 2018

Sue McKay  
Director of Certification  
Election Systems & Software  
11208 John Galt Boulevard  
Omaha, Nebraska 68137

### **Approval of Voting System Testing Application Package**

Dear Sue McKay,

The U.S. Election Assistance Commission (EAC) completed the review of the application package for the Election Systems and Software's (ES&S) EVS 6.0.4.0 voting system. The application was accepted and assigned the following unique application number: EVS6040.

ES&S selected SLI Compliance as the lead VSTL for this testing engagement and testing will be conducted to the *VVSG 1.0*. If the system meets the criteria for a grant of certification, the system will be assigned the number "**ESSEVS6040**," as per your request on the application form (EAC-002C).

The Certification Program assigned Ryan Macias as Project Manager to oversee this testing engagement. The goal of the Project Manager is to facilitate the communication between EAC staff (including Technical Reviewers), manufacturer, and VSTL to optimize the efficiency of the certification process. The Project Manager will monitor the voting system throughout its life cycle in the Certification Program, and ensure the process meets the requirements of the Certification Program's manuals.

The contact information for this Project Manager is:

- Name and Title: Ryan Macias, Sr. Election Technology Specialist
- E-mail: rmacias@eac.gov
- Telephone: (202) 579-5496

The EAC may at any time utilize additional technical reviewers to assist in the review of test plans, test cases, and test reports. All communications with the technical reviewers shall be facilitated through the Project Manager.

Finally, we strongly encourage you to regularly visit the EAC's Web site ([www.eac.gov](http://www.eac.gov)) for the latest Notices of Interpretation and Clarification, news, program manuals, and updates. The exact location of this information is: <http://www.eac.gov/program-areas/voting-systems>. The information contained in the Notices of Interpretation and Clarification is critical to understanding testing standards and program requirements. It is a manufacturer's responsibility to ensure they adhere to all procedural requirements of the program.

If you have any questions or need further information about this matter, please do not hesitate to contact us at your earliest convenience. We thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Hancock". The signature is written in a cursive style with a large, sweeping initial "B".

Brian Hancock  
Director of Voting System Testing and Certification

# Exhibit E



United States Election Assistance Commission



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Certificate of Conformance

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**ES&S EVS 6.0.4.0**

The voting system identified on this certificate has been evaluated at an accredited voting system testing laboratory for conformance to the *Voluntary Voting System Guidelines Version 1.0 (VVSG 1.0)*. Components evaluated for this certification are detailed in the attached Scope of Certification document. This certificate applies only to the specific version and release of the product in its evaluated configuration. The evaluation has been verified by the EAC in accordance with the provisions of the *EAC Voting System Testing and Certification Program Manual* and the conclusions of the testing laboratory in the test report are consistent with the evidence adduced. This certificate is not an endorsement of the product by any agency of the U.S. Government and no warranty of the product is either expressed or implied.

Product Name: EVS

Model or Version: 6.0.4.0

Name of VSTL: SLI Compliance

EAC Certification Number: ESSEVS6040

Date Issued: May 3, 2019

*Executive Director*

**Scope of Certification Attached**

**Manufacturer:** Election Systems & Software  
**System Name:** EVS 6.0.4.0  
**Certificate:** ESSEVS6040

**Laboratory:** SLI Compliance  
**Standard:** VVSG 1.0 (2005)  
**Date:** May 3, 2019



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## Scope of Certification

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This document describes the scope of the validation and certification of the system defined above. Any use, configuration changes, revision changes, additions or subtractions from the described system are not included in this evaluation.

### Significance of EAC Certification

An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting system standards. An EAC certification is **not**:

- An endorsement of a Manufacturer, voting system, or any of the system's components.
- A Federal warranty of the voting system or any of its components.
- A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
- A substitute for State or local certification and testing.
- A determination that the system is ready for use in an election.
- A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

### Representation of EAC Certification

Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

### System Overview

The ES&S EVS 6.0.4.0 voting system is a modification of the ES&S EVS 6.0.2.0 voting system, certified on October 4, 2018, which contains changes in hardware, software, as well as an upgrade in the election management system's COTS operating system. The ES&S EVS 6.0.4.0 voting system is composed of software applications, central count location devices and polling place devices with accompanying firmware, and COTS hardware and software.

#### Electionware®

Electionware election management software is an end-to-end election management software application that provides election definition creation, ballot formation, equipment

configuration, result consolidation, adjudication and report creation. Electionware is composed of five software groups: Define, Design, Deliver, Results and Manage.

#### **ExpressVote XL™**

ExpressVote XL is a hybrid paper-based polling place voting device that provides a full-face touchscreen vote capture that incorporates the printing of the voter's selections as a cast vote record, and tabulation scanning into a single unit.

#### **ExpressTouch®**

ExpressTouch Electronic Universal Voting System (ExpressTouch) is a DRE voting system which supports electronic vote capture for all individuals at the polling place.

