No. 22-16413

In the
United States Court of Appeals for the Ninth Circuit

KARI LAKE, MARK FINCHEM,
Plaintiffs-Appellants,
v.
KATHLEEN HOBBS, as Secretary of State, *ET AL.*,
Defendants-Appellees.

On Appeal from the
United States District Court for
the District of Arizona

Brief *Amicus Curiae* of Maricopa County Republican Committee, Georgia Republican Party, Inc., Republican State Committee of Delaware, Kansas Republican Party, Republican Party of New Mexico, and Nebraska Republican Party in Support of Plaintiffs-Appellants' Motion to Recall Mandate

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DISCLOSURE STATEMENT

The *amici curiae* herein, Maricopa County Republican Committee, Georgia Republican Party, Inc., Republican State Committee of Delaware, Kansas Republican Party, Republican Party of New Mexico, and Nebraska Republican Party, through their undersigned counsel, submit this Disclosure Statement pursuant to Federal Rules of Appellate Procedure 26.1. None of these *amici curiae* has stock, and none has any parent which is a publicly traded company.

s/Jeremiah L. Morgan
Jeremiah L. Morgan

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INTEREST OF *AMICI CURIAE*[1]

The interest of the *amici curiae* is set forth in the motion for leave to file accompanying this *amicus* brief.

STATEMENT OF THE CASE

The Parties. Appellant/Movant Kari Lake was the Republican candidate for Governor of Arizona in 2022, running against Democrat candidate Katie Hobbs. Hobbs was then serving as Arizona's Secretary of State with statutory responsibility to ensure elections are conducted lawfully. Hobbs certified herself as the victor by a margin of a mere 17,117 votes out of over 2.55 million votes cast. That same year, Appellant/Movant Mark Finchem was the Republican candidate for Secretary of State, running against Democrat candidate Adrian Fontes, who Hobbs declared to be the winner by a margin of 120,208 votes.

Proceedings. On April 22, 2022, after learning that Arizona's elections were being administered in violation of state law, Lake and Finchem filed a Complaint against then-Secretary of State Hobbs and the Boards of Supervisors for Maricopa and Pima Counties in U.S. District Court for the District of Arizona. On June 15, 2022, Lake and Finchem followed with a motion for preliminary

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[1] No party's counsel authored the brief in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting the brief. No person other than these *amici curiae*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

injunction, which was heard on July 21, 2022 — 12 days before the primary election and three and one-half months before the general election.

On August 26, 2022, three weeks after the August 2 primary election, the district court granted Appellees' motion to dismiss, asserting that Appellants lacked standing because "'speculative allegations that voting machines may be hackable are insufficient to establish an injury in fact under Article III.'" *Lake v. Fontes*, 83 F.4th 1199, 1201 (9th Cir. 2023). On October 16, 2023, this Court, in a *per curiam* opinion, affirmed the district court's dismissal based on standing.[2] On March 14, 2024, Appellants filed a Petition for Certiorari in the U.S. Supreme Court, as the serious election problems that occurred in 2022 were being repeated in 2024, where Lake is a candidate for the U.S. Senate and Finchem is a candidate for the Arizona State Senate, District 1 seat. The petition was denied.

Motion to Recall Mandate. On June 6, 2024, Appellants filed their Motion to Recall Mandate. This *amicus* brief is being filed in support of that Motion. (Page references here are to Appellants' Corrected Motion.)

[2] Appellant Lake later challenged the outcome of the general election in Arizona state court.

STATEMENT

Among the most distasteful aspects of living in a constitutional republic is coming to the realization that some politicians and elected officials, shall we say, prioritize winning too highly. It is even more distasteful to realize that some lawyers share that same weakness. While we must entrust the conduct of elections and vote counting to elected officials, it cannot be assumed they will always act as disinterested parties. After all, elected officials are merely politicians who were successful in the last election. And, although it is tempting for the Judicial Branch to view this as a problem for the political branches to solve, that would be no answer at all, for it is the political branches that conduct the elections by which politicians are elected to office. In our system, it falls to the judiciary to ensure that the political branches are not allowed to use their governmental powers in conducting elections unlawfully to benefit themselves and their political allies.

The 2022 election for Governor of Arizona was a classic case of the fox guarding the hen house. The Secretary of State, with statutory authority to administer elections, was a candidate for Governor, and declared herself the victor by a tiny margin in a hotly disputed election. Then, evidence provided by that same Secretary of State and her successor assured the courts of the integrity of the

election which she supervised. In such cases, the duty of the Judiciary to ensure that election challenges are given full consideration is particularly acute.

