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7
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 Mark Finchem, an individual,
11 Plaintiff/Contestant;
12 vs.
13 Adrian Fontes, officeholder-elect;
14 Defendant/Contestant;
15 Katie Hobbs, in her official capacity as the
16 Secretary of State;
17 Defendant.

Case No. CV2022-053927

**FIRST AMENDED
VERIFIED STATEMENT OF
ELECTION CONTEST**

***(Expedited Election Proceeding
Pursuant to A.R.S. § 16-672, et seq.)***

18 Contestant, for his Verified Statement of Elections Contest against the Contestee(s)
19 named above, alleges he is entitled to relief as follows:

20 **OPENING STATEMENT**

21 Arizona is obligated to administer a full, fair, and secure election under the
22 supervision of the Arizona Secretary of State. As more fully outlined below, it failed
23 miserably to do so in the mid-term election. Reports emanating from and related to the
24 election establish unequivocally that Arizona voters experienced monumental difficulties
25 trying to register their votes/ballots through tabulating machines. In Maricopa County alone
26 there was widespread tabulation machine failures. (See Exhibit A, map attached hereto). For
27 example, ballot reading machines failed repeatedly to register a citizen's ballot, even if the
28 ballot was run and rerun again and again the tabulators failed.

1 Many Voters purposely stood in line, often for an hour or more, to cast their vote but
2 were frustrated by machine failure. These citizens wanted to assure themselves that their vote
3 counted, and they had an absolute right to such an assurance. Instead, they were offered weak
4 and unsatisfying alternatives, like depositing their ballot into some mysterious Box 3 with
5 the assurance their votes would be counted later. These black box votes were likely never
6 counted and constitute the 60,000 Maricopa County and 20,000 Pima county missing votes
7 reported on the Secretary of State website. (See Affidavit of Karla Sweet as to defective
8 process; *Exhibit B*-Declaration of Robert Bowes regarding missing ballots; *Exhibit C*-
9 Declaration of Michael Schafer, witness to transport of Box 3 ballots *Exhibit D*; See Exhibit I
10 emails and missing ballot information-Pima County).

11 None of these voters came to the polling place for such an unreliable and
12 unprecedented voting experience. Each such voter was deprived of personally registering
13 their vote – to the point of inconveniencing themselves by traveling to a polling location and
14 often waiting an hour or more, sometimes much more, when mail-in voting with serious
15 chain of custody flaws was available.

16 More than that, a process that should be sacrosanct oozes impropriety. The state
17 officer who was supervisor of the election, the Secretary of State, was herself running for
18 governor.

19 Despite repeated calls for the Secretary to recuse herself she refused. Recusal would
20 cause her to lose control of the election she hoped to directly benefit from - a staggering
21 appearance of impropriety and display of unethical behavior. To add to it, she worked
22 directly with social medial platforms to suppress availability to the public platforms that she
23 herself enjoyed the access to.

24 Our election is the only mid-term election in the 50 states with such a comical and
25 tragic outcome. It was also the only election in the country where the governing Secretary of
26 State presided over the election.

27 All these circumstances when taken together were/are so extraordinary that the vote
28 must be nullified and redone.

1 **INTRODUCTION**

2 1. This is an elections contest pursuant to A.R.S. § 16-672 *et seq.*

3 **JURISDICTION AND VENUE**

4 2. The jurisdiction of this Court over this action is established according to A.R.S.
5 §16-672(A)-(B).

6 3. Venue of this Court is established according to A.R.S. § 16-672(B).

7 **PARTIES**

8 **Contestant**

9 4. Contestant Mark Finchem ("Finchem") is a qualified elector of the State of
10 Arizona and Pima County and resides in Pima County, Arizona.¹

11 5. Finchem is the Republican Party's nominee for Secretary of State in the
12 November 8, 2022, statewide election (also denominated as the "midterm election") as
13 presented on the ballot

14 6. Finchem is referred to herein as the "Plaintiff".

