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16
17 **UNITED STATES DISTRICT COURT**
18 **DISTRICT OF ARIZONA**

19 Kari Lake and Mark Finchem,) No. 2:22-cv-00677-JJT
20)
Plaintiffs,)
21)
v.) **SECRETARY OF STATE KATIE**
22) **HOBBS' RESPONSE IN**
Katie Hobbs, in her official capacity as) **OPPOSITION TO PLAINTIFFS'**
23) **MOTION FOR PRELIMINARY**
Arizona Secretary of State, et al.,) **INJUNCTION**
24)
Defendants.)
25)
26)

1 **Introduction**

2 Plaintiffs sued in April 2022 to enjoin the use of electronic voting systems in all Arizona
3 elections. That claim was already too late to get relief this election year. Yet Plaintiffs waited
4 another two months to file a Motion for Preliminary Injunction [Doc. 50] repeating the same
5 allegations. Plaintiffs’ lack of diligence is reason enough to deny relief, but the Court can take
6 its pick of many reasons to deny the Motion.

7 To begin, Plaintiffs cannot succeed on the merits. Plaintiffs lack standing because their
8 claims rest on a speculative chain of contingencies that cannot establish an injury-in-fact. Their
9 claims are also barred by the Eleventh Amendment because the alleged federal constitutional
10 violations are actually claims that election equipment violates state law, and it’s plainly not the
11 role of federal courts to compel state officials to comply with state law. And Plaintiffs fail to
12 state a cognizable constitutional claim. Their hypothetical claims about “vulnerabilities” in
13 election equipment doesn’t translate to a burden on Plaintiffs’ right to vote, and they don’t have
14 a constitutional right to a hand-count of all ballots.

15 Next, Plaintiffs fall far short of establishing any other injunction factor. Plaintiffs just
16 assume they prevail on the merits, and include two conclusory sentences in their 35-page
17 motion claiming they will face irreparable harm without an injunction. But granting an
18 injunction would cause irreparable harm by upending longstanding election procedures in the
19 middle of an election year.

20 Plaintiffs’ eleventh-hour request for an injunction is also barred by the laches and
21 *Purcell* doctrines. Counties have already planned, budgeted, and prepared to administer the
22 2022 Primary and General elections using existing electronic voting equipment. Forcing them
23 to hand-count dozens of races on millions of ballots would be impossible to implement this
24 year and would have disastrous cascading effects. It could also disenfranchise voters with
25 disabilities who have relied on accessible voting equipment for decades (and violate state and
26 federal law). All told, Plaintiffs’ requested relief would create severe hardship and damage the

1 public interest.

2 The Court should deny Plaintiffs' Motion for any of these reasons. It also can and should
3 deny the Motion for reasons in the Maricopa County Defendants' response [Doc. 57], which
4 the Secretary joins.

5 **Factual Background**

6 **I. The Use of Electronic Voting Equipment in Arizona.**

7 Arizona authorized the use of electronic voting systems as early as 1966. H.B. 204, 27th
8 Leg., 2d. Reg. Sess. (Ariz. 1966) [https://azmemory.azlibrary.gov/digital/collection/azsession](https://azmemory.azlibrary.gov/digital/collection/azsession/id/22/rec/4)
9 [/id/22/rec/4](https://azmemory.azlibrary.gov/digital/collection/azsession/id/22/rec/4). All electronic voting systems undergo federal and state testing and certification
10 before being used in Arizona elections, all counties perform logic and accuracy testing on all
11 equipment before and after every election, and the Secretary performs logic and accuracy
12 testing on a sample of each county's equipment before every election with a federal, statewide,
13 or legislative race. *See, e.g.*, A.R.S. §§ 16-442, 16-449, 16-602; 2019 Elections Procedures
14 Manual ("2019 EPM") at 76-82, 86-100, 235 [https://azsos.gov/sites/default/files/2019](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf)
15 [ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf).¹

16 Though Arizona uses electronic equipment to tabulate votes (and has done so for many
17 decades), every vote cast in Arizona is on a paper ballot. *E.g.*, A.R.S. §§ 16-462, 16-468(2),
18 16-502. Voters with disabilities may use accessible electronic voting devices to select their
19 choices on a ballot, but every accessible voting device must produce a paper ballot or voter
20 verifiable paper audit trail. 2019 EPM at 80. The federal Election Assistance Commission and
21 the Secretary have certified each electronic voting system to be used in each county in 2022.
22 Ariz. Sec'y of State, *2022 Election Cycle / Voting Equipment*, [https://azsos.gov/sites/default/](https://azsos.gov/sites/default/files/2022_Election_Cycle_Voting_Equipment-Feb-Final.pdf)
23 [files/2022_Election_Cycle_Voting_Equipment-Feb-Final.pdf](https://azsos.gov/sites/default/files/2022_Election_Cycle_Voting_Equipment-Feb-Final.pdf).

24
25
26 ¹ The 2019 EPM is the last EPM promulgated under A.R.S. § 16-452 and has "the force and effect of law." *E.g.*, *Gonzalez v. Arizona*, 677 F.3d 383, 397 (9th Cir. 2012) (en banc).

1 **II. The 2020 Election Results.**

2 In the face of a once-in-a-century pandemic and unprecedented levels of
3 misinformation, Arizona election officials successfully administered free, fair, and secure
4 elections in 2020. Over 3.4 million Arizonans exercised their right to vote in the general
5 election, and counties completed and passed post-election audits and logic and accuracy testing
6 confirming the results.

7 The Secretary and other dedicated election officials defended nearly a dozen post-
8 election lawsuits in Arizona, including several suits seeking to overturn the results of the
9 presidential election. Every lawsuit failed. *E.g.*, *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 716,
10 724 (D. Ariz. 2020) (“Plaintiffs failed to provide the Court with factual support for their
11 extraordinary claims” challenging accuracy of election results in Maricopa County, including
12 implausible allegations of fraud and “irregularities” relating to Dominion voting systems).