#### **ExpressVote® Hardware 1.0**

ExpressVote Universal Voting System Hardware 1.0 (ExpressVote HW1.0) is a hybrid paper-based polling place voting device that provides touch screen vote capture that incorporates the printing of the voter's selections as a cast vote record, to be scanned for tabulation in any one of the ES&S precinct or central scanners.

#### **ExpressVote® Hardware 2.1**

ExpressVote Universal Voting System Hardware 2.1 (ExpressVote HW2.1) is a hybrid paper-based polling place voting device that provides touch screen vote capture that incorporates the printing of the voter's selections as a cast vote record, and tabulation scanning into a single unit. ExpressVote HW2.1 is capable of operating in either marker or tabulator mode, depending on the configurable mode that is selected in Electionware.

There are two separate versions of the ExpressVote hardware version 2.1: 2.1.0.0 and version 2.1.2.0 (6.4 & 6.8). Please note that all future references to ExpressVote HW 2.1 as used throughout the document refers to both hardware versions.

#### **DS200®**

DS200 is a polling place paper-based voting system, specifically a digital scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

#### **DS450®**

DS450 is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

#### **DS850®**

DS850 is a central scanner and tabulator that simultaneously scans the front and back of a paper ballot and/or vote summary card in any of four orientations for conversion of voter selection marks to electronic Cast Vote Records (CVR).

### Event Log Service (ELS)

ELS monitors and logs users' interactions with the Election Management System. Events that happen when a connection to the database is not available are logged to the Windows Operating System log through the ELS.

### Removable Media Service (RMS)

RMS is a utility that runs in the background of the Windows operating system. RMS reads specific information from any attached USB devices so that ES&S applications such as Electionware can use that information for media validation purposes.

## Configurations

Within the scope of the ES&S EVS 6.0.4.0 voting system, three unique configurations are supported, in order to accommodate limitations of components with the ES&S EVS 6.0.4.0 voting system.

### Configuration A

ES&S EVS 6.0.4.0: Test Configuration A is comprised of the entire suite of voting system products.

- Electionware
- ExpressVote Marker (HW 1.0)
- ExpressVote Marker/Tabulator (HW 2.1)
- ExpressVote XL
- ExpressTouch
- DS200
- DS450
- DS850

### Configuration B

- Electionware
- ExpressVote Marker (HW 1.0)
- ExpressVote Marker/Tabulator (HW 2.1)
- DS200
- DS450
- DS850

### Configuration C

- Electionware
- ExpressVote XL

## Mark Definition

ES&S' declared level mark recognition for the DS200, DS450 and DS850 is a mark across the oval that is 0.02" long x 0.03" wide at any direction.

## Tested Marking Devices

Bic Grip Roller Pen

## Language Capability

EVS 6.0.4.0 supports English, Spanish, Chinese (Cantonese), Korean, Japanese, Hindi, Bengali, Vietnamese, Tagalog, Creole, Russian, and French. Configuration C also supports Punjabi and Gujarati.

## Proprietary Components Included

This section provides information describing the components and revision level of the primary components included in this Certification.

System Component	Software or Firmware Version	Hardware Version	Model	Comments
Electionware	5.0.4.0			
ES&S Event Log Service	1.6.0.0			
Removable Media Service	1.5.1.0			
ExpressVote HW 1.0	1.5.2.0	1.0		Paper-based vote capture and selection device
ExpressVote Previewer (1.0)	1.5.2.0			
ExpressVote HW 2.1	2.4.5.0	2.1.0.0 2.1.2.0		Hybrid paper-based vote capture and selection device and precinct count tabulator
ExpressVote Previewer (2.1)	2.4.5.0			
DS200	2.17.4.0	1.2.1, 1.2.3, 1.3, 1.3.11		Precinct Count Tabulator
DS450	3.1.1.0	1.0		Central Count Scanner and Tabulator
DS850	3.1.1.0	1.0		Central Count Scanner and Tabulator
ExpressVote XL	1.0.3.0	1.0		Hybrid full-faced paper-based vote capture and selection device and precinct count tabulator
ExpressTouch	1.0.3.0	1.0		DRE
Delkin USB Flash Drive		USB Flash Drive	Bitlocker 32.2MB	BitLocker USB Flash Drive
ExpressVote Rolling Kiosk		1.0	98-00049	Portable Voting Booth
Voting Booth		N/A	98-00051	Stationary Voting Booth
Quad Express Cart		N/A	41404	Portable Voting Booth
MXB ExpressVote Voting Booth		N/A	95000	Sitting and Standing Voting Booth

System Component	Software or Firmware Version	Hardware Version	Model	Comments
ExpressVote Single Table		N/A	87033	Voting Table for One Unit
ExpressVote Double Table		N/A	87032	Voting Table for Two Units
ADA Table		N/A	87031	Voting Table for One Unit
DS200 Ballot Box		1.0, 1.1	98-00009	Collapsible Ballot Box
DS200 Ballot Box		1.2, 1.3, 1.4, 1.5	57521	Plastic ballot box
DS200 Tote Bin		1.0	00074	Tote Bin Ballot Box
DS450 Cart		N/A	3002	
DS850 Cart		N/A	6823	
Universal Voting Console		1.0	98-00077	Detachable ADA support peripheral
Tabletop Easel		N/A	14040	
ExpressTouch Voting Booth		N/A	98-00081	Stationary Voting Booth
SecureSetup	2.1.0.3			Proprietary Hardening Script