15 **Contestee(s)**

16 7. The person whose right to the Office of Secretary of State that is contested by
17 Finchem, is Adrian Fontes ("Fontes"), in the November 8, 2022, statewide election as
18 presented on the ballot.

19 8. Kathleen ("Katie") Hobbs is an individual and is being sued in her purported
20 official capacity as the acting Arizona Secretary of State and Chief Election Officer
21 ("Secretary Hobbs").

22 9. Fontes and Hobbs are collectively referred to herein as the "Defendants."

23 **GROUND FOR THE CONTEST**

24 10. The foregoing allegations are reincorporated as if fully set forth herein.

25 11. On December 5, 2022, Secretary Hobbs published the official canvas for the
26 November 08, 2022, general election results.

27 _____
28 ¹ Finchem's full residential address location is protected from disclosure pursuant to A.R.S. §
16 153.

1 12. Allegedly 1,200,411 votes went to Finchem, and 1,320,619 votes went to
2 Fontes.²

3 13. Plaintiff alleges this total is undependable and inaccurate because the
4 electronic ballot tabulation machines were not certified and could not be certified as the
5 laboratory engaged to do so was itself not certified.

6 14. 18. Defendant Hobbs herself said that new machines would be needed as a
7 result of the 2021 Arizona state senate audit.

8 **Misconduct - Secretary Hobbs**

9 15. Secretary Hobbs, in her capacity as Secretary of State, has a duty to supervise
10 elections throughout the state of Arizona. Hobbs was herself elected Secretary in a contested
11 election in 2020.

12 16. Secretary Hobbs, at the same time she had a duty to supervise the election, was
13 seeking the office of Governor in the midterm election.

14 17. Kari Lake (hereinafter “Lake”) was the Republican candidate for Arizona
15 Governor in the November 8, 2022, statewide election, as presented on the ballot.

16 18. Lake, her staff, and the Republican electorate perceived a conflict of interest
17 in that Hobbs was a statewide official managing an election in which she was also a candidate
18 for Governor.

19 19. Pursuant to the obvious conflict of interest that was evident to the voting public
20 through media coverage, Lake repeatedly and publicly called for Hobbs to recuse herself
21 from the Secretary of State’s management of the midterm election.

22 20. Secretary Hobbs repeatedly and publicly refused to recuse herself.³

23 21. As will be more fully outlined below, Hobbs had a duty to closely manage and
24 perfect the election process throughout Arizona. After winning her own 2020 contested
25 election she represented to her Arizona constituency that she would cure any defects in the
26 voting process.

27 _____
² See: https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf

28 ³ Ms. Hobbs most recently refused to recuse herself on November 4, 2022. See: <https://www.wsj.com/livecoverage/midterms-elections-voting-2022-11-04>.

1 22. Hobbs also had a duty to make sure there were no obvious defects in the
2 election process and negligently or intentionally failed to do so as detailed the expert
3 testimony fully described below.

4 23. She breached that duty and abused election law by failing to have the ballot
5 tabulating machines, designated as critical infrastructure by the Obama administration,
6 properly certified by a properly certified certification laboratory. Her deliberate or negligent
7 failure resulted in the uninspected and unverified machines to have widespread failures
8 across the State causing election result chaos.

9 24. As a result of the chaos, elected county officials governing elections in their
10 counties, called for a full hand-count of ballots.

11 25. Hobbs abused her office of Secretary of State by threatening county officials
12 with criminal charges and indictment for failure to certify a defective election process.

13 26. For example, on November 18, 2022, the Cochise County Board of
14 Supervisors voted not to accept election results certified and submitted by the Cochise
15 County Elections Department as the official canvass for the General Election held on
16 November 8, 2022. Instead, they set a special meeting for December 2, 2022, to hear expert
17 testimony from compliance experts on the voting test lab accreditation.⁴

18 27. In a November 23 letter to the Mojave County Board, State Elections Director
19 Kori Lorick, who serves as State Elections Director under Secretary Hobbs, said that the
20 canvass — or certification — of the election “is not discretionary.”⁵