13 After these legal challenges failed, the Arizona Senate hired private companies called
14 “Cyber Ninjas” and CyFIR, LLC to conduct an “audit” of the election results in Maricopa
15 County. The audit team failed to meet industry standards for any credible audit (much less for
16 an election audit), showed a lack of understanding of election processes, and tried to perform
17 (and botched) a hand-count of the top two races. *E.g.*, Ariz. Sec’y of State, *Report on the*
18 *Partisan Review of the 2020 Election in Maricopa County*, [https://azsos.gov/](https://azsos.gov/sites/default/files/2020_Ballot_Review_Report_ver20210819-03_Review.pdf)
19 [sites/default/files/2020_Ballot_Review_Report_ver20210819-03_Review.pdf](https://azsos.gov/sites/default/files/2020_Ballot_Review_Report_ver20210819-03_Review.pdf). The Cyber
20 Ninjas’ “audit report” took five months to complete and included various misleading and
21 inaccurate findings, all of which were debunked by Maricopa County elections officials. [Doc.
22 29-1 Exh. 13]. Even so, the “audit” report didn’t contradict the certified election results.

23 **III. Plaintiffs’ Claims Challenging All Electronic Voting Systems.**

24 Undeterred, Plaintiffs now challenge the use of electronic voting systems in Arizona,
25 raising many of the same inaccurate theories about electronic voting systems. Plaintiffs
26 vaguely allege that electronic voting systems—in general—have certain security risks,

1 complain about a lack of “transparency” from manufacturers, and allude to various election
2 equipment issues in other jurisdictions. Based on these allegations in the Complaint, Plaintiffs
3 ask [Doc. 3 ¶ 23] the Court to infer that all voting systems certified for use in Arizona are
4 “potentially unsecure, lack adequate audit capacity, fail to meet minimum statutory
5 requirements, and deprive voters of the right to have their votes counted and reported in an
6 accurate, auditable, legal, and transparent process.” They then ask the Court [¶ 153] to enjoin
7 the use of electronic voting systems and compel Arizona’s election officials to conduct
8 elections following a 9-step list of Plaintiffs’ preferred election procedures.

9 After filing their original complaint two months ago, Plaintiffs did nothing. Now they
10 seek a preliminary injunction to change the procedures for an election that’s already underway.

11 **Argument**

12 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
13 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
14 that the balance of equities tips in his favor, and that an injunction is in the public interest.”
15 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When asked to enjoin election
16 procedures shortly before an election, courts also weigh “considerations specific to election
17 cases,” such as potential voter confusion and disruption of the orderly administration of
18 elections, as well as the court system’s “own institutional procedures” that may cause even
19 more delay. *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

20 A preliminary injunction is “an extraordinary remedy never awarded as of right,” and
21 the requesting party “must generally show reasonable diligence.” *Benisek v. Lamone*, __ U.S.
22 __, 138 S. Ct. 1942, 1943-44 (2018). And mandatory injunctions—as Plaintiffs request here—
23 are “particularly disfavored”; they should be denied “unless the facts and law clearly favor the
24 moving party.” *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (emphasis added)
25 (quotations omitted).

26 Plaintiffs don’t come close to meeting their heavy burden.

1 **I. Plaintiffs Cannot Succeed on the Merits.**

2 Plaintiffs' motion doubles down on the same conjectural allegations in the First
3 Amended Complaint, claiming all electronic voting equipment is "vulnerable" to interference,
4 relying on irrelevant and abstract examples, and vaguely concluding that no security measures
5 can prevent that interference. For the reasons below and in Defendants' Motions to Dismiss
6 [Docs. 27, 45], which the Secretary incorporates here, Plaintiffs have no chance of succeeding
7 on the merits and the FAC should be dismissed with prejudice.

8 **A. Plaintiffs lack Article III standing.**

9 To establish Article III standing, Plaintiffs must show: (1) that they suffered an injury
10 in fact "that is concrete and particularized and actual or imminent, not conjectural or
11 hypothetical," *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (quotations omitted); (2) that
12 the challenged conduct caused their alleged injury; and (3) that a favorable decision would
13 likely redress the claimed injury, *Barnum Timber Co. v. U.S. E.P.A.*, 633 F.3d 894, 897 (9th
14 Cir. 2011). Plaintiffs fail at step one.

15 Plaintiffs' allegations depend on a long chain of contingencies to get to their alleged
16 harm: that Arizona's specific electronic voting systems are in fact vulnerable to security
17 breaches; that third parties will in fact exploit those vulnerabilities and interfere in a future
18 election; that Arizona's election officials will not detect or stop this interference; and that this
19 interference will affect Plaintiffs' votes or enough votes to impact the outcome of the election
20 in a way that harms Plaintiffs. This is precisely the kind of "speculative chain of possibilities"
21 that cannot establish an actual or imminent injury-in-fact. *Clapper v. Amnesty Int'l USA*, 568
22 U.S. 398, 414 (2013).

23 Indeed, courts have found that similar claims that electronic voting equipment is
24 "vulnerable to undetectable hacking and malicious manipulation" is a "conjectural and
25 hypothetical injury" that "cannot survive as the foundation for" a claim in federal court. *Shelby*
26 *Cnty. Advocs. for Valid Elections v. Hargett*, 2019 WL 4394754, at *2 (W.D. Tenn. Sept. 13,

1 2019), *aff'd Shelby Advocs. for Valid Elections v. Hargett*, 947 F.3d 977 (6th Cir. 2020); *see*
2 *also, e.g., Stein v. Cortes*, 223 F. Supp. 3d 423, 432 (E.D. Pa. 2016) (voter's "allegation that
3 voting machines may be 'hackable,' and the seemingly rhetorical question they pose respecting
4 the accuracy of the vote count, simply do not constitute injury-in-fact"); *Samuel v. Virgin*
5 *Islands Joint Bd. of Elections*, 2013 WL 842946, at *5 (D.V.I. Mar. 7, 2013) ("conjectural"
6 allegations "that the election process 'may have been' left open to compromise" by using
7 certain voting machines were "amorphous due process claims, without requisite
8 concreteness"). The same is true here.

9 Plaintiffs fail to allege a concrete and particularized injury-in-fact and thus lack
10 standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016).

11 **B. The Eleventh Amendment bars Plaintiffs' claims.**

12 "The Eleventh Amendment bars a suit against state officials when," as here, "the state
13 is the real, substantial party in interest." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S.
14 89, 101 (1984) (quotations omitted).

15 The *Ex parte Young* exception to Eleventh Amendment immunity applies only to
16 "claims seeking prospective injunctive relief against state officials to remedy a state's ongoing
17 violation of federal law." *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 865 (9th
18 Cir. 2016) (citing *Ex parte Young*, 209 U.S. 123 (1908) (emphasis added)). But this exception
19 doesn't apply when a plaintiff asks a federal court to "order state actors to comply with state
20 law." *Hale v. Arizona*, 967 F.2d 1356, 1369 (9th Cir. 1992); *see also Pennhurst*, 465 U.S. at
21 106 ("[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal
22 court instructs state officials on how to conform their conduct to state law."). Yet that's exactly
23 what Plaintiffs do here.

