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STATE OF ARIZONA
COUNTY OF MARICOPA

BARRY HESS, Candidate; JUDITH
LEWIS, voter, KAREN JOHNSON,
voter, JOHN D. BRAKEY, voter;
FRANK HENRY, voter; JACK
SCHOLNICK, voter

Plaintiffs,
v.

HELEN PURCELL, Maricopa County
Recorder; Maricopa County Board of
Supervisors, a body politic. FULTON
BROCK, DON STAPLEY, ANDREW
KUNASET, MAX W. WISLON, and
MARY ROSE WILCOX, Supervisors,
Maricopa County Board of Supervisors,

Defendants.

Case No.

SPECIAL ACTION
(MANDAMUS AND INJUNCTIVE RELIEF
REQUESTED)

(Assigned to Hon.)

Pursuant to Rule 4, Arizona Rules of Procedure for Special Action, BARRY HESS, JUDITH LEWIS, KAREN JOHNSON, JOHN D. BRAKEY, FRANK HENRY and JACK SCHOLNICK by and through their attorney Brad Roach hereby request Special Action Relief against the Defendants named above for the reasons set forth in the attached Petition.

RESPECTFULLY SUBMITTED this ____ day of August, 2010.

ROACH LAW FIRM, LLC

Brad Roach
Attorney for Plaintiffs

The Plaintiffs allege:

GENERAL ALLEGATIONS

1. Plaintiff Barry Hess is a certified candidate for Arizona Governor for the Libertarian Party and a qualified elector in Maricopa County.
2. Plaintiff Judith Lewis is a registered voter in Maricopa County.
3. Plaintiff Former Senator Karen Johnson is a registered voter in Navajo county.
4. Plaintiff John D. Brakey is a registered voter in Pima County.
5. Plaintiff Frank Henry is a registered voter in Yavapai County.
6. Plaintiff Jack Scholnick is a registered voter in Santa Cruz County.
7. All Plaintiffs have an interest in the outcome of the August 24, 2010 primary election and the November 2nd, 2010 general election. All Plaintiffs want the elections held in Maricopa County to follow state mandated procedures for accuracy, security and transparency.
8. All Arizona electors have the legal right to have their votes accurately counted with equal weight regardless of which county their vote is cast.
9. Violating mandatory security provisions in any county endangers the effective suffrage of all electors in all counties.
10. All plaintiffs will suffer irreparable harm if Maricopa County conducts its state mandated elections on August 24th 2010 and November 2nd 2010 without legally required procedures ensuring accuracy, transparency and security.
11. Plaintiffs do not have a remedy at law for these violations. Elections may be contested after the canvass only if specific allegations demonstrate how the outcome would have been different and these specific allegations must be made within five days of the canvass. Such a challenge is impossible as a factual matter for many reasons including Maricopa

County's refusal to release necessary computer data following all elections.

12. Defendant Helen Purcell is sued solely in her official capacity as Maricopa County Recorder. Defendant Maricopa County Board of Supervisors is a body politic. Defendants Fulton Brock, Don Stapley, Andrew Kunaset, Max W. Wilson, and Mary Rose Wilcox are sued solely in their respective capacities as Maricopa County Supervisors.
13. The Maricopa County Board of Supervisors ("BOS") is statutorily tasked with the responsibility of administering elections within Maricopa County.
14. The BOS has entered into an intergovernmental agreement with the Maricopa County Recorder, ceding the Recorder with oversight responsibilities of the Elections Department. Those legal duties, by statute, remain with the Board of Supervisors.
15. Procedures for conduction elections and tabulating results are defined in A.R.S. §§16-400 *et seq.*
16. The Arizona Secretary of State is required to prescribe rules to achieve and maintain the maximum degree of correctness, uniformity and efficiency in the procedures for voting, and for producing, distributing, collecting, counting, tabulating and storing ballots. These uniform rules are prescribed in an official instructions and procedures manual which have been approved by both the governor and attorney general per A.R.S. §§ 16-452. Per that section, any violation if these adopted rules is a class 2 misdemeanor unless the violation of rules is specified as a more significant crime per statute. The latest revision of this manual is dated May of 2010; all allegations herein relating to violations of the state-standard procedures manual (usually by page number or the like) refer to this May edition approved by the Secretary of State, Governor and Attorney General.
17. The plaintiffs allege in their petition that the defendants are not performing several acts which the law specifically impress as a duty resulting from their office, trust or statute

related to voting and ballot security requirements. The plaintiffs are beneficially interested as electors and/or candidates. They do not have a plain, adequate or speedy remedy at law for the violations alleged herein.

18. Plaintiffs request reasonable attorney fees, costs and other expenses pursuant to A.R.S. §§ 12-2021 et. seq. and private attorney general theory of recovery of such expenses pursuant to A.R.S. §§ 12-2030(b) fees and other expenses including the reasonable expenses of expert witnesses, the reasonable cost of any study, analysis, report, test or project necessary for preparation of plaintiff's case, plus reasonable and necessary attorney's fees.

