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13 *Attorneys for Plaintiff*

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF ARIZONA

16 David Isabel, individually and on behalf
17 of all others similarly situated,

18 Plaintiff,

19 v.

20 Michele Reagan, in her individual
21 capacity; Maricopa County; Adrian
22 Fontes, in his official capacity as
23 Maricopa County Recorder,

24 Defendants.

No. _____

**CLASS ACTION COMPLAINT AND
JURY TRIAL DEMAND**

25 David A. Isabel (“Plaintiff”), on behalf of himself and all others similarly situated,
26 brings this Action against Defendants Michele Reagan, Maricopa County, and Adrian
27 Fontes (“Defendants”), and alleges as follows:
28
29

NATURE OF THE CASE

1
2 1. The right to vote is “a fundamental matter in a free and democratic
3 society.” *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 667 (1966) (quotation
4 marks omitted). “No right is more precious in a free country than that of having a voice
5 in the election of those who make the laws under which, as good citizens, we must live.
6 Other rights, even the most basic, are illusory if the right to vote is undermined.”
7 *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Plaintiff brings this lawsuit to protect this
8 most precious of rights.
9
10

11 2. This case concerns the disenfranchisement of hundreds of eligible Arizona
12 voters who cast ballots in the November 2016 General Election. These Arizona voters
13 were lawfully registered to vote and cast their ballots in accordance with state and federal
14 law. Nevertheless, despite clearly established law, their votes were not counted.
15
16

17 3. Plaintiff was denied his right to participate meaningfully in the November
18 8, 2016 General Election (the “November 2016 Election”) because Defendants
19 improperly deemed him ineligible to vote and refused to count his ballot.
20

JURISDICTION AND VENUE

21
22 4. Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1988 to redress the
23 deprivation under the color of state law of rights secured by the United States
24 Constitution and federal law.
25

26 5. This Court has original jurisdiction over the subject matter of this action
27 pursuant to 28 U.S.C. §§ 1331, 1343, and 1357 because the matters in controversy arise
28 under the Constitution and laws of the United States.
29

1 15. Columbus Day is a state and federal holiday. *See* A.R.S. § 1-301(A); 5
2 U.S.C. § 6103.

3
4 16. In 2016, the 29th day before the November 2016 Election was also
5 Columbus Day—Monday, October 10, 2016.

6 17. Post offices were closed on Sunday, October 9th and on Monday,
7
8 Columbus Day, October 10th.

9 18. Arizona Motor Vehicle Division (“MVD”) offices were closed on Saturday,
10
11 October 8, 2016, Sunday, October 9, 2016, and Monday, October 10, 2016.

12 19. Nevertheless, Defendant Reagan set the voter registration deadline for the
13
14 November 2016 Election on Monday, October 10, 2016.

15 20. Notably, on August 25, 2016, the Director of the Office of the Secretary of
16
17 State’s Elections Division (the “State Elections Director”) emailed all of Arizona’s
18
19 county recorders notifying them that October 10, 2016 was the correct deadline and that
20
21 the deadline “could not be lawfully moved to October 11th.”

22 21. On information and belief, the State Elections Director, at all relevant
23
24 times, was acting under the direction, supervision, and control of Defendant Reagan, and
25
26 held himself out as her agent.

27 22. Defendants adopted a policy that deemed invalid any ballot cast in the
28
29 November 2016 Election by a voter who registered on October 11, 2016 (the “October
30
31 10, 2016 Policy”).

32 23. The October 10, 2016 Policy represented the official policy of Defendant
33
34 Maricopa County.

1 24. More than 2,000 Arizonans registered to vote on October 11, 2016,
2 including Plaintiff Isabel.

3
4 25. Defendants never provided Plaintiff, or any other voter who registered on
5 October 11, 2016, with any notification regarding their eligibility to vote in the
6 November 2016 Election.

7
8 26. Instead, on or around October 14, 2016, Defendants issued Plaintiff a Voter
9 Identification Card, which listed his Date of Registration as October 11, 2016.

10 27. Moreover, the Voter Identification Card was sent to Plaintiff with a mailer
11 that included the following language:
12

13 Your name and information appears in the General Register and this Voter
14 Identification Card contains information relating to your registration on file.

15 . . .

16 DON'T FORGET to bring your identification with you to vote on Election
17 Day!

18 . . .