It would be unrealistic to assume that Americans would never engage in election fraud. Election fraud has long been part of American politics. Highly regarded journalist Seymour Hersh has carefully studied the 1960 presidential election in which Chicago vote counters reported that John F. Kennedy defeated Richard Nixon in Illinois, but by fewer that 9,400 votes.[3] Six decades later, election fraud is not unheard of, even in Arizona, as since 2020, there have been at least 10 convictions for absentee ballot fraud or ineligible voting in Arizona, including elected officials.[4]

In a survey conducted earlier this year, veteran pollster Scott Rasmussen asked Americans:

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[3] Hersh writes about the Illinois election: "The turnout in Chicago was high, as usual: more than 89 percent of the eligible voters voted, or were recorded as having voted.... He won Chicago by 456,312 votes.... At the time, Kennedy's huge Chicago margin was widely considered suspect, even by the newly elected president.... Nixon had no illusions about what happened in Illinois, but he chose not to demand a recount.... The recount in Illinois was in the hands of the Democratic Party, and would not have come close to telling the real story of the election." S. Hersh, The Dark Side of Camelot at 132-34 (Back Bay Books: 1998).

[4] *See* "Election Fraud Cases," *Heritage Foundation*; *see also* Arizona Attorney General, "Guillermina Fuentes Enters Guilty Plea in Yuma County Ballot Harvesting Case" (June 2, 2022).

> "Suppose that your favorite candidate loses a close election. However, people on the campaign know that they can win by cheating without being caught. Would you rather have your candidate win by cheating or lose by playing fair?"

Among **all Americans**, just **7 percent** said they would want their candidate to win by cheating. But that number rose to **35 percent** among the **elite 1 percent** of Americans who make over $150,000 a year, live in densely populated areas, and have postgraduate degrees. And, from that elite 1 percent, he identified those persons who were part of the **politically obsessed 1 percent**, who talk about politics every day. In that third group, **69 percent** admitted to being willing to cheat. Rasmussen stated: "'I've been polling for a very long time and the last finding is the most terrifying poll result I've ever seen.'"[5]

Lest anyone think that these survey results are less reliable because they report what people might do, consider what they have done. A Rasmussen Reports/Heartland Institute survey in December found that more than **20 percent** of voters who used mail-in ballots in 2020 admit they participated in at least one form of election fraud.[6]

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[5] R. Bluey, "'Most Terrifying Poll Result I've Ever Seen': Scott Rasmussen Surveys America's Elite 1%," *The Daily Signal* (Mar. 21, 2024).

[6] *See* "Election 2024: Would You Cheat to Win? 28% Say 'Yes,'" *Rasmussen Reports* (Apr. 16, 2024).

Our entire system of representative government is predicated on the notion that the person who gets the most votes wins the election. However, a large segment of America no longer believes the electoral system is reliable. This is true for both parties. A Washington Post-University of Maryland poll from December 2023 found that 36 percent of respondents viewed Joe Biden's 2020 win as illegitimate, while the same poll in October 2017 had showed 42 percent of voters believed that Trump's 2016 win was illegitimate.[7] The public's level of suspicion cannot be lessened by deriding those who question election results as election deniers, but can only be addressed in a meaningful way when voters see that election challenges are taken seriously.

ARGUMENT

I. THE JUDICIARY IS THE FINAL GUARDIAN OF FREE AND FAIR ELECTIONS.

The most basic requirement for a fair election is that the legislature's directions for the conduct of that election be faithfully followed by state and county officials. As the Wisconsin Supreme Court noted in overturning a decision by election officials to install unmanned ballot drop boxes in violation of state election law:

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[7] Washington Post-University of Maryland poll (December 2023).

> If the right to vote is to have any meaning at all, elections must be conducted according to law.... The right to vote presupposes the rule of law governs elections. If elections are conducted outside of the law, the people have not conferred their consent on the government. Such elections are unlawful and their results are illegitimate. [*Teigen v. Wis. Elections Comm'n*, 2022 WI 64, P22-P23 (Wisc. 2022).]