## COTS Software

Manufacturer	Application	Version
Microsoft Corporation	Server 2008	R2 w/ SP1 (64-bit)
Microsoft Corporation	Windows 7 Professional	SP1 (64-bit)
Microsoft Corporation	Windows 7 Enterprise	SP1 (64-bit)
Microsoft Corporation	WSUS Microsoft Windows Offline Update Utility	11.5
Symantec	Endpoint Protection	14.2.0_MP1 (64-bit)
Symantec	Symantec Endpoint Protection Intelligent Updater (File-Based Protection)	20190122-001-core15sdsv5i64.exe
Symantec	Symantec Endpoint Protection Intelligent Updater (Network-Based Protection)	20190121-062-IPS_IU_SEP_14RU1.exe
Symantec	Symantec Endpoint Protection Intelligent Updater (Behavior-Based Protection)	20190115-001-SONAR_IU_SEP.exe
Gigabyte	WindowsImageTool	B17.1116.01
Cerberus	CerberusFTP Server – Enterprise	10.0.5 (64-bit)
Adobe	Acrobat	XI
Microsoft Corporation	Visual C++ Redistributable	en_visual_cpp_2015_redistributable_x86_8487157.exe (32-bit)
RSA Security	RSA BSAFE Crypto-C ME for Windows 32-bit	4.1
OpenSSL	OpenSSL	2.0.12
OpenSSL	OpenSSL	2.0.16
OpenSSL	OpenSSL	1.02d
OpenSSL	OpenSSL	1.02h
OpenSSL	OpenSSL	1.02k

## COTS Hardware

Manufacturer	Hardware	Model/Version
Dell	EMS Server	PowerEdge T420, T630
Dell	EMS Client or Standalone Workstation	Latitude 5580, E6430 OptiPlex 5040, 5050, 7020
Dell	Trusted Platform Module (TPM) Chip version 1.2	R9X21
Innodisk	USB EDC H2SE (1GB) for ExpressVote 1.0	DEEUH1-01GI72AC1SB
Innodisk	USB EDC H2SE (16GB) for ExpressVote 2.1	DEEUH1-16GI72AC1SB
Delkin	USB Flash Drive (512MB, 1GB, 2GB, 4GB, 8GB)	N/A
Delkin	Validation USB Flash Drive (16 GB)	N/A
Delkin	USB Embedded 2.0 Module Flash Drive	MY16TNK7A-RA042-D/ 16 GB
Delkin	Compact Flash Memory Card (1GB)	CE0GTFHHK-FD038-D
Delkin	Compact Flash Memory Card Reader/Writer	6381
Delkin	CFAST Card (2GB, 4GB)	N/A
Lexar	CFAST Card Reader/Writer	LRWCR1TBNA
CardLogix	Smart Card	CLXSU128kC7/ AED C7
SCM Microsystems	Smart Card Writer	SCR3310
Avid	Headphones	86002
Zebra Technologies	QR code scanner (Integrated)	DS457-SR20009, DS457-SR20004ZZWW
Symbol	QR Code scanner (External)	DS9208
Dell	DS450 Report Printer	S2810dn
OKI	DS450 and DS850 Report Printer	B431dn, B431d, B432DN
OKI	DS450 and DS850 Audit Printer	Microline 420
APC	DS450 UPS	Back-UPS Pro 1500, Smart-UPS 1500
APC	DS850 UPS	Back-UPS RS 1500, Pro 1500
Tripp Lite	DS450 and DS850 Surge Protector	Spike Cube
Seiko Instruments	Thermal Printer	LTPD-347B
NCR/Nashua	Paper Roll	2320
Fujitsu	Thermal Printer	FTP-62GDSL001, FTP-63GMCL153







## System Limitations

This table depicts the limits the system has been tested and certified to meet.

System Characteristic	Boundary or Limitation	Limiting Component
Max. precincts allowed in an election	9,900	Electionware
Max. ballot styles in an election	15,000	Electionware
Max. candidates allowed per election	10,000	Electionware
Max. contests allowed in an election	10,000	Electionware
Max. number of parties allowed	General election: 75 Primary election: 30	Electionware
Max. District Types/Groups	25	Electionware
Max. districts of a given type	250	
Max. Contests allowed per ballot style	500	
Max. Reporting Groups in an election	14	Electionware
Max. candidates allowed per contest	230	Electionware
Max. "Vote For" per contest	230	Electionware
Max. ballots per batch	1,500	DS45/DS850

### Component Limitations:

#### Electionware

1. Electionware software field limits were calculated based on an average character width for ballot and report elements. Some uses and conditions, such as magnified ballot views or combining elements on printed media or ballot displays, may result in field limits (and associated warnings) lower than those listed. Check printed media and displays before finalizing the election.
2. The Electionware Export Ballot Images function is limited to 250 districts per export.
3. Electionware supports the language special characters listed in the System Overview, Attachment 1. Language special characters other than those listed may not appear properly when viewed on equipment displays or reports.
4. The Straight Party feature must not be used in conjunction with the Single or Multiple Target Cross Endorsement features.