19
20 **IMPORTANT ELECTION DATES**
21 **FECHAS IMPORTANTES DE ELECCIONES**

22 **NOVEMBER 08, 2016 GENERAL ELECTION**
23

24
25 28. On November 3, 2016, the Hon. Steven P. Logan of the United States
26 District Court for the District of Arizona issued an order, which held, *inter alia*, that
27 (1) “the Secretary erred in her application of Ariz. Rev. Stat. § 16-120”; and that (2) “the
28 Secretary’s voter registration deadline violated Section 8 of the [National Voter
29

1 Registration Act].” In sum, Judge Logan held that, under state and federal law, Tuesday,
2 October 11, 2016 was the proper voter registration deadline for the November 2016
3 Election.
4

5 29. Upon information and belief, the Defendants had notice of Judge Logan’s
6 order and its contents on or before November 8, 2016.
7

8 30. Upon information and belief, the Defendants understood that Judge
9 Logan’s order established that the October 10, 2016 deadline violated federal and state
10 law.
11

12 31. Moreover, upon information and belief, Defendants understood that federal
13 and state law *required* them to consider any voter who registered on October 11, 2016,
14 including Plaintiff Isabel, eligible to cast a ballot in the November 2016 Election.
15

16 32. This understanding is plainly reflected in the 2018 Elections Procedures
17 Manual at § 1.12.1.3.3 (“Eligibility When Registration Deadline Falls on a Weekend or
18 Holiday), which cites to Judge Logan’s Order for the proposition that “the voter
19 registration deadline **must** be moved closer to election day if the closure of State or
20 Federal offices would cause a method of registration to be unavailable within the 30-day
21 period preceding the next election.” *See* 2018 Elections Procedures Manual at
22 § 1.12.1.3.3 (emphasis added).
23
24

25 33. On information and belief, Defendant Reagan personally and formally
26 approved the 2018 Elections Procedures Manual, which included the language cited
27 above.
28
29

1 34. Moreover, on information and belief, the Arizona Attorney General
2 reviewed Defendant Reagan's proposed 2018 Elections Procedures Manual, which
3 included the language cited above, for legal errors, approved it without alterations, and
4 submitted it to the Arizona Governor for his signature.
5

6 **II. NOVEMBER 8, 2016 ELECTION**

7 35. On November 8, 2016, Plaintiff Isabel went to his assigned polling location
8 to cast his ballot. Although he presented sufficient identification to the poll workers, he
9 was instructed to fill out a provisional ballot because he was not on the list of eligible
10 voters. Plaintiff Isabel completed a provisional ballot as instructed and deposited the
11 completed ballot as instructed.
12

13 **III. POST-ELECTION CONDUCT**

14 36. Arizona law requires each County Recorder to verify all provisional ballots
15 within 10 calendar days after the general election.
16

17 37. The provisional ballot that was cast by Plaintiff was verified, but not
18 counted due to the October 10, 2016 Policy enacted and adopted by Defendants.
19

20 38. Nevertheless, Defendants certified the results of the November 2016
21 Election knowing that the ballots cast by Plaintiff and others similarly situated were not
22 counted in violation of State and Federal law.
23

24 39. Specifically, on or about November 28, 2016, Defendant Maricopa County
25 and Defendant Fontes's predecessor, certified the 2016 General Election Official
26 Canvass.
27
28
29

1 40. Specifically, on or about December 5, 2016, Defendant Reagan instructed
2 the Assistant Secretary of State to serve as the Acting Secretary of State and certify the
3 2016 General Election Official Canvass.
4

5 41. Defendant Reagan signed the 2016 General Election Official Canvass
6 Certification as both the Secretary of State and the Acting Governor.
7

8 42. Notably, Defendants never informed Plaintiff that his ballot was not
9 counted.
10

11 43. Plaintiff first learned that his ballot was not counted in 2017.

12 **IV. CLASS ALLEGATIONS**

13 44. Plaintiff is a United States Citizen living in Arizona. He brings this action
14 against the Defendants both as an individual and as a representative of a class of all
15 Arizona voters who had their ballots discarded due to the unlawful October 10, 2016
16 Policy, which set an unlawful voter registration deadline.
17

18 45. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
19 23(b)(2) to certify a class of individuals who did not have their ballots counted due to the
20 unlawful October 10, 2016 voter registration deadline.
21

22 46. Plaintiff seeks to represent a class of all Arizona voters who registered to
23 vote on October 11, 2016 and cast a provisional ballot in the November 8, 2016 General
24 Election.
25

26 47. Plaintiff also seeks to represent a subclass of all Maricopa County voters
27 who registered to vote on October 11, 2016 and cast a provisional ballot in the November
28 8, 2016 General Election.
29

1 48. The members of the Class and Subclass are so numerous that joinder of all
2 members is impracticable. The Class and Subclass consist of hundreds of individuals
3 who registered to vote on October 11, 2016 and cast a provisional ballot in the November
4 8, 2016 General Election.
5

6 49. There are questions of law and fact common to the Class and Subclass,
7 including:
8

