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7 **STATE OF ARIZONA**
8 **SUPERIOR COURT, COUNTY OF PIMA**
9

10 Bill Beard, Dave Croteau, Paul Hilts,
Arlene Leaf, Marcelo C. Ruiz, Mary
11 DeCamp, Mickey Duniho, William A.
Lolos, Sherry Mann, Jim March, Lori Oien,
12 and Molly Stranahan,

13 Plaintiffs,

14 v.

15 Ann Day, Ramón Valadez, Sharon
16 Bronson, Ray Carroll, Richard Elías,
Supervisors; Pima County Board of
17 Supervisors,

18 Defendants.

Case No.

**SPECIAL ACTION
(MANDAMUS AND INJUNCTIVE RELIEF
REQUESTED)**

(Assigned to Hon.)

19
20 Pursuant to Rule 4, Arizona Rules of Procedure for Special Action, Plaintiffs, by
21 and through their attorney, Brad Roach, hereby request Special Action Relief against the
22 Defendants named above for the reasons set forth in the attached Petition.

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24 RESPECTFULLY SUBMITTED this 25th day of October, 2012.

25 **ROACH LAW FIRM, LLC**

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Brad Roach
Attorney for Plaintiffs
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The Plaintiffs allege:

GENERAL ALLEGATIONS

1. Plaintiff Bill Beard is a registered Republican elector and Republican candidate for Pima County Recorder.
2. Plaintiff Dave Croteau is a registered Green Party elector and Green Party candidate for Pima County.
3. Plaintiff Paul Hilts is a registered Democratic elector in Pima County. He is also the chair of the Pima County Democratic Party Election Integrity Committee
4. Plaintiff Arlene Leaf is a registered Democratic elector in Pima County.
5. Plaintiff Marcelo C. Ruiz is a registered independent elector in Pima County.
6. Plaintiff Mary DeCamp is a registered independent elector in Pima County.
7. Plaintiff Mickey Duniho is a registered independent elector in Pima County.
8. Plaintiff William A. Lolos is a registered Democratic elector in Pima County.
9. Plaintiff Sherry Mann is a registered independent elector in Pima County.
10. Plaintiff Jim March is a registered Libertarian elector in Pima County.
11. Plaintiff Lori Oien is a registered Republican elector in Pima County.
12. Plaintiff Molly Stranahan is a registered Democratic elector in Pima County.
13. All Plaintiffs have an interest in the outcome of the November 6, 2012 general election.
14. Defendant Pima County Board of Supervisors is a body politic. Defendants Ann Day, Ramón Valadez, Sharon Bronson, Ray Carroll, Richard Elías are sued solely in

1 their respective capacities as Pima County Supervisors.

2 15. The Pima County Board of Supervisors (“BOS”) is statutorily tasked with the
3 responsibility of administering elections within Pima County.
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6 **SPECIFIC ALLEGATIONS**

- 7 1. Ballots in Pima County are tabulated using the Diebold/Premier GEMS software.
8
9 2. The software used in Pima County is easy to manipulate and therefore easy to
10 fraudulently alter the results of an election. (See Memorandum in Support of Special
11 Action).
12
13 3. Not only can the system be easily manipulated, it is easy for a person or group
14 interested in committing a fraud to cover their tracks in the computer system.
15 Therefore, it is impossible to challenge an election under the current statutory scheme
16 without the equitable relief requested. (See Memorandum in Support of Special
17 Action).
18
19 4. Pima County has previously acknowledged the fundamental flaws in the software and
20 are estopped from arguing otherwise in this case. (See Memorandum in Support of
21 Special Action).
22
23 5. Pima County has a long and sad history of blocking any attempt to monitor the
24 elections process, verify the integrity of the computer systems, or audit the results.
25 (See Pima County Superior Court cases C2007-2073 and C2008-5016). This
26 persistent hindering, at every turn, of electors’ and political parties’ attempts to verify
27 election integrity has costs the County hundreds of thousands of dollars in attorney’s
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fees and resulted in multiple court ordered releases of election information Pima County sought to hide.