21 28. On November 28, Kori Lorick emailed the Mojave County Board. Reminding
22 the supervisors again of their "non-discretionary statutory duty to canvass the 2022 General
23 Election results by today," she invoked the threat of prosecution of the county election
24 governing board as follows:

25 "The only basis for delaying the county canvass is pursuant
26 to A.R.S. 16-642(C) if returns from a polling place are missing,

27 _____
28 ⁴ See: <https://www.youtube.com/watch?v=RvAxd054xoM&feature=youtu.be>

⁵ See: <https://justthenews.com/sites/default/files/2022-12/11.23.22%20Mohave%20BOS%20Letter%20re%20canvass.pdf>

1 and that is indisputably not the case here," she wrote. "If Mohave
2 County does not perform their ministerial duty to canvass your
3 election results today, we will have no other choice but to pursue
4 legal action and seek fees and sanctions against the Board. "Our
5 office will take all legal action necessary to ensure that Arizona's
6 voters have their votes counted, including referring the individual
7 supervisors who vote not to certify for criminal enforcement under
8 A.R.S. 16-1010."

9 29. Under the cited statute, an election official "who knowingly refuses to
10 perform" their election duties "is guilty of a class 6 felony unless a different punishment for
11 such act or omission is prescribed by law."

12 30. Governing bodies in the different counties believed the cited statute is
13 inapplicable when such a body is presented with reasonable evidence that the electoral
14 system in their county was seriously defective.

15 31. In order to assure every constituent's vote was properly counted the local
16 governing body, not the Secretary of State, should determine what type of recount is needed
17 to best provide the constituency with assurance that every vote was properly counted.

18 32. Hobbs' own political party, on a national platform vociferously decries the
19 "every vote must be counted".

20 33. As a direct result of Hobbs threats, on or about November 28, 2022, two of the
21 supervisors on the Mojave County board said they were voting to certify the election "under
22 duress" after being warned that they would "be arrested and charged with a felony" if they
23 didn't, according to the board chairman, Ron Gould.⁶

24 34. On November 29, 2022, Secretary Hobbs filed suit to compel Cochise County
25 to vote 'YES' to certify the election results despite the governing board's belief based on an
26 expert opinion that the tabulation machines were not properly vetted via certification. *See*
27 *Hobbs v Crosby* CV202200553.

28 _____
⁶ See: <https://twitter.com/KariLakeWarRoom/status/1597380690597023744>

1 35. The governing board decided its constituency's voted were best protected by
2 a full hand count.

3 36. Hobbs demurred and ordered a partial count. The governing board had a duty
4 to protect – not Hobbs who was self-interested in the outcome.

5 37. On or about December 1, 2022, Plaintiff's counsel of record, Daniel J
6 McCauley III, notified the Cochise County Superior Court, the trial judge's JA and the
7 Cochise County Clerk, that he had filed a Notice of Removal to the District Court and advised
8 each of them to contact the trial judge immediately. Further, he notified at least one office of
9 the three different law offices prosecuting the two cases against the Board of Supervisors
10 that a Notice of Removal to District Court had been filed and not to proceed pursuant to 28
11 U.S. Code § 1446(d). *See Hobbs v Crosby CV-22-536-TUC-MSA.*

12 38. Upon learning of the removal, one of the attorneys representing Hobbs
13 continued with the threats and intimidation by threatening Plaintiff's counsel and each
14 member of the Board of Supervisors with sanctions for removing the case. (*See Gaona Email*
15 *attached hereto as Exhibit E*).

16 39. On December 2, 2022, Hobbs again continued with the threats and
17 intimidation. In a letter to the Arizona Attorney General, regarding the Cochise County
18 Board of Supervisors, Secretary Hobbs demanded the Arizona Attorney General take "all
19 necessary actions to hold these public officers accountable."⁷

20 40. The hand count could have been accomplished within the time Hobbs
21 aggressively stymied the will of the Cochise County public as legitimately put forward by
22 its elected governing board.

23 41. Hobbs' misconduct and self-interest is unprecedented and unacceptable in any
24 Arizona election process.