24 Plaintiffs try to disguise their claims as alleged violations of the federal Constitution,
25 but their claims turn on application of state law. [*E.g.*, Doc. 3 ¶¶ 156-61 (claiming the Secretary
26 "has failed to meet the duties" in Arizona statutes, including A.R.S. §§ 16-446(B), 16-452, and

1 16-445(D)); ¶¶ 162-64 (describing statutory requirements that the County Defendants
2 allegedly violated); ¶¶ 181, 194 (claiming Defendants “abrogated their statutory duties”)].
3 Many courts have rejected similar state law claims cloaked as alleged federal law violations.
4 *See, e.g., S&M Brands, Inc. v. Georgia ex rel. Carr*, 925 F.3d 1198, 1204-05 (11th Cir. 2019)
5 (Eleventh Amendment barred federal constitutional claim that “relied on a determination that
6 state officials had not complied with state law”); *DeKalb Cty. Sch. Dist. v. Schrenko*, 109 F.3d
7 680, 682 (11th Cir. 1997) (rejecting attempt to assert federal constitutional claim because the
8 “gravamen” and “substance” of the complaint was that the state improperly interpreted and
9 applied a state statute); *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 716 (D. Ariz. 2020) (Eleventh
10 Amendment immunity bars “state law claims, masked as federal law claims”) (citing *Massey*
11 *v. Coon*, 865 F.2d 264 (9th Cir. 1989)).

12 Even more, Plaintiffs’ requested relief creates significant federalism concerns. They not
13 only seek to enjoin the use of electronic voting systems, but also want a mandatory injunction
14 compelling Defendants to conduct elections according to Plaintiffs’ detailed demands about
15 how ballots must be cast, conveyed, counted, and recounted, and how the whole process must
16 be recorded, streamed, and archived. [Doc. 3 ¶ 153].

17 The Court should reject Plaintiffs’ request to entangle the Court, “as [an] overseer[] and
18 micromanager[], in the minutiae of state election processes.” *Ohio Democratic Party v. Husted*,
19 834 F.3d 620, 622 (6th Cir. 2016).

20 **C. Plaintiffs fail to state a cognizable constitutional claim.**

21 **1. Arizona’s electronic voting systems do not infringe Plaintiffs’ right to**
22 **vote.**

23 All agree that voting is a fundamental constitutional right, *see Yick Wo v. Hopkins*, 118
24 U.S. 356, 370 (1886), and that the right to vote includes the right of “qualified voters . . . to vote
25 and to have their votes counted,” *Reynolds v. Sims*, 377 U.S. 533, 554 (1964) (citation omitted).
26

1 But Plaintiffs do not allege—much less offer any evidence—that they have been or will be
2 deprived of that right.

3 Plaintiffs allege [at 5] that all electronic voting systems are “unreliable, unsecure, and
4 vulnerable to undetected manipulation of the voting results they report.” Their Motion parrots
5 the same speculative, implausible allegations in the FAC, this time with attached declarations
6 of so-called experts on various topics.² They broadly argue that all electronic voting equipment
7 is vulnerable to unauthorized access and manipulation [at 5-12], that election equipment is
8 vulnerable to a “supply chain attack” by “foreign adversaries” [at 12-14], that all “Dominion
9 Democracy Suite software and hardware components” have security vulnerabilities [at 15-18],
10 that “election infrastructure” has been “hacked” in various jurisdictions in the past [at 18-19],
11 that “human error” can cause security risks [20-21], and that one type of Dominion voting
12 system had a “misread” issue that was identified and addressed in Tennessee [at 21-22].

13 Plaintiffs’ only evidence of security vulnerabilities in any election equipment certified
14 for use in Arizona’s 2022 elections is a CISA advisory on Dominion Voting Systems
15 Democracy Suite ImageCast X. CISA, ICS Advisory (ICSA-22-154-01), *Vulnerabilities*
16 *Affecting Dominion Voting Systems ImageCast X* (June 3, 2022) [https://www.cisa.gov/
17 uscert/ics/advisories/icsa-22-154-01](https://www.cisa.gov/uscert/ics/advisories/icsa-22-154-01). The ImageCast X is an accessible in-person voting
18 system Maricopa County uses to allow voters with disabilities to mark their ballots. The CISA
19 advisory identified vulnerabilities in certain ImageCast X versions “as used in Dominion
20 Democracy Suite Voting System Version 5.5-A.” *Id.* The advisory recommended that election
21 officials take certain “defensive measures to reduce the risk of exploitation of these
22 vulnerabilities.” *Id.* Maricopa County doesn’t even use Democracy Suite Version 5.5-A
23 equipment (it uses the newer Version 5.5B), but in all events, Maricopa County already

24
25 ² If the Court decides to consider Plaintiffs’ declarations in deciding the Motion (it shouldn’t),
26 the Secretary reserves the right to object to those declarations, including on relevance and
hearsay grounds, and under Fed. R. Evid. 702, 703 and *Daubert v. Merrell Dow Pharms., Inc.*,
509 U.S. 579, 594 (1993).

1 implements all the recommendations in the CISA advisory to secure its equipment. [Doc. 57-
2 ¶¶ 29-30].

3 Plaintiffs offer no evidence that any other specific election equipment used in any
4 Arizona county (1) has any security vulnerabilities, (2) has ever been breached, or (3) is at
5 imminent risk of being breached.³ Nor do Plaintiffs address the detailed security procedures
6 Arizona’s election officials use before, during, and after elections to ensure that electronic
7 voting systems are secure. *E.g.*, A.R.S. §§ 16-449 (pre-election logic and accuracy testing), 16-
8 602 (post-election hand count audits); 2019 EPM at 86-100 (pre-election logic and accuracy
9 testing; security measures for electronic voting systems), 213-34 (hand count audit), 235 (post-
10 election logic and accuracy testing); *see also* [Doc 29-1 Exh. 1 at 58-61]. The only procedure
11 Plaintiffs even mention [at 31] is the hand-count audit, concluding without explanation (and
12 without an ounce of irony or shame) that the hand-count “is known to be error-prone.”

