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16 \*Pro hac motion forthcoming  
17 *Attorneys for Plaintiffs*

18 **SUPERIOR COURT OF THE STATE OF ARIZONA**  
19 **FOR THE COUNTY OF MARICOPA**

20 LAURIE AGUILERA, a registered voter in  
21 Maricopa County, Arizona; DONOVAN  
22 DROBINA, a registered voter in Maricopa  
23 County, Arizona;

24 *Plaintiffs,*

25 v.

26 ADRIAN FONTES, in his official capacity as  
27 Maricopa County Recorder; CLINT  
28 HICKMAN, JACK SELLERS, STEVE  
CHUCRI, BILL GATES AND STEVE  
GALLARDO, in their official capacities as  
members of the Maricopa County Board of  
Supervisors; MARICOPA COUNTY, a  
political subdivision of the State of Arizona;

*Defendants.*

Case No. CV2020-014562

**PLAINTIFFS' RESPONSE TO  
INTERVENOR'S MOTION TO  
DISMISS**

1 Come now Plaintiffs, Laurie Aguilera and Donovan Drobina, and submit their  
 2 response to the Intervenor Arizona Democratic Party’s (“Intervenor”) Motion to Dismiss.  
 3 Intervenor, recognizing that the black letter law is not on its side, seeks dismissal by wildly  
 4 attempting to characterize Plaintiffs’ vote denial and other claims as “fringe,” “absurd” and  
 5 conspiratorial. Intervenor’s motion misstates the allegations and misstates the law. For  
 6 these and other reasons identified below, Intervenor’s motion should be denied.

7 **I. Any Arizona Voter Has Standing to Challenge Violations of Arizona**  
 8 **Election Law. Even if Plaintiffs Have to Demonstrate a Particularized**  
 9 **Concern Beyond This To Establish Standing, Which they Do Not, They**  
 10 **Can Do So.**

11 To establish standing, a party must first establish “a causal nexus between the  
 12 defendant's conduct and [their] injury.” *Arizonans for Second Chances, Rehab., & Pub.*  
 13 *Safety v. Hobbs*, 471 P.3d 607 (Ariz. 2020) (internal citations omitted). “This requirement  
 14 is a low bar and easily shown if there is a direct relationship between the plaintiff and the  
 15 defendant with respect to the conduct at issue.” *Id.* (citations omitted).

16 Plaintiffs, as Arizona citizens and voters, have a beneficial interest in whether their  
 17 ballots were correctly counted, as well as counted by a system capable of automatically  
 18 reading every properly-cast ballot with perfect accuracy as state law requires, and thus have  
 19 standing to bring claims that allege their rights were violated. See *Ariz. Pub. Integrity All.*  
 20 *v. Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at \*6-7 (Nov. 5, 2020).  
 21 Moreover, the Arizona Supreme Court has expressly found that plaintiffs who bring an  
 22 action to “determine the extent of a state official’s legal duties” and who seek both  
 23 declaratory and injunctive relief, have standing because every voter has standing to bring  
 24 claims that public officials have violated Arizona election law. *Id.*<sup>1</sup>

25 In addition, District of Arizona has recently opined that, under Arizona law, where  
 26 Plaintiffs are voters whose right to vote has been denied or their lawfully cast votes have  
 27 not been counted, they have standing to bring their claims. See *Mecinas v. Hobbs*, No.  
 28 *CV-19-05547-PHX-DJH*, 2020 U.S. Dist. LEXIS 111841, at \*20 (D. Ariz. June 25, 2020).

<sup>1</sup> Intervenor seems not to recognize that “Does I-X” are not “fictional plaintiffs” but common placeholders for additional plaintiffs that may be added later to a suit.

1 In this case, Plaintiff Aguilera’s claim that she was denied the right to vote by being refused  
2 the opportunity to cure her ballot is a “distinct and palpable” injury that is directly  
3 connected to the actions of Defendants. Notably, Intervenor’s motion misstates the claim:  
4 Ms. Aguilera is not seeking to vote twice- she seeks the opportunity to cure her ballot, an  
5 opportunity she was denied on election day after her ballot was cancelled. Because Plaintiff  
6 Aguilera was directly disenfranchised by Defendants through the voting system and  
7 procedures they managed, she has standing to bring her claims in this Court.

8 Plaintiff Drobina claims that his ballot was physically rejected multiple times by  
9 Defendants’ choice of vote tabulating equipment, rendering his properly marked ballot  
10 unreadable by the automated machine. Plaintiff Drobina’s claim stems directly from the  
11 decisions made by Defendants to lease tabulators that were not able to process his ballot  
12 although he marked it as instructed. Plaintiffs, as Arizona citizens and voters, have a  
13 beneficial interest in whether their ballots were both correctly and automatically counted  
14 as state law requires, and thus doubly have standing to bring claims that allege their rights  
15 were violated, as well as violations of state election law. See *Ariz. Pub. Integrity All. v.*  
16 *Fontes*, No. CV-20-0253-AP/EL, 2020 Ariz. LEXIS 309, at \*6-7 (Nov. 5, 2020).