9 a. Whether the Defendants violated the Class and Subclass members’
10 right to register to vote by adopting a voter registration deadline that did not
11 comply with the National Voter Registration Act;
12

13 b. Whether the Defendants violated Class and Subclass members’ right
14 to vote by refusing to count their ballots and certifying election results that
15 did comply with the Help America Vote Act;
16

17 c. Whether the Defendants violated Class and Subclass members’
18 federal and constitutional rights by engaging in conduct that led to the
19 disenfranchisement of all voters who registered on October 11, 2016.
20

21 50. Plaintiff’s claims are typical of those of the Class and Subclass because the
22 policies, practices, and conduct that violated Plaintiff’s rights are the same as those that
23 were applied to all members of the Class and Subclass. Plaintiff is a member of the Class
24 and Subclass he seeks to represent.
25

26 51. Plaintiff, as the Class and Subclass Representative, will fairly and
27 adequately protect the interests of the Class and Subclass members and is unaware of any
28 conflict among or between the Class and Subclass members that would preclude their fair
29

1 and adequate representation. Class counsel has the legal knowledge and resources to
2 fairly and adequately represent the interests of all class members in this action.

3
4 52. Defendants have acted on grounds applicable to the Class and Subclass, in
5 that their policies, practices, and conduct have affected all Class and Subclass members.

6
7 FIRST CAUSE OF ACTION

8 (42 U.S.C. § 1983; Violation of the National Voter Registration Act Against Defendants
9 Reagan, Maricopa County, and Fontes)

10 53. Plaintiff realleges and incorporates by reference all prior paragraphs of this
11 Complaint and the paragraphs in the counts below as though fully set forth herein.

12 54. The purpose of the National Voter Registration Act (“NVRA”) is to, among
13 other things, “establish procedures that will increase the number of eligible citizens who
14 register to vote in elections for Federal office.” 52 U.S.C. § 20501(b)(1).

15
16 55. To accomplish this, the NVRA requires that states provide for voter
17 registration via several methods: registration with an application for a driver’s license, 52
18 U.S.C. § 20504; registration by mail, 52 U.S.C. § 20505; and in-person registration at
19 registration sites or government offices, 52 U.S.C. § 20506.

20
21 56. Section 8 of the NVRA, 52 U.S.C. § 20507(a)(1), requires that each state to
22 ensure that an eligible applicant is registered to vote in an election if “the valid voter
23 registration form of the applicant” is: i) “submitted to the appropriate State motor vehicle
24 authority;” ii) “postmarked;” iii) “accepted at the voter registration agency;” or iv)
25 otherwise “received by the appropriate State election official . . . not later than the lesser
26
27
28
29

1 of 30 days, or the period provided by State law, before the date of the election.” 52
2 U.S.C. § 20507(a)(1)(A)–(D).

3
4 57. Arizona law requires that voter registration forms be “received . . . prior to
5 midnight of the twenty-ninth day preceding the date of the election.” A.R.S. § 16-120.
6 Twenty-nine days before the November 2016 Election was October 10, 2016, which is
7 the registration deadline the Defendants set. That date, however, fell on Columbus Day.
8 It was thus impossible for Arizonans to register using certain NVRA-mandated methods
9 on that date. For example, MVD and post offices were closed on Columbus Day. The
10 same was true of October 9, 2016 because it was a Sunday. Therefore, Arizonans were
11 required to register to vote via these methods, by the latest, Saturday, October 8, 2016.
12 This deadline was 31 days before the election and violates the NVRA. *See* 52 U.S.C.
13 § 20507(a)(1).

14
15
16
17 58. Put differently, given that 29 days before the November 2016 Election fell
18 on Columbus Day, the first available day to require voters to register through the NVRA
19 methods that was “not later” than 29 days before the election was Tuesday, October 11,
20 2016. Accordingly, Defendants’ insistence that voters who registered by October 11,
21 2016 were ineligible vote in the November 2016 Election was inconsistent with, and a
22 violation of, the NVRA and Arizona law.

23
24
25 59. Defendants, either by evil motive or intent, or through reckless, callous, and
26 deliberate indifference to Plaintiff’s federally protected rights, violated 52 U.S.C.
27 § 20507(a)(1). To the extent that these violations were also carried out by their
28 subordinates, Defendants are also liable for such violations because Defendants either
29

1 directed their subordinates' conduct, or had knowledge of and acquiesced in the
2 unconstitutional conduct carried out by their subordinates.

3
4 60. Defendants' violations of 52 U.S.C. § 20507(a)(1) directly and proximately
5 caused Plaintiff to suffer injuries and damages.