13 In short, Plaintiffs’ claims are no more than their own policy preference that votes be
14 counted by hand. But “it is the job of democratically-elected representatives to weigh the pros
15 and cons of various balloting systems.” *Weber v. Shelley*, 347 F.3d 1101, 1106-07 (9th Cir.
16 2003); *see also Green Party of N.Y. v. Weiner*, 216 F. Supp. 2d 176, 190-91 (S.D.N.Y. 2002)
17 (debate over use of voting machines or paper ballots “is for the elected representatives of the
18 people to decide, after balancing the pros and cons of different systems against their expense.”).
19 Indeed, the “framers of the Constitution intended the States to keep for themselves, as provided
20 by the Tenth Amendment, the power to regulate elections.” *Gregory v. Ashcroft*, 501 U.S. 452,

21 ³ They rely [at 10, 16-18] on the opinions of Doug Logan and Ben Cotton, members of the
22 Cyber Ninjas and CyFIR “audit” team, who vaguely claim that election equipment used in
23 Maricopa County in 2020 lacked certain security measures, but do not contest the vote totals
24 in that election. These findings have been thoroughly debunked. [Doc. 29-1 Exh. 13]. Plaintiffs
25 also offer [at 20] rank speculation from an “expert”—with no qualifications or experience
26 analyzing elections—claiming that the “predictability and dependence” of the ratio of votes in
the 2020 Presidential race in Maricopa and Pima Counties were “so statistically improbable as
to be impossible without manipulation or control.” These unsupported conclusions prove
nothing.

1 461-62 (1991) (quoting *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973)); *see also* U.S. Const.
2 art. I, § 4, cl. 1 (delegating power to the states over the “times, places, and manner” of elections
3 for congressional offices). Plaintiffs don’t have a “constitutional right to any particular method
4 of registering and counting votes.” *Green Party of N.Y.*, 216 F. Supp. 2d at 191.

5 Plaintiffs rely [at 9-10, 25] on *Curling v. Raffensperger*, 493 F. Supp. 3d 1264, 1280
6 (N.D. Ga. 2020), but that case doesn’t help them. There, the court found that the plaintiffs
7 “may ultimately prevail” on the merits of their claims challenging the statewide use of
8 electronic ballot-marking-device (BMD) voting systems in Georgia, because the plaintiffs
9 presented detailed, compelling evidence about specific problems with the particular BMD
10 voting system used in Georgia’s elections. *Id.* at 1310.⁴ And even then, the court rejected the
11 plaintiffs’ “expansive” request for an injunction replacing the entire statewide voting system
12 during an election year. *Id.* at 1312 (“[I]mposition of such a sweeping change in the State’s
13 primary legally adopted method for conducting elections at this moment in the electoral cycle
14 would fly in the face of binding appellate authority and the State’s strong interest in ensuring
15 an orderly and manageable administration of the current election”).

16 At bottom, Plaintiffs fail to show a burden on their right to vote. They don’t allege that
17 Arizona’s specific electronic voting systems are at risk of security breaches; that anyone has
18 ever exploited any vulnerabilities; or that Arizona’s election officials cannot detect or stop
19 interference in our elections.

20
21
22 ⁴ As Plaintiffs note [at 31], an expert in that case stated that “Georgia can eliminate or greatly
23 mitigate [the identified] risks by adopting the same approach to voting that is practiced in most
24 of the country: using hand-marked paper ballots and reserving BMDs for voters who need or
25 request them.” That is Arizona’s approach—the vast majority of voters vote early or on
26 Election Day using hand-marked paper ballots. *E.g.*, A.R.S. §§ 16-462, 16-468(2), 16-502.
And even for accessible electronic voting devices used by voters with disabilities, Arizona law
requires that every accessible voting device produce a paper ballot or voter verifiable paper
audit trail. 2019 EPM at 80.

1 **2. Plaintiffs fail to state a cognizable claim that Arizona’s voting systems**
2 **violate the Equal Protection Clause.**

3 Plaintiffs next argue [at 27] that “if” Arizona “counts ballots cast by absentee voters
4 securely, but counts ballots cast at polls insecurely (or *vice versa*), the system infringes the
5 Equal Protection rights of the Plaintiffs.” (Emphasis added). Yet they don’t explain how mail-
6 in ballots are cast or counted differently (or more “securely”) than in-person ballots. Every
7 ballot cast in Arizona (whether in-person or by mail) is a paper ballot, and every ballot is
8 tabulated using electronic tabulation equipment. Plaintiffs don’t even try to describe how the
9 use of electronic voting systems violates their Equal Protection rights.

10 **3. The State has compelling interests in using electronic voting**
11 **equipment.**

12 Even if Plaintiffs could allege that electronic voting systems have security risks that
13 could theoretically burden their right to vote, Arizona has compelling interests in using
14 electronic voting systems.

15 Arizona authorized electronic voting systems over fifty years ago, and for good reason.
16 Electronic tabulation of votes is much faster, more cost effective, and more accurate than hand
17 counting millions of ballots with dozens of races. [Decl. of Pima Cnty. Elections Director
18 Constance Hargrove (“Hargrove Decl.”) ¶¶ 5-10, attached as **Exhibit A**; Decl. of Cochise
19 Cnty. Elections Director Lisa Marra (“Marra Decl.”) ¶¶ 5-10, attached as **Exhibit B**; Decl. of
20 Navajo Cnty. Elections Director Rayleen Richards (“Richards Decl.”) ¶¶ 5-10, attached as
21 **Exhibit C**; Doc. 57-1 ¶¶ 31-57]. To hand-count every race on every ballot, every county would
22 need to hire huge teams of bipartisan election workers, on top of the many poll workers and
23 temporary election workers counties must already hire to successfully administer the election.
24 [Hargrove Decl. ¶ 5; Marra Decl. ¶ 5; Richards Decl. ¶ 5; Doc. 57-1 ¶ 55]. A 100% hand count
25 would be extremely costly and time-consuming and could interfere with mandatory deadlines,
26 like the canvassing deadlines for counties and the Secretary. A.R.S. §§ 16-642(A), 16-648(A).

1 [Hargrove Decl. ¶¶ 6-8; Marra Decl. ¶¶ 6-8; Richards Decl. ¶¶ 6-8; Doc. 57-1 ¶ 53 (Maricopa
2 County “would need 250 times the current space and resources to complete the hand count
3 according to statutory timelines”)]. There is also significant risk of human error in repetitive
4 tasks like counting ballots, and there is no way to ensure an accurate hand count of all races on
5 all ballots, even with quality control measures in place. [Hargrove Decl. ¶ 10; Marra Decl. ¶
6 10; Richards Decl. ¶ 10; Doc. 57-1 ¶ 57].