5. The 'MasterFile.txt' and the 'Votes File.txt' do not support results for elections that contain multiple sheets or multiple ExpressVote cards per voter. These files can be produced using the Electionware > Reporting > Tools > Export Results menu option. This menu option is available when the Rules Profile is set to "Illinois".

#### **Paper Ballot Limitations**

1. The paper ballot code channel, which is the series of black boxes that appear between the timing track and ballot contents, limits the number of available ballot variations depending on how a jurisdiction uses this code to differentiate ballots. The code can be used to differentiate ballots using three different fields defined as: Sequence (available codes 1-16,300), Type (available codes 1-30) or Split (available codes 1-18).
2. If Sequence is used as a ballot style ID, it must be unique election-wide and the Split code will always be 1. In this case the practical style limit would be 16,300.
3. The ExpressVote activation card has a limited ballot ID based on the three different fields defined as: Sequence (available codes 1-16,300), Type (available codes 1-30) or Split (available codes 1-18).
4. Grid Portrait and Grid Landscape ballot types are New York specific and not for general use.

#### **ExpressVote**

1. ExpressVote capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the ExpressVote system as the maximum capacities of the ES&S ExpressVote are never approached during testing.

#### **ExpressVote XL**

1. ExpressVote XL capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System and ballot tabulator limitations define the boundaries and capabilities of the ExpressVote XL system as the maximum capacities of the ES&S ExpressVote XL are never approached during testing.
2. ExpressVote XL does not offer open primary support based on the ES&S definition of Open Primary, which is the ability to select a party and vote based on that party.
3. ExpressVote XL does not support Massachusetts Group Vote.
4. ExpressVote XL does not support Universal Primary Contest.
5. ExpressVote XL does not support Multiple Target Cross Endorsement.
6. ExpressVote XL does not support Reviewer or Judges Initials boxes.
7. ExpressVote XL does not support multi-card ballots.
8. In a General election, one ExpressVote XL screen can hold 32 party columns if set up as columns or 16 party rows if set up as rows.
9. ExpressVote XL does not support Team Write-In.

#### **ExpressTouch**

1. ExpressTouch capacities exceed all documented limitations for the ES&S election management, vote tabulation and reporting system. For this reason, Election Management System limitations define the boundaries and capabilities of the ExpressTouch system as the maximum capacities of the ES&S ExpressTouch are never approached during testing.

2. ExpressTouch does not offer open primary support, which is the ability to select a party and vote based on that party.
3. ExpressTouch does not support Massachusetts Group Vote.
4. ExpressTouch does not support Universal Primary Contest.
5. ExpressTouch does not support Multiple Target Cross Endorsement.
6. ExpressTouch does not support Team Write-In.

#### **DS200**

1. The ES&S DS200 configured for an early vote station does not support precinct level results reporting. An election summary report of tabulated vote totals is supported.
2. The DS200 storage limitation for write-in ballot images is 3,600 images. Each ballot image includes a single ballot face, or one side of one page.
3. Write-in image review requires a minimum 1GB of onboard RAM.
4. To successfully use the Write-In Report, ballots must span at least three vertical columns. If the column is greater than 1/3 of the ballot width (two columns or less), the write-in image will be too wide to print on the tabulator report tape.

## Functionality

### **VVSG 1.0 Supported Functionality Declaration**

<b>Feature/Characteristic</b>	<b>Yes/No</b>	<b>Comment</b>
Voter Verified Paper Audit Trails		
VVPAT	No	
Accessibility		
Forward Approach	Yes	
Parallel (Side) Approach	Yes	
Closed Primary		
Primary: Closed	Yes	
Open Primary		
Primary: Open Standard (provide definition of how supported)	Yes	Configuration B only
Primary: Open Blanket (provide definition of how supported)	No	
Partisan & Non-Partisan:		
Partisan & Non-Partisan: Vote for 1 of N race	Yes	
Partisan & Non-Partisan: Multi-member ("vote for N of M") board races	Yes	
Partisan & Non-Partisan: "vote for 1" race with a single candidate and write-in voting	Yes	
Partisan & Non-Partisan "vote for 1" race with no declared candidates and write-in voting	Yes	
Write-In Voting:		
Write-in Voting: System default is a voting position identified for write-ins.	Yes	
Write-in Voting: Without selecting a write in position.	Yes	
Write-in: With No Declared Candidates	Yes	
Write-in: Identification of write-ins for resolution at central count	Yes	
Primary Presidential Delegation Nominations & Slates:		
Primary Presidential Delegation Nominations: Displayed delegate slates for each presidential party	No	