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28 ⁷ *See:* <https://www.documentcloud.org/documents/23327719-2022-12-2-cochise-bos-referral>

1 42. In further abuse of her office, an email surfaced on December 3, 2022, that
2 showed Secretary Hobbs' office flagging a constituents Twitter account for review on
3 January 7, 2021.⁸

4 43. The message emerged during discovery in a First Amendment lawsuit filed in
5 May by Missouri Attorney General Eric Schmitt and Louisiana Attorney General Jeff Landry
6 against President Joe Biden, alleging collusion between the administration and Big Tech in
7 a sprawling censorship enterprise. *See Missouri et al. v. Biden et al.* 3:22-cv-01213-TAD-
8 KDM.

9 44. Under the subject line "Election Related Misinformation," Secretary Hobbs'
10 communications director cited two tweets from an account that were of "specific concern to
11 the Secretary of State."

12 45. In explaining the reason for the state intervention to seek suppression of the
13 offending speech, the comms director said only:

14 "These messages falsely assert that the Voter Registration System is
15 owned and therefore operated by foreign actors. This is an attempt to
16 further undermine confidence in the election institution in Arizona."

17 46. On October 31, 2022, Finchem's Twitter account was temporarily suspended.
18 "Twitter has blocked my account from speaking truth with one week left until the election,"
19 Finchem wrote on his Facebook page that afternoon. On information and belief the
20 suspension was directly caused by Hobbs' illicit censoring of her constituents in concert with
21 Twitter (as pled herein).

27 ⁸ *See: Missouri et al v. Biden et al Case No:* 3:22-cv-01213-TAD-KDM, Document 71-8 Filed
28 08/31/22, Page 45 of 111 PageID #: 2793-2794,
<https://storage.courtlistener.com/recap/gov.uscourts.lawd.189520/gov.uscourts.lawd.189520.71.8.pdf>

1 47. Jenna Ellis, a former advisor to Donald Trump, tweeted at Elon Musk that
2 Finchem was suspended on Twitter. "@elonmusk this shouldn't happen a week before the
3 election!"⁹

4 48. Musk, who closed the \$44 billion deal to purchase Twitter, responded that he
5 was "looking into" the suspension, and Finchem's account was restored within an hour.

6 49. Finchem vehemently contests the illegitimacy of the 2020 election.

7 50. Finchem is informed and believes Fontes and Secretary Hobbs categorized his
8 tweets under "Election Related Misinformation" and caused his Twitter account to be
9 suspended.

10 51. Had Musk not intervened personally in the enforcement decision, Finchem
11 likely would have been censored during the election.

12 **Illegal Votes**

13 52. Michael Schafer, a subject matter expert (*See* CURRICULUM VITAE and
14 opinion incorporated by reference as Exhibit D) on the specific accreditation of testing
15 laboratories by the EAC (Election Assistance Commission), on Labs; "Pro V&V," and "SLI
16 Compliance," a Division of Gaming Laboratories International, LLC, was asked in 2020 to
17 evaluate if these specific labs met the standards of accredited test labs.

18 53. The Voting System Test Laboratory Program requirements posted in Manual,
19 Version 2.0 ("VSTL"), section 3.6.1., is specific and requires the certificate to be signed by
20 the Chair of the Commission and only be the Chair.

21 **Voting System Test Laboratory Program Manual, Version 2.0**

22 3.6.1. Certificate of Accreditation. A Certificate of Accreditation shall be issued to each
23 laboratory accredited by vote of the Commissioners. The certificate shall be
24 signed by the Chair of the Commission and state:

25
26
27 ⁹ See:

28 <https://twitter.com/JennaEllisEsq/status/1587203144878006272?s=20&t=Hb9Vo6dXZ5Ifp3sTVIb0xg>

1 61. A.R.S. § 16-672 guarantees that "[a]ny elector of the state may contest the
2 election of any person declared elected to a state office...upon any of the following grounds:"
3 "[f]or misconduct on the part of election boards or any members thereof in any of the counties
4 of the state, or on the part of any officer making or participating in a canvass for a state
5 election . . ."