7 Even more, using electronic accessible voting devices allows voters with disabilities,
8 including physical or visual disabilities, to vote independently and in secret. [Hargrove Decl.
9 ¶ 11; Marra Decl. ¶ 11; Richards Decl. ¶ 11]. Banning accessible voting machines would
10 impede these voters’ ability to exercise their right to vote and would force election
11 administrators to violate state and federal law. [*Id.*]

12 Arizona’s important interests in making voting accessible to all eligible voters and
13 “reducing administrative burdens” more than justifies the non-existent burden on Plaintiffs’
14 right to vote. *Ariz. Democratic Party v. Hobbs*, 18 F.4th 1179, 1190 (9th Cir. 2021).

15 **II. Plaintiffs Will Suffer No Irreparable Harm Without an Injunction.**

16 Even if Plaintiffs had any chance of success on the merits (they don’t), they establish
17 no other injunction factors.

18 Their 35-page motion includes two sentences [at 32] claiming “they will suffer
19 irreparable harm absent the grant of preliminary relief” because “Arizona’s intended use of
20 Electronic Voting Systems” in the 2022 elections “will deprive Plaintiffs of their constitutional
21 rights.” But Plaintiffs don’t even state a claim for a constitutional violation (as detailed above),
22 and enjoining the State’s “duly enacted” election statutes “would seriously and irreparably
23 harm the State.” *Abbott v. Perez*, __ U.S. __, 138 S. Ct. 2305, 2324 (2018).

24 What’s more, Plaintiffs’ long delay both in filing the complaint and requesting a
25 preliminary injunction “implies a lack of urgency and irreparable harm.” *Oakland Trib., Inc.*
26 *v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985); *see also Miller for & on Behalf of*

1 *N.L.R.B. v. California Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993) (that the plaintiff
2 “tarried so long before seeking this injunction” weighed against finding of irreparable harm);
3 *Barton & Assocs. Inc. v. Trainor*, 2020 WL 6081496, at *6 (D. Ariz. Oct. 15, 2020) (waiting
4 months to file a complaint then waiting another three weeks to seek a preliminary injunction
5 weighed against finding of irreparable harm).

6 Arizona has authorized electronic voting systems since at least 1966, yet Plaintiffs
7 waited until April 2022 (an election year) to file suit. They then inexplicably waited almost
8 two months to file the Motion, right before early ballots start going out for the Primary.
9 “Plaintiffs fail to explain why they waited until mere months before the 20[22] general election
10 to challenge this practice, and their long delay before seeking a preliminary injunction implies
11 a lack of urgency and irreparable harm.” *Feldman v. Ariz. Sec’y of State’s Off.*, 2016 WL
12 5900127, at *8 (D. Ariz. Oct. 11, 2016), *aff’d*, 842 F.3d 613 (9th Cir. 2016) (quotation
13 omitted).

14 **III. The Balance of Hardships and Public Interest Favor Defendants.**

15 After over half a century of electronic voting systems in Arizona and on the eve of an
16 election, Plaintiffs now request a preliminary injunction upending the State’s ballot tabulation
17 process. This eleventh-hour request for an extraordinary remedy would cause significant
18 hardship, and it’s too late to grant Plaintiffs’ requested relief this election year.

19 **A. The laches and *Purcell* doctrines bar Plaintiffs’ motion.**

20 First, the laches doctrine precludes Plaintiffs’ request for an injunction. Laches “seeks
21 to prevent dilatory conduct and will bar a claim if a party’s unreasonable delay prejudices the
22 opposing party or the administration of justice.” *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10
23 (2006).

24 Plaintiffs’ delay is no doubt unreasonable. When deciding whether delay is
25 unreasonable, courts consider “the justification for the delay, the extent of the plaintiff’s
26 advance knowledge of the basis for the challenge, and whether the plaintiff exercised

1 diligence[.]” *Ariz. Libertarian Party v. Reagan*, 189 F. Supp. 3d 920, 923 (D. Ariz. 2016)
2 (citation omitted). Plaintiffs have known about their claims for decades, and their mid-election
3 year request for an order invalidating all electronic voting systems before the 2022 Primary
4 and General elections is inexcusable. UOCAVA ballots have already been mailed for the
5 Primary, and early voting in that election starts on July 7. Plaintiffs’ delay until mere weeks
6 before early voting begins is unreasonable. “The statue they challenge is not new.” *Arizona*
7 *Pub. Integrity All. Inc. v. Bennett*, 2014 WL 3715130, at *2 (D. Ariz. June 23, 2014) (laches
8 barred request to enjoin 1980 statute shortly before election deadline).

9 The long delay also prejudices the Secretary, election officials in Arizona’s fifteen
10 counties, and above all else, Arizona voters. Counties have already successfully administered
11 jurisdictional elections in March and May 2022 using the current election equipment, and they
12 are deep in preparations for the statewide Primary and General elections. [Hargrove Decl. ¶ 3;
13 Marra Decl. ¶ 3; Richards Decl. ¶ 3; Doc. 29-1 Exh. 1]. Enjoining the use of electronic voting
14 systems in the middle of an election year would upend the administration of elections, cause
15 counties to spend significant time and resources, and create severe disruptions for election
16 administrators and voters. [Hargrove Decl. ¶ 4; Marra Decl. ¶ 4; Richards Decl. ¶ 4; Doc. 57-
17 1 ¶¶ 32-49]. Late filings like Plaintiffs’ also prejudice the administration of justice by
18 “depriv[ing] judges of the ability to fairly and reasonably process and consider the issues and
19 rush appellate review, leaving little time for reflection and wise decision making.” *Ariz.*
20 *Libertarian Party*, 189 F. Supp. 3d at 923 (cleaned up).