<b>Feature/Characteristic</b>	<b>Yes/No</b>	<b>Comment</b>
Slate & Group Voting: one selection votes the slate.	No	
Ballot Rotation:		
Rotation of Names within an Office; define all supported rotation methods for location on the ballot and vote tabulation/reporting	Yes	
Straight Party Voting:		
Straight Party: A single selection for partisan races in a general election	Yes	
Straight Party: Vote for each candidate individually	Yes	
Straight Party: Modify straight party selections with crossover votes	Yes	
Straight Party: A race without a candidate for one party	Yes	
Straight Party: N of M race (where "N">1)	Yes	
Straight Party: Excludes a partisan contest from the straight party selection	Yes	
Cross-Party Endorsement:		
Cross party endorsements, multiple parties endorse one candidate.	Yes	
Split Precincts:		
Split Precincts: Multiple ballot styles	Yes	
Split Precincts: P & M system support splits with correct contests and ballot identification of each split	Yes	
Split Precincts: DRE matches voter to all applicable races.	Yes	
Split Precincts: Reporting of voter counts (# of voters) to the precinct split level; Reporting of vote totals is to the precinct level	Yes	It is possible to list the number of voters.
Vote N of M:		
Vote for N of M: Counts each selected candidate, if the maximum is not exceeded.	Yes	
Vote for N of M: Invalidates all candidates in an overvote (paper)	Yes	
Recall Issues, with options:		
Recall Issues with Options: Simple Yes/No with separate race/election. (Vote Yes or No Question)	No	
Recall Issues with Options: Retain is the first option, Replacement candidate for the second or more options (Vote 1 of M)	No	
Recall Issues with Options: Two contests with access to a second contest conditional upon a specific vote in contest one. (Must vote Yes to vote in 2 <sup>nd</sup> contest.)	No	
Recall Issues with Options: Two contests with access to a second contest conditional upon any vote in contest one. (Must vote Yes to vote in 2 <sup>nd</sup> contest.)	No	
Cumulative Voting		
Cumulative Voting: Voters are permitted to cast, as many votes as there are seats to be filled for one or more candidates. Voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidate.	No	
Ranked Order Voting		
Ranked Order Voting: Voters can write in a ranked vote.	No	
Ranked Order Voting: A ballot stops being counting when all ranked choices have been eliminated	No	

<b>Feature/Characteristic</b>	<b>Yes/No</b>	<b>Comment</b>
Ranked Order Voting: A ballot with a skipped rank counts the vote for the next rank.	No	
Ranked Order Voting: Voters rank candidates in a contest in order of choice. A candidate receiving a majority of the first choice votes wins. If no candidate receives a majority of first choice votes, the last place candidate is deleted, each ballot cast for the deleted candidate counts for the second choice candidate listed on the ballot. The process of eliminating the last place candidate and recounting the ballots continues until one candidate receives a majority of the vote	No	
Ranked Order Voting: A ballot with two choices ranked the same, stops being counted at the point of two similarly ranked choices.	No	
Ranked Order Voting: The total number of votes for two or more candidates with the least votes is less than the votes of the candidate with the next highest number of votes, the candidates with the least votes are eliminated simultaneously and their votes transferred to the next-ranked continuing candidate.	No	
<b>Provisional or Challenged Ballots</b>		
Provisional/Challenged Ballots: A voted provisional ballots is identified but not included in the tabulation but can be added in the central count.	Yes	
Provisional/Challenged Ballots: A voted provisional ballots is included in the tabulation, but is identified and can be subtracted in the central count	Yes	
Provisional/Challenged Ballots: Provisional ballots maintain the secrecy of the ballot.	Yes	
<b>Overvotes (must support for specific type of voting system)</b>		
Overvotes: P & M: Overvote invalidates the vote. Define how overvotes are counted.	Yes	
Overvotes: DRE: Prevented from or requires correction of overvoting.	Yes	
Overvotes: If a system does not prevent overvotes, it must count them. Define how overvotes are counted.	Yes	
Overvotes: DRE systems that provide a method to data enter absentee votes must account for overvotes.	Yes	
<b>Undervotes</b>		
Undervotes: System counts undervotes cast for accounting purposes	Yes	
<b>Blank Ballots</b>		
Totally Blank Ballots: Any blank ballot alert is tested.	Yes	
Totally Blank Ballots: If blank ballots are not immediately processed, there must be a provision to recognize and accept them	Yes	
Totally Blank Ballots: If operators can access a blank ballot, there must be a provision for resolution.	Yes	
<b>Networking</b>		
Wide Area Network – Use of Modems	No	
Wide Area Network – Use of Wireless	No	
Local Area Network – Use of TCP/IP	No	
Local Area Network – Use of Infrared	No	

Feature/Characteristic	Yes/No	Comment
Local Area Network – Use of Wireless	No	
FIPS 140-2 validated cryptographic module	Yes	
Used as (if applicable):		
Precinct counting device	Yes	DS200, ExpressTouch, ExpressVote HW2.1, ExpressVote XL
Central counting device	Yes	DS450 and/or DS850

## Baseline Certification Engineering Change Order's (ECO)

This table depicts the ECO's certified with the voting system:

Change ID	Date	Component	Description	Inclusion
ECO 938	12/14/18	DS200	Texture Free Surface for Security Seals	DeMinimis Optional
ECO 982	2/20/19	ExpressVote XL	Add Cord Wrap Hooks, Filler for Card Bin and Shipping Bracket	DeMinimis Optional
ECO 988	4/29/19	ExpressVote	Add End of Life Zebra Scanner	DeMinimis Optional
ECO 989	4/29/19	ExpressVote	Adds Updated USB Thumb Drive Cover	DeMinimis Optional
ECO 991	4/29/19	DS200	Add Hardware Rev 1.3.11	Non-DeMinimis Optional
ECO 993	4/29/19	DS450	Adds Oki 432 Report Printer and APC Smart-UPS 1500	Non-DeMinimis Optional
ECO 1000	2/13/19	DS200 Collapsible Ballot Box	Adds Hardware Rev 1.1	De Minimis Optional
ECO 1004	12/14/18	DS450	Add Oki 432 Report Printer Due to End of Life	De Minimis Optional
ECO 1005	12/14/18	DS850	Add Oki 432 Report Printer Due to End of Life	De Minimis Optional
ECO 1016	2/13/19	ExpressVote Voting Booth	Added Enhanced Doors	De Minimis Optional
ECO 2160	4/29/19	ExpressVote	Lengthen Detachable Key Pad Cord	De Minimis Optional

# Exhibit F



**KATIE HOBBS**  
SECRETARY OF STATE  
*State of Arizona*

February 24, 2020

Susan Parmer  
State Certification Manager  
Election Systems & Software  
11208 John Galt Blvd  
Omaha, NE 68137

Dear Ms. Parmer,

Elections Systems & Software (ES&S) has requested certification of Engineering Change Order # 1045 (ECO) for software components of the ExpressVote HW 1.0 & 2.1 as it relates to the EVS 6.0.4.0 voting system release previously conditionally certified for use in Arizona elections.

The Secretary of State Equipment Certification Advisory Committee, appointed by me pursuant to A.R.S. § 16-442, met in a public meeting held January 28, 2020 to review your application and supporting documentation. The Committee forwarded their findings and recommendation for certification.

I concur with the Committee report and hereby approve and grant certification of ECO # 1045 which includes:

ECO #	Component	Hardware Version	Software/Firmware Version
1045	ExpressVote	HW 1.0	1.5.2.1
	ExpressVote	HW 2.1	2.4.5.1

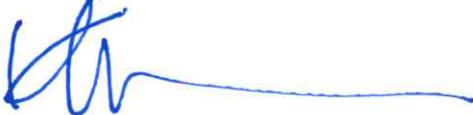
In addition, I believe ES&S has demonstrated that ECO # 1045 has fully addressed the missing Spanish translation issue previously identified on the ExpressVote units which needed to be resolved prior to January 2, 2021 or the system may be subject to decertification. Therefore, I grant certification of EVS 6.0.4.0 Voting System for use in Arizona's state, county, city, and town elections with the following conditions:

- 1) The ExpressVote units will not be programmed and/or used as a tabulation unit;
- 2) Certification of the electronic adjudication feature contingent on the process being conducted in accordance with A.R.S. § 16-621(B) and the Elections Procedures Manual.

**1700 West Washington Street, Floor 7**  
**Phoenix, Arizona 85007-2808**  
**Telephone (602) 542-4285 Fax (602) 542-1575**  
**[www.azsos.gov](http://www.azsos.gov)**

As a reminder, before the voting system may be used in a state election, the application source code must be placed in escrow with the State of Arizona as the recipient of escrow. Should questions arise regarding this certification, please contact Janine Petty, Deputy State Election Director at 602-542-6209.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KH', followed by a long horizontal line extending to the right.

Katie Hobbs  
Secretary of State

# Exhibit G

Exhibit G

Arizona Supreme Court

Civil Special Action

CV-22-0217-SA

DANIEL WOOD et al v BRNOVICH/HOBBS/DUCEY/BRUTINEL

Appellate Case Information

Case Filed: 31-Aug-2022 Archive on: 8-Sep-2032 (planned)
Case Closed: 8-Sep-2022

Dept/Composition

Side 1. DANIEL WOOD, BRIAN STEINER and PAUL RICE, Petitioner
(Litigant Group) DANIEL WOOD, BRIAN STEINER and PAUL RICE

- Daniel Wood
Brian Steiner
Paul Rice

Side 2. MARK BRNOVICH, in his official Capacity as the Attorney General for the State of Arizona; KATIE HOBBS, in her official capacity as the Arizona Secretary of State; DOUG DUCEY, in his official capacity as the Governor of the State of Arizona; ROBERT M. BRU, Respondent
(Litigant Group) MARK BRNOVICH, in his official Capacity as the Attorney General for the State of Arizona; KATIE HOBBS, in her official capacity as the Arizona Secretary of State; DOUG DUCEY, in his official capacity as the Governor of the State of Arizona; ROBERT M. BRU

- Mark Brnovich, Arizona Attorney General's Office
Katie Hobbs, Arizona Secretary of State

CASE STATUS

Sep 8, 2022.....Decision Rendered

Aug 31, 2022....Pending

CASE DECISION

08-Sep-2022 ORDER

\* Before us is the fourth matter filed directly in this Court by some combination of petitioners challenging the 2020 election results.