6. Pima County has not only fought over the plain meaning of various election and public records laws, it has actively intervened in drafting of election laws. Specifically, in 2006, former Representative Ted Downing and former Senator Karen Johnson authored SB 1557 in the State legislature to mandate random auditing and hand counting of ballots. Pima County Election Director Brad Nelson told Downing that including county races in the bill would be a “deal breaker”. Nelson said that he and the Maricopa County Election Director would oppose the entire bill if the County elections were covered by the mandatory hand count. Because of that threat, SB 1557 was passed into what became A.R.S. §16-602 and County races were not included in the mandatory audit.
7. Most Vote by Mail ballots are tabulated by Pima County before Election day.
8. After tabulation, Vote by Mail ballots are “batched” in boxes unrelated to the precincts from which the votes came.
9. Random hand count audits of the ballots are a highly effective method of detecting election fraud. Determining that an election has not been tampered with can be accomplished with such testing easily, and with mathematical precision. (See Memorandum in Support of Special Action).
10. The Court has equitable authority to ensure the integrity of elections. (See Memorandum in Support of Special Action).
11. Because the Diebold/Premier GEMS software is so easily to manipulate, and no other adequate remedy is available to the Plaintiffs to prevent, or even detect, fraud,

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Plaintiffs look to the Court to fashion equitable relief to ensure the purity of elections and guard against abuses of the elective franchise.¹

12. Plaintiffs have a constitutional right to participate in elections that are fair and pure. They do not simply have an interest in the outcome of elections. They have a fundamental interest in democracy that the Arizona constitution guarantees will be fair.

13. In order to meaningfully insure the integrity of the election, vote by mail ballots must be organized in a way that allows them to be compared against the computer generated results. State law currently requires results of the computer tally to be released on a precinct by precinct basis. Therefore the vote by mail ballots, after they have been counted by the computer, must be separated into their individual precincts.

14. Pima County must be ordered to perform a random hand audit of the vote by mail ballots and compare those results with the computer generated results.

15. Plaintiffs will be irreparably harmed if equitable relief is not granted.

16. Finally, Pima County does not instruct its election day poll workers, as required by law, to include the “tally list” or results tape in the Official Return Envelope.²

¹ Arizona Constitution Article 7 § 12 “Registration and other laws”:
There shall be enacted registration and other laws to secure the purity of elections and guard against abuses of the elective franchise.

² A.R.S. §16-615. “Delivery of returns”

A. Before it adjourns, the election board or tally board shall enclose and seal in a strong envelope provided for that purpose one of the poll lists and one of the tally lists, signed as required.

B. The envelope containing the poll list and the tally list shall constitute the official returns of the election...

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs request this Court to issue its Order to Show Cause requiring
3 the Defendants to appear and show cause, if any they have, why it should not enter preliminary
4 or final orders:

5 1. Issue an injunction requiring the Defendants to instruct poll workers to include, in
6 every Official Return Envelope, a copy of the signed “tally lists” or results tape as
7 required by A.R.S. §16-615.

8 2. Issue an injunction mandating that the Defendants separate the vote by mail
9 ballots by precinct.

10 3. Issue an injunction ordering Pima County to conduct sufficient randomly selected
11 hand count audits of the vote by mail ballots, according to the procedure outlined in
12 A.R.S. §16-602. County races must be included in the audit.

13 4. Plaintiffs request reasonable attorney fees, costs and other expenses pursuant to
14 A.R.S. §§ 12-2021 et. seq. and private attorney general theory of recovery of such
15 expenses pursuant to A.R.S. §§ 12-2030(b) fees and other expenses including the
16 reasonable expenses of expert witnesses, the reasonable cost of any study, analysis,
17 report, test or project necessary for preparation of plaintiff’s case, plus reasonable and
18 necessary attorney’s fees.
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22 RESPECTFULLY SUBMITTED this 25th day of October, 2012.

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24 **ROACH LAW FIRM, LLC**

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26 _____
27 Brad Roach
28 Attorney for Plaintiffs