The Wisconsin court correctly understood that: "Unlawfully conducted elections threaten to diminish or even eliminate some voices, destabilizing the very foundation of free government." *Id.* at P31. If statutory requirements for elections are violated by government officials, the public cannot have any confidence in the reported results. Fortunately, state and federal law allow challenges to elections to be brought, litigated, and decided by an independent judiciary. However, if during such litigation false information is provided to the courts to cover up the statutory violations, it becomes the solemn duty of the judiciary to act. The judiciary must ensure that fraud in the conduct of election litigation is not allowed to cover up and compound fraud that occurred in the conduct of the election. It should not matter how many months after an election is held that the fraud is discovered, because that generally shows less about the diligence of challengers and more about the skill of government officials in hiding their malfeasance — a skill set for which they must not be rewarded. Delay in discovery does not relieve the courts of their duty to unearth and address both types of fraud.

In 2022, the individual with primary authority for complying with state law was Arizona Secretary of State Katie Hobbs, who also was a candidate for Governor of Arizona. Hobbs declined to either resign or recuse from the supervision of the election in order to avoid any conflict of interest or the appearance of impropriety.[8] As it turned out, it was Secretary of State Katie Hobbs who declared herself to have been elected Governor in an astonishingly close election decided by 17,117 votes. Although there is nothing *per se* illegal about a candidate supervising her own election, serious allegations about election irregularities that occurred in an election conducted by a candidate with a vested interest in the outcome deserves and requires close scrutiny by the judiciary.

II. APPELLANTS SEEK TO RECALL THE MANDATE BASED ON COMPELLING NEW EVIDENCE THAT THE APPELLEES MISLED THIS COURT ABOUT COMPLIANCE WITH ARIZONA ELECTION LAW.

Appellant Kari Lake, whom Hobbs declared herself to have defeated, acted diligently before the election to challenge in federal district court the manner in which that election was being conducted. Defending Lake's litigation challenge against Arizona was Secretary of State Hobbs, until she was sworn in as Governor. At that point, Lake's litigation challenge was defended by Fontes, Hobbs' running

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[8] *See* E. Collins, "Katie Hobbs Again Rejects Kari Lake's Call to Recuse Herself from Oversight of Arizona Race," *Wall Street Journal* (Nov. 7, 2022).

mate, whom Hobbs declared to have defeated Appellant Mark Finchem, by another remarkably small margin.

To state the obvious, if the conduct of the 2022 election had been exposed as unlawful, it likely would have resulted in unseating both Hobbs and Fontes. Thus, the office of the Arizona Secretary of State, both before and after the election, was held by two persons with personal, political, vested interests in the outcome of the election. Hobbs and Fontes were the persons primarily relied upon by the Court for ensuring truthful responses to discovery and accurate and honest pleadings. Appellants have now learned that false information about the conduct of the election provided by Hobbs and Fontes led the district court, this Court, and the U.S. Supreme Court to decisions which now must be examined.

Appellees' fabrications in court, as set out in the Motion and summarized here, appear to have been designed to hide their violation of two fundamental requirements of Arizona election law enacted by the legislature to ensure an accurate vote count.

A. Use of Certified Machines.

1. Statutory Requirement. Arizona election law requires the Secretary of State to follow certain procedures with respect to any voting machines that may be used. *See* A.R.S. §16-442(A)-(C). Among the requirements is that:

> Machines or devices used at any election for federal, state or county offices may only be **certified** for use in this state and may only be used in this state if they comply with the **help America vote act of 2002** and if those machines or devices have been **tested and approved by a laboratory that is accredited** pursuant to the help America vote act of 2002. [A.R.S. §16-442(B) (emphasis added).]

2. Statutory Violation. Maricopa County violated this requirement.

Appellants provided evidence from a cyber expert, Clay Parikh, explaining:

> [The] election software Maricopa County used in the ... 2022 General Elections is an uncertified home-brew version that [alters] the approved and certified Democracy Suite 5.5B. This configuration **has not been tested** by the VSTL Pro V&V, nor been certified by the EAC, and **has not been certified** for use in Arizona by the Secretary of State. [Appellants' Corrected Motion to Recall Mandate ("Motion") at 4-5 (quoting Declaration of Clay U. Parikh, ¶20) (emphasis added).]