21 Second, the *Purcell* principle bars Petitioners’ claims. Under that doctrine, courts
22 generally will not alter election rules on the eve of an election. *Purcell v. Gonzalez*, 549 U.S.
23 1, 5 (2006). This is for good and practical reasons; “[c]ourt orders affecting elections can
24 themselves result in voter confusion and consequent incentive to remain away from the polls,”
25 a risk that only increases “[a]s an election draws closer.” *Id.* at 4-5. And this “important
26 principle of judicial restraint not only prevents voter confusion but also prevents election

1 administrator confusion” and “protects the State’s interest in running an orderly, efficient
 2 election.” *Democratic Nat’l Comm. v. Wis. State Leg.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh,
 3 J., concurring). These risks are even greater here, where Plaintiffs seek to overturn enduring
 4 election procedures that Arizonans and election administrators have relied on for decades.⁵

5 “How close to an election is too close may depend in part on the nature of the election
 6 law at issue, and how easily the State could make the change without undue collateral effects.
 7 Changes that require complex or disruptive implementation must be ordered earlier than
 8 changes that are easy to implement.” *Merrill v. Milligan*, 142 S. Ct. 879, 881 n.1 (2022)
 9 (Kavanaugh, J., concurring). Making Plaintiffs’ dramatic change to the election process this
 10 late in the game would be disastrous. Many counties have already administered local elections
 11 this year using existing equipment, and all counties are working to prepare for the Primary and
 12 General elections. Forcing counties to hand-count every ballot cast would require herculean
 13 efforts to recruit and hire bipartisan election boards, develop new procedures for a 100% hand
 14 count, train the new workers on these procedures, develop and implement quality control
 15 measures, come up with more funding beyond what they already budgeted for the 2022
 16 elections, and find extensive space where they can perform the hand count. [Hargrove Decl. ¶¶
 17 5-10; Marra Decl. ¶¶ 5-10; Richards Decl. ¶¶ 5-10; Doc. 57-1 ¶¶ 50-57].

18 **B. Enjoining electronic election equipment would cause extreme hardship for**
 19 **election administrators and impair the public interest.**

20 For the same reasons, an injunction would cause significant hardship for Arizona’s
 21 election administrators. It would also create hardship for voters with disabilities who need to
 22
 23

24 ⁵ The *Purcell* principle, of course, “does not supervene other relevant legal considerations
 25 applicable when reviewing the grant or denial of preliminary relief. There may well be cases
 26 where a state election rule is so constitutionally problematic . . . that a federal court must
 intervene, even shortly before an election. But this is not such a case[.]” *Mi Familia Vota v.*
Hobbs, 977 F.3d 948, 953 (9th Cir. 2020).

1 use accessible voting devices to vote independently while preserving their right to a secret
2 ballot. Ariz. Const. art. VII § 1.

3 In contrast, preserving the status quo would impose no hardship on Plaintiffs—they
4 haven't shown that electronic voting systems impose any burden on their right to vote. “And
5 as we rapidly approach the election, the public interest is well served by preserving Arizona’s
6 existing election laws, rather than by sending the State scrambling to implement and to
7 administer a new procedure for [counting] ballots at the eleventh hour.” *Arizona Democratic*
8 *Party v. Hobbs*, 976 F.3d 1081, 1086 (9th Cir. 2020). Indeed, “the public interest favors orderly
9 administration of the election.” *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 954 (9th Cir. 2020).

10 **Conclusion**

11 Plaintiffs cannot succeed on the merits, they will suffer no harm, and their lack of
12 diligence is inexcusable. The Court should deny their Motion, dismiss the Complaint, and
13 award the Secretary her fees and costs.

14 Respectfully submitted this 22nd day of June, 2022.

15 **COPPERSMITH BROCKELMAN PLC**

16 By /s/ Kristen Yost

17 Roopali H. Desai
18 D. Andrew Gaona
19 Kristen Yost

20 **STATES UNITED DEMOCRACY CENTER**

21 Sambo (Bo) Dul
22 Christine Bass *

23 * *Pro Hac Vice*

24 *Attorneys for Defendant Arizona Secretary of State*
25 *Katie Hobbs*
26

EXHIBIT A

DECLARATION OF CONSTANCE HARGROVE

I, CONSTANCE HARGROVE, DECLARE:

1. I am the Elections Director for Pima County. I have served as the Elections Director since April 2022. However, I have served as a Deputy Registrar and an Elections Director in Virginia for 28 years. As Elections Director, I prepare, administer, and conduct federal, state, and local elections in Pima County in compliance with applicable laws and regulations. I report to the County Administrator, who reports directly to the Pima County Board of Supervisors. I am over 18, and if called as a witness, I could and would testify competently to the facts stated herein, all of which is my personal knowledge.

2. Pima County administers elections using electronic voting systems manufactured by Election Systems & Software, LLC ("ES&S"). These systems include the ExpressVote ballot marking device and the DS850 digital scan tabulation machine. ElectionWare is the election management system used to design ballots and program voting equipment. Pima County purchased its current voting system beginning in 2014 with four scanners costing \$682,082 and adding additional scanners and ExpressVotes through 2020 at a total cost of \$2,239,738.

3. We are far along in preparing for the statewide primary election on August 2, 2022, for which military and overseas ballots must be mailed starting June 18, 2022. Early voting for the primary election begins on July 6, 2022, and we are also preparing for the statewide general election on November 8, 2022.

4. Prohibiting electronic or computerized equipment for casting and counting votes would completely upend the administration of elections in Pima County, not just for the August Primary but mainly for the administration of the upcoming November 8, 2022, General Election, given the higher turnout. Conducting a manual election requires significantly more resources

and space. Requiring such a significant and resource-intensive change to how we run elections will create considerable problems for officials administering elections and potentially disenfranchise voters with disabilities. I believe irreparable harm will come from such a change, particularly this late in the process. It would be very disruptive to change course at this point if it were even possible. The following paragraphs describe some examples of the significant problems that would arise.

5. **Staffing.** Hand counting all ballots in the general election will require a substantial increase in temporary staff. The process will require a minimum of 50 bipartisan teams of election workers. The increase in temporary staff will also increase permanent staff to manage the process. It will be challenging, if not impossible, to hire and train enough people to complete a 100% hand count. The August 2 Primary Election has over 1,800 different ballot styles. Each team will need to sort ballots by precinct before they begin counting. Pima County currently has 279 voting precincts. I anticipate a minimum of 50 teams to process early ballots, which can be as many as 460,000 ballots in a general election.

6. **Timing.** Because of the number of races on the ballot and the need to build additional layers of quality control in the counting and aggregation process, a 100% hand count would take a very long time to complete. Sorting early ballots and ballots from vote centers can take days before the teams can begin counting. Almost 90% of ballots in Pima County are voted early. Just to count the small number of ballots cast on election day and not all of the early ballots can take at least a week. To count all of the early ballots as well would take many weeks. The teams will inevitably have to recount batches because of human error. The hand counting process will cause us to miss statutory deadlines. Statutorily, the County must complete its

canvass between six and 20 days after the election, A.R.S. § 16-642(A), and the Secretary of State must complete her canvass by the fourth Monday after the election, A.R.S. § 16-648(A).