6
7 SECOND CAUSE OF ACTION

8 (42 U.S.C. § 1983; Violation of the Help America Vote Act Against Defendants Reagan,
9 Maricopa County, and Fontes)

10 61. Plaintiff realleges and incorporates by reference all prior paragraphs of this
11 Complaint and the paragraphs in the counts below as though fully set forth herein.

12 62. Under the Help America Vote Act ("HAVA"), "[i]f the appropriate State or
13 local election official to whom [a] [provisional] ballot or voter information is transmitted
14 ... determines that the individual is eligible under State law to vote, the individual's
15 provisional ballot shall be counted as a vote in that election in accordance with State
16 law." 52 U.S.C. § 21082(a)(4).

17
18 63. Because all of the provisional ballots described herein were cast by voters,
19 who should have been eligible to vote under state law, the plain language of 52 U.S.C.
20 § 21082(a)(4) required that those votes should have been counted.

21
22 64. Defendants, either by evil motive or intent, or through reckless, callous, and
23 deliberate indifference to Plaintiff's federally protected rights, violated 52 U.S.C.
24 § 21082(a)(4). To the extent that these violations were also carried out by their
25 subordinates, Defendants are also liable for such violations because Defendants either
26
27
28
29

1 directed their subordinates' conduct, or had knowledge of and acquiesced in the
2 unconstitutional conduct carried out by their subordinates.

3
4 65. Defendants' violation of 52 U.S.C. § 21082(a)(4) directly and proximately
5 caused Plaintiff to suffer injuries and damages.

6
7 THIRD CAUSE OF ACTION

8 (42 U.S.C. § 1983; Violation of Article I, Section 2 of the U.S. Constitution Against
9 Defendants Reagan, Maricopa County, and Fontes)

10 66. Plaintiff realleges and incorporates by reference all prior paragraphs of this
11 Complaint and the paragraphs in the counts below as though fully set forth herein.

12 67. Article I, Section 2 of the United States Constitution provides that "[t]he
13 House of Representatives shall be composed of Members chosen every second Year by
14 the People of the several States, and the Electors in each State shall have the
15 Qualifications requisite for Electors of the most numerous Branch of the State
16 Legislature."

17
18 68. Article I, Section 2 secures the right of qualified voters within a state to cast
19 their ballots and have them counted in Congressional elections.

20
21 69. Because all of the provisional ballots described herein were cast by
22 qualified voters within the State of Arizona, Article I, Section 2 required Defendants to
23 count their vote.

24
25 70. Defendants, either by evil motive or intent, or through reckless, callous, and
26 deliberate indifference to Plaintiff's federally protected rights, violated Plaintiff's right to
27 vote in Congressional elections. To the extent that these violations were also carried out
28
29

1 by their subordinates, Defendants are also liable for such violations because Defendants
2 either directed their subordinates' conduct, or had knowledge of and acquiesced in the
3 unconstitutional conduct carried out by their subordinates.
4

5 71. Defendants' violation of Article I, Section 2 directly and proximately
6 caused Plaintiff to suffer injuries and damages.
7

8 **WHEREFORE**, Plaintiff prays as follows:

- 9 1. For an order certifying a Class and Subclass pursuant to Rule 23(b)(2);
10 2. For compensatory and punitive damages in an amount to be determined
11 according to proof;
12 3. For costs of suit and attorneys' fees as provided by law; and
13 4. For such other relief as the Court deems just and proper.
14
15

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by
18 jury in this action of all issues so triable.
19

20 Dated: October 9, 2018

21 **SCHARFF PLC**

22 By: s/ Spencer G. Scharff

23 Spencer G. Scharff

24 **MILLER, PITT, FELDMAN &
25 MCANALLY P.C.**

26 By: s/ Nathan Fidel

27 Nathan Fidel

28 *Attorneys for Plaintiff*

29 David A. Isabel

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): David Isabel

**Michelle Reagan ; Maricopa County ;
Defendant(s): Adrian Fontes , Maricopa County
Recorder**

County of Residence: Maricopa

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Spencer G Scharff , Attorney
Scharff PLC
502 W. Roosevelt Street
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**Nathan J Fidel , Attorney
Miller, Pitt, Feldman & McAnally, P.C.
2800 N. Central Avenue, Suite 840
Phoenix, Arizona 85004
602-266-5557**

II. Basis of Jurisdiction:

1. U.S. Government Plaintiff

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- 1 Citizen of This State

Defendant:- 1 Citizen of This State

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

441 Voting

VI. Cause of Action: **42 U.S.C. §§ 1983 and 1988**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: s/Nathan J. Fidel

Date: 10/09/2018

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims More Than 2,000 Arizonians' Votes Weren't Counted in Nov. 2016 Election](#)