17 As to the relief each seeks, Ms. Aguilera seeks, among other things, remedial relief  
18 which is to be able to cure her ballot and have her vote counted, as well as prospective  
19 injunctive relief that would ensure Defendants bring their voting system into compliance  
20 by the next election so that her properly marked ballot is not rejected by the voting system  
21 again. Mr. Drobina seeks, among other things, declaratory relief that recognizes the  
22 violations of state law that occurred which directly interfered with his right to have his  
23 ballot –his entire ballot—accurately and automatically counted. Because each plaintiff has  
24 alleged a palpable injury that is connected to the actions of Defendants, and have injuries  
25 that are redressable, they have standing to bring their claims.

26 **II. Intervenor’s Argument that Plaintiffs Failed to State a Claim is Based**  
27 **on its Misstatement of Law and Should Be Rejected.**  
28

1 Intervenor’s motion misconstrues state law governing how ballots are to be counted,  
2 and then bases the whole of its argument on its erroneous interpretation. Contrary to  
3 Intervenor’s assertions, while Arizona Revised Statute § 16-621(A) does indeed  
4 contemplate that some ballots will require off-site manual tabulation, Intervenors fail to  
5 mention that those ballots are *only* those deemed to be “damaged or defective[,]” A.R.S. §  
6 16-621(A), or those cast by voters who failed to follow the instructions provided by  
7 Defendants. A.R.S. § 16-446(B)(6). In other words, an undamaged ballot completed  
8 according to the instructions should be read accurately and without fail by the County’s  
9 tabulation equipment.

10 What is apparent is, that, contrary to Intervenor’s suggestion, the manual duplication  
11 and off-site counting of ballots is the exception, and the not the rule. It is reserved for  
12 damaged ballots and ballots where a voter has failed to follow Defendants’ instructions,  
13 not properly marked ballots like Plaintiffs’ ballots.<sup>2</sup> Put another way, neither the law nor  
14 the written procedures contemplate that properly marked ballots, like those at issue in this  
15 case, would be sent to be manually duplicated off-site.

16 This is because voters do, in fact, have a right to have their votes be both  
17 automatically and accurately counted at the time they cast their ballot. A.R.S. § 16-  
18 446(B)(6). If that were not true, then the entire expense and complexities of vote tabulation  
19 and on-site tabulators would be completely pointless. If Intervenors are right, then all  
20 polling locations would be nothing more than drop boxes for ballots to be shipped off  
21 elsewhere to be counted. Intervenor’s careless assertions that voters do not have a right to  
22 have their votes counted “onsite” or that it doesn’t matter whether the votes are counted in  
23 front of the voter at the polling site or later at a central counting facility are simply wrong.  
24 It is akin to stating that no one has the right to ensure their ballot is delivered and counted,  
25 yet that is precisely why ballot-harvesting is debated and highly regulated if even allowed.  
26 Voters have the right to have their ballots counted, and to know they have been counted,  
27 which is why Plaintiffs chose to vote in-person, and not take a chance on mailing it off and

28 <sup>2</sup> It is also designed to address ballots cast by voters who were without access to an on-site  
tabulation machine in counties that do not utilize electronic voting systems.

1 hoping it will be received and counted. In addition, counting of a ballot by an impartial  
2 machine certified to have perfect accuracy is inherently superior to counting by fallible  
3 human beings so what matters ultimately is not just that ballots are counted, but are counted  
4 according to the best practices set forth in the law.

5 Because Intervenors have not presented a legally supported argument, nor display a  
6 grasp of voting rights, as to how Plaintiffs failed to state a claim in this vote-denial action,  
7 Intervenor’s argument should be rejected. In addition, despite being given leave to file a  
8 separate brief, and despite claiming, in their motion to intervene, a unique interest in  
9 preventing public access to the counting center, Intervenor, like Defendants, fails to  
10 address Plaintiff’s sixth cause of action concerning the unlawful denial of the public’s right  
11 to access the facility where electronic adjudication is taking place. This provides an  
12 additional reason to deny their motion.

13 **CONCLUSION**

14 For all of the foregoing reasons, Intervenor’s motion to dismiss should be denied.

15  
16 Respectfully submitted this 18<sup>th</sup> day of November, 2020.

17  
18 By /s/Alexander Kolodin

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25 **I CERTIFY** that a copy of this document will be served upon any opposing parties in  
26 conformity with the applicable rule of procedure.

27 By /s/Alexander Kolodin

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