3. False Claims. When the election was challenged, Appellees made false claims about complying with this statute:

> [I]n opposing Appellants' motion for a preliminary injunction, Maricopa submitted the *sworn testimony* of its **Co-Director of Maricopa Elections, Scott Jarrett**, who testified ...
>
> First, Jarrett testified that Maricopa used Dominion Voting Systems Democracy Suite 5.5B election software "**certified** by the Election Assistance Commission for use in elections on September 10, 2019" **in the configuration shown** "at https://www.eac.gov/votingequipment/democracy-suite-55b-modification." Jarrett Decl. ¶¶5-10 (ECF #57-1).... Jarrett also testified that the SoS "approved Dominion Democracy Suite 5.5B for use in Arizona on November 5, 2019. *Id.* at ¶13. [Motion at 2-3 (bold added, italics original).]

4. Judicial Reliance. This Court, hearing the appeal, relied on Appellees' representations in affirming the dismissal of Appellants' challenge to the election, believing that the systems had been certified as required by law:

> Before being **certified** for use in elections, the tabulation machines are tested by an accredited laboratory and the Secretary of State's Certification Committee. Ariz. Rev. Stat. § 16-442…. Ariz. Rev. Stat. § 16-449; Ariz. Sec'y of State, 2019 Election Procedures Manual ("2019 EPM") at 86. [*Lake v. Fontes* at 1202 (emphasis added).]

B. Logic & Accuracy Testing.

1. Statutory Requirement. Arizona election law also requires that equipment and programs be tested. Specifically, it requires:

> the secretary of state, shall have the automatic tabulating equipment and programs **tested** to ascertain that the equipment and programs will correctly count the votes cast for all offices and on all measures.... Electronic ballot tabulating systems shall be **tested for logic and accuracy** within seven days before their use for early balloting.... [A.R.S. §16-449(A)-(B) (emphasis added).]

2. Statutory Violation. Appellees' violation of this statutory requirement was explained by cyber expert Clay Parikh:

> Maricopa did not conduct statutorily mandated pre-election L&A testing on any of its vote-center tabulators prior to the November 2020 election.... Parikh Decl. ¶¶30-41 (Add:76a-79a). Instead, Maricopa **L&A tested only five spare tabulators in connection with the 2020 election**. *Id.* ¶34 (Add:77a). Likewise, Maricopa's pre-election L&A testing covered only five spare tabulators for the November 2022 election. *Id.* [Motion at 6 (emphasis added).]

3. False Claims. When the election was challenged, Appellees made false claims about complying with this statute:

> **Jarrett testified that Maricopa conducted L&A testing** "to ensure the tabulation equipment is accurately counting the ballots as programmed." *Id.* at ¶15. Maricopa also submitted a detailed chart in its motion to dismiss claiming its election software is "U.S. EAC and AZ SOS certified" and its tabulators are logic-and-accuracy tested. Maricopa Mot. to Dismiss, at 3 (June 7, 2022) (ECF #27).... Similarly, Secretary Fontes captioned an entire section of its brief to this Court as "**All** Electronic Voting Systems, Tabulation Equipment, And BMDs For The 2022 Elections **Were Tested And Certified**." Fontes Br. at pp. 10-11 (Mar. 30, 2023). Fontes stated in the same brief that: "**Each** of Arizona's fifteen counties perform **logic and accuracy testing** on vote tabulating equipment before and after an election." *Id.* at 9 (citing 2019 EPM at 86). [Motion at 3-4 (emphasis added).]

4. Judicial Reliance. When the election was challenged, this Court expressly relied on those false claims:

> Before being certified for use in elections … [t]he certified machines are then subjected to **pre-election logic and accuracy tests** by the Secretary of State and the election officials of each county. Ariz. Rev. Stat. § 16-449; Ariz. Sec'y of State, 2019 Election Procedures Manual ("2019 EPM") at 86. [*Lake v. Fontes* at 1202 (emphasis added).]

In their Motion to Recall Mandate, Appellants have demonstrated (i) that Appellees violated two different but related statutory requirements, (ii) that Appellees made false representations to the Court that they had complied with those requirements, and (iii) that this Court relied on those representations to reach its decision. A decision on that basis cannot be allowed to stand.

III. APPELLEES' MISREPRESENTATIONS TO THIS COURT UNDERCUT THE INTEGRITY OF ELECTIONS, AND THIS COURT SHOULD RECALL ITS MANDATE.