On May 7, 2021, Petitioner Brian Steiner and others filed an action styled, We the People, ex rel., v. Ducey, et al.

Ann Timmer

Filed: 08-Sep-2022 Mandate:

Table with 1 row: Decision Disposition Dismissed

5 PROCEEDING ENTRIES

- 1. 31-Aug-2022 FILED: Verified Petition for Writ of Mandamus (Treated as a Petition for Special Action); Declaration of Brian Steiner (Petitioners Wood, et al., Pro Se)
2. 31-Aug-2022 FILED: Consolidated Motion for Temporary Restraining Order and Memorandum of Law in Support Thereof (Petitioners Wood, et al., Pro Se)
3. 7-Sep-2022 RECEIPT No.: ASC2022-00857 ; \$280.00 Applied to: DANIEL WOOD, BRIAN STEINER and PAUL RICE - Class A Filing Fee (\$280.00) Paid for: DANIEL WOOD, BRIAN STEINER and PAUL RICE - By nCourt LLC Portal (Memo: 3200A3B9-37C5-495E-8C00-B3856C7091E3)
4. 8-Sep-2022 FILED: Motion for Counsel for Writ of Mandamus and TRO Filed August 31, 2022 (Petitioners Wood, et al)

Arizona Supreme Court

Civil Special Action

CV-22-0217-SA

DANIEL WOOD et al v BRNOVICH/HOBBS/DUCEY/BRUTINEL

5 PROCEEDING ENTRIES

5. 8-Sep-2022 Before us is the fourth matter filed directly in this Court by some combination of petitioners challenging the 2020 election results.

On May 7, 2021, Petitioner Brian Steiner and others filed an action styled, *We the People, ex rel., v. Ducey, et al.*, CV-21-0114-SA. The petitioners contended that twenty elected officials were “alleged usurpers” who were “in office illegally” and if not, the respondents should “prove otherwise.” In that action, the petitioners alleged that voting systems were “contractually uncertified and illegal” because “[m]achines or devices used at any election for federal, state or county offices may only be certified for use ... if they comply with the help America vote act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2002.” For the relief requested, the petitioners asked that each of the twenty elected officials “be removed from the trusted office.” This Court dismissed the petition because it could find no legal basis for the relief requested and because the action was untimely under A.R.S. § 12-673(A) and observing:

Although our courts have recognized that electors may have an implied private right of action to challenge voting machines’ compliance with applicable statutory requirements in certain limited circumstances, see, e.g., *Chavez v. Brewer*, 222 Ariz. 309, 318 ¶ 28 (App. 2009), nothing in the statutes Petitioners cite grants them a private right of action to remove office holders and sit in their stead. In fact, in a quo warranto action, “a claimant to an office may have judgment only on the strength of his own title and not upon any infirmity or weakness in the defendant’s title.” *Tracy v. Dixon*, 119 Ariz. 165, 166 (1978). (Emphasis added.)

On October 21, 2021, Petitioners Rayana B. Eldan, Brian Steiner, and Daniel Wood, pro se, filed an “Affidavit of Complaint, Petition for Redress by Writs of Mandamus.” Petitioners asked this Court for an order directing the Secretary of State to rescind the Certificates of Election of the Presidential Electors and alleging that the certificates were “invalid and void” and also directing the County Boards of Supervisors and Clerks to rescind the Certificates of Election issued in the county elections. *Eldan et al. v. Katie Hobbs, Secretary of State, et al.* CV-21-0255-SA. The entire Court entered an order dismissing that proceeding on November 8, 2021, quoting the above language from the dismissal order in the CV-21-0114-SA case and stating:

The Court will not attempt to further instruct Petitioners on the need to plead factual allegations upon which relief can be granted in accordance with pertinent court rules. However, irrespective of the Petitioners’ claims of election irregularities, they have alleged no basis for relief under which they may obtain an order directing state officials to “rescind” prior elections or to remove elected office holders from office .... (Emphasis added.)

In *Wood v. Secretary of State Katie Hobbs*, CV-21-0149—SA, Petitioner Daniel Clayton Wood filed a petition on June 4, 2021, and alleged that “Our voting equipment for use in elections did not have certification from any accredited laboratories,” and demanded that the Secretary of State “respond to the questions above within 5 days, by affidavit, before this court, sworn under penalty of perjury. If you do not respond within 5 days, you agree by acquiescence, that you are knowingly interfering with the rights of the people ....” On June 8, 2021 the Court dismissed the petition because Petitioner had failed to comply with A.R.S. § 12-2043 and therefore could not bring a quo warranto proceeding.