7. **Funding.** The Board of Supervisors approves the Elections Department budget, and our budget is set. Under our current budget, I do not have enough funding for a 100% hand count operation. Even if I could get more funding, the additional funding would be significant to Pima County. The County will likely have to cut funding in other areas to accommodate the increased cost.

8. **Operational Logistics.** A 100% hand count operation will also require ample space to house all the bipartisan teams necessary to complete the hand count. The County could potentially lease space to hand count ballots. However, this will create additional security issues. The hand count will require more equipment and supplies (tables, chairs, tally sheets). It will also be critical to physically secure uncounted and counted ballots throughout the process, which would take planning, time, and resources that are not budgeted.

9. **Training.** We have not developed procedures or training materials for a 100% hand count of all races on all ballots. Developing detailed training procedures and material for a 100% hand count will prove difficult. Especially given the many time-sensitive election duties we must complete for this year's primary and general elections. In addition, it is a concern that we will not be able to adequately train the additional temporary staff that would be needed.

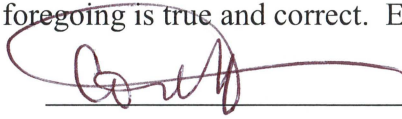
10. **Accuracy.** The November 8, 2022, General Election will involve hundreds of different ballot styles, containing various combinations of races for which voters are eligible to vote. Based on my experience in Virginia with hand-counting ballots in the central absentee precinct, accuracy and efficiency are problematic. During the 2004 Presidential Election, the teams in Virginia struggled to count 3,000 ballots in 16 hours on Election Day. The counting

continued throughout the night with the addition of permanent staff and electoral board members. The group finally reported results after 31 hours of counting and recounting ballots multiple times. Based on my experience and given the inevitability of human error in repetitive tasks, I believe there is no way to ensure an accurate hand count of all races on the ballot, even with quality control measures. Handling ballots multiple times to count each office will compromise accuracy. Skipping an office or an entire ballot becomes more likely with a 100% hand count. The probability of error increases exponentially during a 100% hand count. The teams cannot rerun a batch of ballots through the scanner to get an accurate count as they can with voting equipment. The team will have to recount the batch, ensuring they do not miss over and undervotes.

The lack of time to develop detailed procedures and adequately train the temporary staff to do this work will only exacerbate the error rate.

11. **Serving Voters with Disabilities.** Prohibiting electronic voting machines would also interfere with our ability to serve voters with disabilities in compliance with the Help America Vote Act (HAVA) and state law. Electronic voting machines ensure accessibility at the voting location, allowing voters with disabilities, including physical or visual disabilities, to vote independently and in secret. Prohibiting accessible electronic voting machines would impede these voters' ability to exercise their right to vote. These voters will have to rely on pollworkers to assist them with marking a ballot and compromise their constitutional right to secrecy in voting. Ariz. Const. art. VII, § 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 21, 2022.



Constance Hargrove

EXHIBIT B

DECLARATION OF LISA MARRA

I, LISA MARRA, DECLARE:

1. I am the Elections Director for Cochise County. I have been employed by the County since 2012, and have served as the Elections Director since 2017. As Elections Director, I am responsible for preparing, administering, and conducting federal, state, and local elections in Cochise County in compliance with applicable laws and regulations. I report to the County Administrator, who reports directly to the Cochise County Board of Supervisors. I am over the age of 18, and if called as a witness, I could and would testify competently to the facts stated herein, all of which are within my personal knowledge.

2. To administer our elections, Cochise County uses an electronic voting system comprised of a suite of products manufactured by Election Systems & Software, LLC (“ES&S”), including the Express Vote ballot marking device, the DS200, DS450, and DS850 digital scan tabulation machines, and the ElectionWare election management system. Cochise County purchased its current voting system in 2015, at a cost of approximately \$1,084,621.

3. This year, Cochise County has already successfully administered jurisdictional elections in March 2022 and May 2022 using our current election equipment. We are also far along in preparing for the statewide primary election on August 2, 2022 (for which military and overseas ballots began to be mailed on June 18, 2022). Early voting for the primary election begins on July 6, 2022, and we also are preparing for the statewide general election on November 8, 2022.

4. Prohibiting the use of electronic or computerized equipment for the casting and counting of votes would completely upend the administration of elections in Cochise County, and, particularly, the administration of the upcoming November 8, 2022 general election given

where we are in the election year. Requiring such a significant and resource-intensive change to how we conduct elections, particularly this late in the election year, will create significant problems for officials administering elections and could also confuse and burden voters. I believe irreparable harm would come from forcing such a dramatic change this late in the process. Even if it were possible to change course at this point, doing so would cause severe disruptions. The following paragraphs describe just some examples of the significant problems that would arise.

5. **Staffing.** Hand counting all ballots in the general election would require a huge increase in temporary staff. There is no way that I would be able to hire enough people to complete a hand count of all races on all ballots cast, by bipartisan teams of election workers, in any reasonable amount of time. The general election in November will have up to 55 races. Votes for each race on every ballot would need to be counted and aggregated by hand. It is already hard enough to recruit enough poll workers and temporary election workers to effectively administer the election as it is. It would be impossible to recruit enough additional temporary election workers on top of what we're already working to recruit, with a balance of political party affiliations, to staff a 100% hand count operation.

6. **Timing.** Because of the number of races on the ballot and the need to build in additional layers of quality control in both the counting and aggregation process, a 100% hand count would take very long to complete. Based on my experience, a 100% hand count would take many weeks, if not months. This delay in the counting process would force us to miss mandatory statutory deadlines, including the requirement that the County complete its canvass between six and 20 days after the election (A.R.S. § 16-642(A)), and the requirement that the Secretary of State complete her canvass by the fourth Monday after the election (A.R.S. § 16-648(A)).

7. **Funding.** The County's budget, including the budget for the Elections Department, is approved by the Board of Supervisors and our budget for this year is set. Under our current budget, I do not have enough funding for a 100% hand count operation. Even if I could get more funding, the additional funding required would be massive and I do not believe Cochise County has those financial resources to spare.