6 62. A.R.S. § 16-621 assures the public that "[a]ll proceedings at the counting
7 center shall be under the direction of the board of supervisors or other officer in charge of
8 elections and shall be conducted in accordance with the approved instructions and procedures
9 manual issued pursuant to § 16-452 under the observation of representatives of each political
10 party and the public."

11 63. Secretary Hobbs has an absolute duty to enforce current rules and statutes
12 related to Arizona elections and to develop future rules that maintain the maximum degree
13 of election management and control (See A.R.S. § 16-452).

14 64. She negligently or intentionally failed in that duty by not properly investigating
15 the re-certification of both the certifying labs and the lab's certification of the computer
16 automated voting systems (*See* Expert Schafer analysis attached hereto as Exhibit D).

17 65. A.R.S. § 38-503 was passed to effect a public policy that protects the public
18 from self-dealing by public employees. Secretary Hobbs' actions to threaten arrest of the
19 Mojave County Board of Supervisors, sue and threatened the Cochise County Board of
20 Supervisors with a criminal investigation and prosecution, as a very senior representative of
21 Arizona government direct Twitter to censor Twitter posts made by her constituent, and
22 failing to recuse herself from overseeing the gubernatorial election in which she herself was
23 a candidate - was all self-dealing.

24 66. At minimum, Secretary Hobbs had an ethical duty to recuse herself – which,
25 again, Plaintiff alleges, is indisputably a form of self-dealing.

26 67. Initiating court actions to compel the county Boards to certify her election,
27 when the Boards had been presented expert-compiled evidence that there were irregularities
28

1 in the vote, constitutes "misconduct on the part of...officer[s] making or participating in a
2 canvass for a state election". (See: A.R.S. § 16-672(A)(1)).

3 68. Secretary Hobbs' negligent or intentional failure to closely monitor the
4 certification and re-certification of the certification laboratories and the re-certification of
5 the electronic tabulation system resulted in the chaotic performance of those machines during
6 the midterm election. Had they been properly vetted and inspected the machines would have
7 run properly.

8 69. Such validation was essential since Hobbs approved a new voting process that
9 allowed voters to cast ballots at any location. This new scheme was applied universally
10 across the entire State, not incrementally. Its failure directly caused the chaos in the election.

11 70. Any testing by the Secretary of State was obviously inadequate and should
12 have been affected by a lab certified for such analysis. This has been proven to have been an
13 essential step circumvented by the Secretary of State.

14 71. The Secretary changed the gauge of paper lined across the state. Before making
15 such a substantial change a certified lab should have tested and certified a material procedural
16 change before the paper substitution.

17 72. Their changes had a vast effect on the public's voting experience and amount
18 to material misconduct.

19 73. This failure resulted in an amount more significant than 201,232 votes for
20 Fontes and 79,298 votes for Gallego, changing the outcome of the election in favor of
21 Defendants.

22 74. Had this failure not occurred during the election 201,232 votes would have
23 gone to Finchem, changing the outcome of the election in favor of Plaintiff.

24 75. Finally, Hobbs' threatening and intimidating county officials who govern the
25 midterm election is distinct misbehavior. As the third highest official in the Arizona
26 governmental hierarchy, Hobbs' successful demands on Twitter to censor the free speech of
27 Arizona citizens because of "misinformation" offended her political perspective is not only
28

1 misbehavior but should disqualify her from the office of Governor. These political demands
2 and machinations by Hobbs constitute government censorship in the opinion of Plaintiff.

3 **COUNT TWO – ELECTIONS CONTEST**

4 ***(Illegal Votes - A.R.S. § 16-673)***

5 76. The foregoing allegations are incorporated as if set forth herein.

6 77. A.R.S. § 16-672 provides that "[a]ny elector of the state may contest the
7 election of any person declared elected to a state office...upon any of the following grounds:

8 4. On account of illegal votes."