In the instant petition, Petitioners Daniel Wood, Brian Steiner and Paul Rice, purporting to be acting with the assistance of Florida counsel, have filed a “Consolidated Motion for Temporary Restraining Order and Memorandum of Law in Support Thereof.” In the motion, Petitioners advise that federal law requires that records, documents, and evidence from the 2020 presidential election must be preserved for twenty-two months, which, they contend, expires September 3, 2022. Therefore, the Court should “issue a Temporary Restraining Order to prevent the Defendants, and anyone acting in concert with the Defendants, from destroying the records, documents and evidence pertaining to Arizona’s 2020 presidential election. The Plaintiffs may need the records, documents and evidence pertaining to Arizona’s 2020 presidential election in their presentation of their case in chief,” and to pursue their “42 U.S.C. § 1983 violation of civil rights case.”

In their “Petition for Writ of Mandamus” brought under A.R.S. § 12-2021, also filed in this action, Petitioner argue that the Attorney General, Governor, Secretary of State, and Chief Justice illegally certified the election. They contend that under A.R.S. § 16-442, machines or devices used in election for federal, state, or county offices may only be certified for use if they comply with the Help America Vote Act of 2002 and if they have been tested and approved by a laboratory. “If voting hardware and/or software were used in violation of Arizona law, then said election is void ab initio and said election cannot be lawfully certified by any Defendant.” Petitioners contend that because the legal requirements of A.R.S. § 16-442 were not met, the defendants had no authority to certify the results. They reason, “If none of the Defendants had the legal authority to certify Arizona’s 2020 presidential election results, then this Court must issue a peremptory writ of mandamus . . . compelling the Defendants to decertify Arizona’s 2020 presidential election and to rerun Arizona’s 2020 presidential election in accordance with Arizona law.” They ask that the Court “issue a peremptory Writ of Mandamus” compelling defendants to decertify the election; recall the Biden electors, “remove the Maricopa County votes from the 2020 election results as they were/are void ab initio, order Maricopa County to rerun the Arizona 2020 presidential election in accordance with the law, as soon as possible, by way of a special election, with paper ballots only, on a single election day, omitting Zuckerboxes and ‘no excuse’ absentee mail-in ballots, with the paper ballots being counted by hand with multiple members of all political parties present to observe, with unobstructed 24/7 public livestream cameras of all vote counting so that Arizona can restore voter confidence and Arizona’s commitment to free and fair elections, with the Defendants then adding Maricopa County’s presidential election votes to the remaining votes and ordering the Defendants to then certify a lawful 2020 presidential election,” and such other relief as the Court deems appropriate.

First, the challenge to the election is untimely. The laws of Arizona set forth the process for contesting an election—a process that requires the filing of a contest within five days after the canvass of the election. Election contests based on alleged improprieties are not new. See *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986)(pointing out that election contests have been brought based on a claim that unregistered voters have voted; that the election was held in a building other than that designated in the election notice; that ineligible electors were allowed to vote and that the ballot was not in the form required; and agreeing in that case that the failure to purge voters would support a contest “on account of illegal votes.” (internal citations omitted)). Such contests must, however, be timely:

**Arizona Supreme Court**

**Civil Special Action**

**CV-22-0217-SA**

**DANIEL WOOD et al v BRNOVICH/HOBBS/DUCEY/BRUTINEL**

It is commonly stated that election contests are purely statutory and dependent upon statutory provisions for their conduct. *Brown v. Superior Court*, 81 Ariz. 236 (1956); *Fish v. Redeker*, 2 Ariz. App. 602 (1966). The failure of a contestant to an election to strictly comply with the statutory requirements is fatal to his right to have the election contested. *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790 (Alaska, 1968). We have held particularly that the “requirements as to the time within which the contest must be brought are regarded as mandatory, and unless strictly complied with The court is without jurisdiction to proceed”; *Brown v. Superior Court*, supra, 81 Ariz. at 239. Citing 29 C.J.S. Elections § 259.

The rationale for requiring strict compliance with the time provisions for initiating a contest is the strong public policy favoring stability and finality of election results. (Emphasis added; citations cleaned up.)

*Donaghey v. Att’y Gen.*, 120 Ariz. 93, 95 (1978) (emphasis added).

Second, as this Court previously observed, “irrespective of the Petitioners’ claims of election irregularities, they have alleged no basis for relief under which they may obtain an order directing state officials to ‘rescind’ prior elections or to remove elected office holders from office ....”

The Court, en banc, observes that Petitioners have cited no authority for the proposition that they or anyone else may overturn the Arizona statutes that govern both the conduct of elections and the challenges to the results of such elections. Likewise, they cannot dictate the terms of a proposed effort to “rerun the 2020 presidential election,” which was certified almost two years ago. Therefore,

IT IS ORDERED dismissing the petition.

IT IS FURTHER ORDERED denying the request for temporary restraining order.

IT IS FURTHER ORDERED denying the motion for expedited consideration as moot.

IT IS FURTHER ORDERED denying Petitioners’ “Motion for Counsel for Writ of Mandamus and TRO” as moot. (Hon. Ann A. Scott Timmer)

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