8. **Operational Logistics.** A 100% hand count operation would require extensive space, which the County doesn't have, to house all the bipartisan teams necessary to complete the hand count. It would also require equipment and supplies (*e.g.*, tables, chairs, tally sheets, etc.), as well as the means for physically securing ballots throughout the counting process and physically securing the facilities, both of which would take time and resources to secure that the County also doesn't have.

9. **Training.** We have not developed procedures or training materials for a 100% hand count of all races on all ballots. Given where we are in the election year and the many other time-sensitive election duties we must complete for the primary and general election this year, we do not have enough time to develop detailed procedures and training materials, much less to adequately train the army of additional temporary staff that would be needed to carry out a 100% hand count of all races on all ballots.

10. **Accuracy.** The November 8, 2022 general election will involve up to 55 races and 140 different ballot styles, containing different combinations of races for which voters are eligible to vote. Based on my experience and given the inevitability of human error in repetitive tasks, I believe there is no way to ensure an accurate hand count of races on all ballots, even with quality control measures in place. The lack of time to develop detailed procedures and adequately train the temporary staff needed to do this work will only exacerbate the error rate.

11. **Serving Voters with Disabilities.** Prohibiting the use of electronic voting machines would also interfere with our ability to serve voters with disabilities, in compliance with federal and state law. Electronic voting machines ensure accessibility at the voting location, allowing voters with disabilities, including physical or visual disabilities, to vote independently and in secret. Prohibiting the use of accessible electronic voting machines would impede these voters' ability to exercise their right to vote and could put Cochise County in violation of state and federal law.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 20, 2022.



Lisa Marra

EXHIBIT C

DECLARATION OF RAYLEEN RICHARDS

I, RAYLEEN RICHARDS, DECLARE:

1. I am the Elections Director for Navajo County. I have been employed by the County since 2007 and have served as the Elections Director since 2016. As Elections Director, I am responsible for preparing, administering, and conducting federal, state, and local elections in Navajo County in compliance with applicable laws and regulations. I report to the County Administrator, who reports directly to the Navajo County Board of Supervisors. I am over the age of 18, and if called as a witness, I could and would testify competently to the facts stated herein, all of which are within my personal knowledge.

2. To administer our elections, Navajo County uses an electronic voting system comprised of a suite of products manufactured by Election Systems & Software, LLC (“ES&S”), including the Express Vote ballot marking device, the DS450 and DS850 digital scan tabulation machines, and the ElectionWare election management system. Navajo County purchased its current voting system in [2015], at a cost of approximately [\$300,000.00].

3. This year, Navajo County has already successfully administered jurisdictional elections in March 2022 using our current election equipment. We are also far along in preparing for the statewide primary election on August 2, 2022, for which military and overseas ballots began to be mailed on June 18, 2022 and early voting begins on July 6, 2022. We are also in the process of preparing for the statewide general election on November 8, 2022.

4. Prohibiting the use of electronic or computerized equipment for the casting and counting of votes would completely upend the administration of elections in Navajo County, and, particularly, the administration of the upcoming November 8, 2022 general election given where we are in the election year. Requiring such a significant and resource-intensive change to

how we conduct elections, particularly this late in the election year, will create significant problems for officials administering elections and could also confuse and burden voters. I believe irreparable harm would come from forcing such a dramatic change this late in the process. Even if it were possible to change course at this point, doing so would cause severe disruptions. The following paragraphs describe just some examples of the significant problems that would arise.

5. **Staffing.** Hand counting all ballots in the general election would require a huge increase in temporary staff. There is no way that I would be able to hire enough people to complete a hand count of all races on all ballots cast, by bipartisan teams of election workers, in any reasonable amount of time. The general election in November will have up to 50 races. Votes for each race on every ballot would need to be counted and aggregated by hand. It is already hard enough to recruit enough poll workers and temporary election workers to effectively administer the election as it is; it would be impossible to recruit enough additional temporary election workers on top of what we're already working to recruit, with a balance of political party affiliations, to staff a 100% hand count operation.

6. **Timing.** Because of the number of races on the ballot and the need to build in additional layers of quality control in both the counting and aggregation process, a 100% hand count would take very long to complete. Based on my experience, a 100% hand count would take many weeks, if not months. This delay in the counting process would force us to miss mandatory statutory deadlines, including the requirement that the County complete its canvass between six and 20 days after the election (A.R.S. § 16-642(A)), and the requirement that the Secretary of State complete her canvass by the fourth Monday after the election (A.R.S. § 16-648(A)).

7. **Funding.** The County's budget, including the budget for the Elections Department, is approved by the Board of Supervisors and our budget for this year is set. Under our current budget, I do not have enough funding for a 100% hand count operation. Even if I could get more funding, the additional funding required would be massive and I do not believe Navajo County has those financial resources to spare.

8. **Operational Logistics.** A 100% hand count operation would require extensive space, which the County doesn't have, to house all the bipartisan teams necessary to complete the hand count. It would also require equipment and supplies (*e.g.*, tables, chairs, tally sheets, etc.), as well as the means for physically securing ballots throughout the counting process and physically securing the facilities, both of which would take time and resources to secure that the County also doesn't have.

9. **Training.** We have not developed procedures or training materials for a 100% hand count of all races on all ballots. Given where we are in the election year and the many other time-sensitive election duties we must complete for the primary and general election this year, we do not have enough time to develop detailed procedures and training materials, much less to adequately train the army of additional temporary staff that would be needed to carry out a 100% hand count of all races on all ballots.

10. **Accuracy.** The November 8, 2022 general election will include up to 50 races and 100-200 different ballot styles, containing different combinations of races for which voters are eligible to vote. Based on my experience and given the inevitability of human error in repetitive tasks, I believe there is no way to ensure an accurate hand count of races on all ballots, even with quality control measures in place. The lack of time to develop detailed procedures and adequately train the temporary staff needed to do this work will only exacerbate the error rate.

11. **Serving Voters with Disabilities.** Prohibiting the use of electronic voting machines would also interfere with our ability to serve voters with disabilities, in compliance with federal and state law. Electronic voting machines ensure accessibility at the voting location, allowing voters with disabilities, including physical or visual disabilities, to vote independently and in secret. Prohibiting the use of accessible electronic voting machines would impede on these voters' ability to exercise their right to vote and could put Navajo County in violation of state and federal law.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 20, 2022.

A handwritten signature in blue ink that reads "Rayleen Richards". The signature is written in a cursive style and is positioned above a solid horizontal line.

Rayleen Richards