SPECIFIC ALLEGATIONS

19. Defendants have not ordered nor intend to instruct their pollworkers to sign the polltapes (also known as "results tapes") that are printed by the precinct electronic voting machines, in violation of the state-standard procedures manual at page 144 under the subsection "keypad". The procedures manual is binding under law pursuant to A.R.S. §§ 16-452. See Exhibit A, Maricopa Board Workers Manual, page 41 and Secretary of State polling procedures manual, pages 144. *nb.* Exhibit B, Maricopa Board Workers Manual, p. 44, item 13 where instruction is given on other areas for pollworkers to sign.
20. Defendants have ordered properly credentialed party observers in recent past elections not to observe the central tabulator systems, in violation of the state-standard procedures manual at page 105 the list of items the observers are specifically allowed to see by law. Plaintiffs allege defendants intent to continue this illegal practice. The procedures manual is established as binding under law at A.R.S. §§ 16-452 and this violation is defined as a class 2 misdemeanor.
21. Defendants have installed software on their secure vote processing electronic systems for the specific purpose of communicating critical vote totals over the Internet over

cellular communication networks (“cellular modems” or a “tethered cellphone”), in violation of the state-standard procedures manual at section “Election Management System Security” on page 87, items 6 and 7. The procedures manual is established as binding under law at A.R.S. §§ 16-452 and this violation is defined as a class 2 misdemeanor. Plaintiffs allege that use of such software and related cellular communication hardware is insecure and unlawful.

22. Defendants have in the past and intend to use in the future uncertified software on the certified election management system (“central tabulator”) in violation of A.R.S. §§ 16-442, which is defined as a class 5 felony.
23. Defendants have prevented polling place observers including official precinct observers present after the close of polls to look at or photograph the polltapes (“results tapes”) produced by the electronic voting machines at the end of the day. This is in violation of A.R.S. §§ 16-601.
24. Defendants have ordered their pollworkers for this election for this election not to place the polltapes (“results tapes” that should be signed) produced by the electronic voting machines into the sealed “official returns envelope”. This sealed envelope is there to be preserved in case of a challenge. See also A.R.S. §§ 16-615, 16-622 and 16-624, and the official election procedures manual at page 203 showing that the secure storage of these materials is in case of a challenge. Violations of election procedures are generally class 6 felonies unless otherwise specified, per A.R.S. §§ 16-1010.
25. Defendants have ordered their pollworkers for this election to continue the past unlawful practice of bringing critical ballot material back from the polling places at the end of election day with one person only. Such a procedure is in violation of the procedures manual page 146 under “Final Closing of the Polling Place”, which requires two persons transport the ballot material. See Exhibit B, Maricopa Board Workers

Manual, page 42 and Secretary of State poling procedures manual, pages 144-145.

26. Respondents have chosen in previous elections and intend for this election to produce reports of election totals that do not segregate the vote totals by type, particularly mail-in, precinct and provisional totals. This procedure violates the implicit right to observe the election process (both as political observers and public observers) as outlined across the entire election process in the May 2010 state-standard procedures manuals and numerous sections of the Arizona Revised Statutes such as 16-602, 16-621 and 16-447. In addition, the mandate to provide totals of votes and ballots cast by precinct at A.R.S. §§ 16-646 pre-dates the implementation of widespread mail-in voting; the mail-in votes are processed as a distinct type of precinct and a failure to report on those mail-in votes separately violates the goal of process transparency at 16-646. Finally, A.R.S. §§ 16-452 creating the state-standard procedures and manual does so for the purpose (in part) of producing uniform vote totals statewide. Pima, Pinal and all other counties that the plaintiffs are aware of produce vote totals separating the mail-in and precinct vote totals by precinct. Maricopa does not. This breakdown in uniformity is therefore both illegal and blocks a key transparency provision. Respondents have chosen in previous elections and intend to continue in this election to select (for hand auditing) precincts, auditable mail-in vote batches and races *before* publishing complete unofficial vote totals, in violation of A.R.S. §§ 16-602 paragraph B1. Violations of election procedures are generally class 6 felony unless otherwise specified, per A.R.S. §§ 16-1010.

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

1. Issuing an injunction mandating that the Defendants order their pollworkers to sign all

polltapes printed by the touchscreen and optical scan electronic voting machines.

2. Issuing an injunction mandating that the Defendants order their central tabulator management team to allow complete observation by political party observers or candidate/issue representatives of all electronic systems and system components over which ballot totals information travels or is processed.
3. Issuing an injunction mandating that the Defendants order their staff to halt any Internet communications in the election process and remove any software designed to facilitate such communications.
4. Issuing an injunction mandating that the Defendants order their staff to halt the use of any illegal and uncertified software and the data generated by that software.
5. Issuing an injunction mandating that the Defendants order their pollworkers to allow voters to inspect the polltapes after the post-polls-close procedure, and photograph or videotape them if desired.
6. Issuing an injunction mandating that the Defendants order their pollworkers to place one signed polltape (“results tape”) into the sealed official returns envelope on election night.
7. Issuing an injunction mandating that the Defendants order their pollworkers to transport election materials with two people, rather than just one.
8. Issuing an injunction mandating that the Defendants produce unofficial and final (official) vote totals segregated by both type and precinct where “type” means precinct voting, mail-in voting and provisional voting.
9. For their costs, expenses and reasonable attorney’s fees incurred herein.
10. For such relief as is just upon the presentation of evidence.

RESPECTFULLY SUBMITTED this 16th day of August, 2010.

ROACH LAW FIRM, LLC

Brad Roach
Attorney for Plaintiffs