9 78. Plaintiff herein alleges that the failure of Secretary Hobbs resulted in
10 widespread tabulation machine malfunctions. One of the direct results of these tabulation
11 machine failures has resulted in Arizona becoming a laughingstock among the 50 states.
12 Further, has cast serious aspersions on state government and its ability to run a clean and fair
13 election. As a result, the Plaintiff has been damaged as well as the State and its citizenry as
14 a whole. The result is simply an illegal election.

15 79. The Arizona Supreme Court has developed a rule for deducting illegal votes
16 from otherwise valid election results when it is impossible to determine for whom the
17 ineligible voters actually voted. Specifically, unless it can be shown for which candidate they
18 were cast, they are to be deducted from the whole vote of the election division, and not from
19 the candidate having the largest number.

20 80. Applying this rule, illegal votes are proportionately deducted from both
21 candidates.

22 81. There are a myriad of problems with identifying who votes were actually cast
23 for due to the well-publicized tabulation machine failures. And, further complicated by the
24 fact that a minimum of 60,000 votes went missing, according to the Secretary of State's own
25 website. (*See* Declaration of Bowes; Exhibit C; *See* Report of Roving GOP attorney Mark
26 Sonnenklar, now in the public domain, Exhibit F).

27 82. According to A.R.S. § 16-442 B. "[M]achines or devices used at any election
28 for federal, state or county offices may only be certified for use in this state and may only be

1 used in this state if they comply with the Help America Vote Act of 2002, and if those
2 machines or devices have been tested and approved by a laboratory that is accredited
3 pursuant to the Help America Vote Act of 2002."

4 83. Wherefore, according to expert Michael Schafer, the accreditation of the
5 laboratories used to certify the tabulation equipment that counted the votes from
6 November 8, 2022, were not accredited due to the certificate not being signed by the Chair
7 of the Commission, Thomas Hicks, and therefore caused all votes tabulated by machines
8 certified by test labs that were not accredited to be illegal votes cast. (*See Exhibit D*).

9 84. The election likely would have favored Plaintiff had the illegal voting not been
10 cast, changing the election's outcome in favor of Plaintiff. (*See Exhibit H-List of court cases*
11 ordering an election redone.

12 **DEMAND FOR RELIEF**

13 WHEREFORE, Plaintiff prays for the following relief:

- 14 A. Pursuant to A.R.S. § 16-677 and/or Court rules, Plaintiff is entitled to have the
15 inspection/discovery done before preparing for trial.
- 16 B. That the Court order a reasonable inspection (sampling) of mail-in ballots
17 (including their signed envelopes and/or scans thereof) in order to compare
18 them to the signatures on file; and to compare "duplicate" ballots to the original
19 ballots from which they were "duplicated," for Congressional District 3 in
20 particular; as discovery under the Civil Rules and/or in accordance with A.R.S.
21 § 16-677;
- 22 C. That the Court declare that the certificate of election of Adrian Fontes and
23 Ruben Gallego is of no further legal force or effect and that the election is
24 annulled and set aside in accordance with A.R.S. § 16-676(B);
- 25 D. That, if an inspection of the ballots should so prove, the Court declare that the
26 Plaintiff has the highest number of legal votes and declare those persons
27 elected or in the alternative order a paper ballot revote.
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- E. That the Court order a state-wide special election, counted by hand, without the use of electronic vote tabulation systems at the precinct level, no mail-in ballots supervised by a special master appointed by the court;
- F. That the Court order a referral to the Attorney General to investigate Secretary Hobbs for willful acts in violation of impartiality under A.R.S. §§ 16-452 and § 38-503 according to A.R.S. § 16-1010.
- G. For such injunctive, declaratory, mandamus (special action), or other relief as may be proper or necessary to effect these ends;
- H. For Plaintiff's taxable costs under A.R.S. § 12-341, attorney fees and expenses under any applicable authority;
- I. For such other and further relief, the Court may deem proper in the circumstances

Dated December 12, 2022

Mark Finchem
Mark Finchem

Dated December 12, 2022

Daniel J. McCauley, III
Daniel J. McCauley III, Attorney for Plaintiff