Appellants' Motion to Recall Mandate asks this Court to exercise an authority which courts have had since common law to correct final orders under certain conditions. Although neither Rule 41 nor any other Rule in the Federal Rules of Appellate Procedure addresses recall of the mandate once it has been issued, the power to recall the mandate is inherent in the powers of the courts of appeals. "Although some Justices have expressed doubt on the point, the courts of appeals are recognized to have an inherent power to recall their mandates, subject to review for an abuse of discretion." *Calderon v. Thompson*, 523 U.S. 538, 549 (1998) (citations omitted). Furthermore, this Court's Circuit Rules explicitly recognize this implicit power, requiring a petition for rehearing to be accompanied by a motion to recall the mandate if it has already issued. *See* Circuit Rule 40-2. A motion to recall the mandate is also referenced in the Circuit Advisory Committee Note to Rule 41-1.

These *amici* believe that Appellants' Motion is well supported, based on two knowingly false claims by Appellees, as discussed in Section II, *supra*. *See also* Motion at 1. This Court previously relied in good faith on Appellees' representations which now have been discovered to have been fraudulent. This

Court found that "[b]efore being certified for use in elections, the tabulation machines are tested by an accredited laboratory and the Secretary of State's Certification Committee.... The certified machines are then subjected to pre-election logic and accuracy tests...." *Lake v. Fontes* at 1202. This Court denied standing to Appellants "particularly given the robust safeguards in Arizona law." *Id.* at 1204. Appellees had no motivation to reveal, and in fact concealed, the fact that they had violated those very safeguards which the Arizona legislature required, and on which the Court relied.

On April 2, 2024, Appellants' counsel brought these specific falsehoods to Appellees' attention and asked them to correct the record. *See* Motion at 7; 41a-46a. Appellees refused. At that point, any claim that Appellees could have made that their misrepresentations were accidental was forfeited.

In a 1944 patent case, the Supreme Court ruled against a defrauding party in a patent infringement suit. The Court stated that the party's fraud on the court was not merely an injustice against the other party, but "a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 246 (1944). *See also Levander v. Prober (In re Levander)*, 180 F.3d 1114 (9th Cir. 1999).

If a fraud on the court in a patent case is inimical to the good order of society, how much more when the fraud is committed against free and fair elections — the very foundation of a representative republic? The Supreme Court has said that: "'[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.'" *Reynolds v. Sims*, 377 U.S. 533, 560 (1964). *See also Coomer v. Lindell,* 2023 U.S. Dist. LEXIS 43709, at *14 (D. Colo. 2023).

When a fraud on the court is discovered, this Court has an obligation to recall its mandate and allow the trial court to get to the bottom of the fraud. Appellees' conduct here certainly qualifies as "that species of fraud which does or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases." *Levander* at 1119.

As the Supreme Court has made clear, "[t]he public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co.* at 246. The Supreme Court has been clear that "[e]very voter's vote is entitled to be counted once. It must be correctly counted and reported.... '[T]he right to have one's vote

counted' has the same dignity as 'the right to put a ballot in a box.' It can be protected from the diluting effect of illegal ballots." *Gray v. Sanders*, 372 U.S. 368, 380 (1963). Appellees' defiance of Arizona election law has jeopardized these rights for all Arizona voters. Now that Appellees' fraud has been revealed, this Court should not decline to do its duty. "The right to vote is too important in our free society to be stripped of judicial protection...." *Wesberry v. Sanders*, 376 U.S. 1, 7 (1964). Appellees' intentional deception cries out for a recall of this Court's mandate and a remand to the district court for further proceedings.

IV. THE RECENT DECISION OF THE ARIZONA COURT OF APPEALS, DIVISION TWO, DECLINED TO ADDRESS WHETHER REQUIRED L&A TESTING WAS PERFORMED.

Two days before this *amicus* brief was filed — on Tuesday, June 11, 2024 — the Arizona Court of Appeals, Division Two, rendered a decision in *Lake v. Hobbs*, Appeal from the Superior Court in Maricopa County, No. CV2022095403. That decision affirmed the trial court's denial of Lake's Rule 60(b), Ariz.R.Civ.P., motion for relief of the Superior Court's dismissal of certain counts in her state contest to the election.[9] Lest there be any confusion, the Arizona Court of Appeals

[9] The federal court proceeding now before the Ninth Circuit was filed before the 2022 primary and general elections, while the state court proceeding that is the subject of the June 11 decision was an election challenge filed after the November election.

made clear that it was not addressing whether Arizona election officials complied, or failed to comply, with Arizona state law requiring L&A testing:

> Lake asserted that **she had obtained evidence** that "show[ed] that Maricopa ... **did not perform L&A testing** on *any* vote center tabulators used on Election Day." And that "after Maricopa certified it passed L&A testing on October 11, 2022, Maricopa secretly tested all 446 vote center tabulators on October 14th, 17th, and 18th, and knew that 260 of the vote center tabulators would fail on Election Day." **Demonstrating now a violation of the law or pre-election perfidy, by itself, is not the appropriate focus of a Rule 60(b)(3) motion;** rather such is merely relitigating the underlying election contest itself. *See* Welch, 123 Ariz. at 165 (Rule 60(b) motion "is not a device for weighing evidence or reviewing legal errors"). **The focus must rather be on the fraud or misconduct that prevents a litigant from trying otherwise meritorious claims**. *See* Est. of Page, 177 Ariz. at 93-94. [*Lake v. Hobbs* at ¶29 (emphasis added).]

Believing that there was no fraud or misconduct before the state court that prevented Appellants from litigating the issue of L&A testing in state court, the state court never reached the issue as to whether L&A testing was performed as the statute requires.

V. THE DECISION OF THIS COURT WILL AFFECT NOT ONLY ARIZONA, BUT ALL OTHER STATES AS WELL.

The lead *amicus* on this brief is the Maricopa County Republican Committee ("Maricopa GOP"), the official Republican organization in Maricopa County, Arizona. The Maricopa GOP has supported Kari Lake and Mark Finchem and has been disappointed with the lack of candor of state and county public officials with

respect to the manner in which the 2022 gubernatorial election was conducted. The Maricopa GOP has long been on record demanding fair elections and supporting election transparency throughout Arizona. For example, Maricopa GOP voted to censure Maricopa County government officials who allowed the November 8, 2022 election to be "fraught with avoidable errors, leading to significant voter disenfranchisement" as shown by a State Senate Signature Audit report which "revealed at least 1,298 ballots cast by dead voters and 17,822 mismatched ballots." *See* MCRC Formally Censures Press Release (Jan. 20, 2023). In March 2023, Maricopa GOP called for a forensic investigation by the State Legislature and the Attorney General of allegations concerning government electoral corruption. *See* MCRC Calling for Investigation Press Release (Mar. 8, 2023).

In addition, in December 2023, the Maricopa GOP adopted a resolution calling on the Arizona House of Representatives to impeach Arizona Attorney General Kris Mayes for abuse of office based on Arizona Senate Resolution 1037, "finding that computerized voting machines used in Arizona were not transparent and contained components manufactured, assembled, or tested in foreign nations like China and thus posed a threat to the security of elections" as well as citing "actual breaches of voting systems and uncured vulnerabilities making voting

systems such as those used in Arizona subject to a material risk of manipulation." *See* "MCRC EGC Unanimously Passes Resolution Calling on the Arizona House of Representatives to Impeach Arizona Attorney General Kris Mayes" (Dec. 6, 2023). Thus, the allegations made by Appellants herein are not new or surprising.

The other *amici* are five state Republican Party Committees: Georgia, Delaware, Kansas, New Mexico, and Nebraska. Although the issue in this case deals with the misdeeds of election officials in Arizona, the presence of these other *amici* reveals that the consequences of this Court's decision will extend far beyond Arizona state borders. Without this Court's intervention, the same flawed procedures employed by the Secretary of State and Maricopa County in 2020 and 2022, will again be used in the 2024 presidential election.

On March 4, 2024, the U.S. Supreme Court addressed the merits of a different type of election violation — an effort to remove President Trump from the Colorado ballot. In that case, the High Court's unanimous decision recognized that the states depend on each other in having fair presidential elections. The Court concluded "in a Presidential election 'the impact of the votes cast in each State is affected by the votes cast' ... 'for the various candidates in other States.'" *Trump v. Anderson*, 601 U.S. 100, 116 (2024) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 795 (1983)). In truth, all states have an interest in the conduct of the

presidential elections in every other state in that they be regular, lawful, and orderly. What happens in Arizona most certainly does not stay in Arizona, but significantly affects every other state in the union.

CONCLUSION

For the foregoing reasons, the motion to recall the mandate should be granted.

Respectfully submitted,

/s/Jeremiah L. Morgan

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 22-16413

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing Brief *Amicus Curiae* of Maricopa County Republican Committee, *et al.* in Support of Plaintiffs-Appellants' Motion to Recall Mandate, was made, this 13th day of June 2024, by the Court's Case Management/Electronic Case Files system upon the attorneys for the parties.

/s/Jeremiah L. Morgan
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