



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

April 6, 2022

The Honorable Karen Fann
Arizona State Senate
1700 W. Washington St.
Phoenix, Arizona 85007

RE: Interim Report - Maricopa County November 3, 2020 General Election

Dear President Fann:

Six months ago the Arizona Attorney General's Office (the "Office") received reports sent from the Arizona State Senate concerning its Maricopa County Forensic Election Audit. In addition, the Attorney General's Election Integrity Unit (EIU) has received and is reviewing additional complaints alleging election failures and potential misconduct that occurred in 2020.

Our team of EIU investigators and attorneys has now collectively spent thousands of hours reviewing the Senate's audit reports and other complaints, conducting interviews, and analyzing Maricopa County's election system and processes. We have reached the conclusion that the 2020 election in Maricopa County revealed serious vulnerabilities that must be addressed and raises questions about the 2020 election in Arizona.

As our state's chief law enforcement officer, I am very concerned by any potential vulnerabilities in our state's election systems, including those that the audit and other complaints have alleged. The EIU's review has uncovered instances of election fraud by individuals who have been or will be prosecuted for various election crimes.¹ The EIU's review is ongoing and we are therefore limited in what we can disclose about specific criminal and civil investigations. Thus, this interim report will focus on what our office can presently share and the current status of our review.

We can report that there are problematic system-wide issues that relate to early ballot handling and verification. The early ballot signature verification system in Maricopa County is insufficient to guard against abuse. At times election workers conducting the verification process had only seconds to review a signature. For example, on November 4, 2020, the Maricopa

¹ See Arizona Attorney General's Office – Fraud & Special Prosecutions Section, Prosecutions Related to Voting or Elections Since 2010, *available at* https://www.azag.gov/sites/default/files/docs/criminal/viu/EIU_Prosecutions_February_2022-02-02.pdf.

County Recorder verified 206,648 early ballot affidavit signatures, which resulted in an average of 4.6 seconds per signature. There are simply too many early ballots that must be verified in too limited a period of time, thus leaving the system vulnerable to error, fraud and oversight.

Moreover, our review has determined that in multiple instances, Maricopa County failed to follow critical procedures when transporting early ballots from drop locations to the election headquarters. It is estimated that between 100,000 and 200,000 ballots were transported without a proper chain of custody. Because most voters in Arizona now choose to vote by early ballot, it is imperative that the processes for handling and verification of early ballots be strengthened before the 2022 elections per our recommendations below.

The first half of this report discusses document production issues we have confronted with Maricopa County and the EIU's ongoing review of the Senate's audit reports and other complaints. The rest of this report then sets forth our election integrity concerns and recommendations in the areas of early-ballot signature verification, ballot drop boxes, use of private grant monies by election officials, election document preservation and transparency, and our ongoing actions to defend election integrity in active litigation.

I. Document Preservation & Production Issues

Our ongoing review of the Senate's audit reports requires that we carefully assess the Maricopa County election system and processes. Maricopa County has not always timely and fully responded to our requests for records, necessitating follow-up correspondence or additional requests. The most recent response from Maricopa County came just yesterday. Similar to the manner in which it responded to the Senate subpoena, Maricopa County occasionally chose a combative and/or litigious approach to providing requested information rather than assuming a posture of transparency.² Because we do not have civil subpoena authority, this has necessarily delayed the EIU in investigating all issues.

Following the receipt of the Senate's audit report, the EIU sent its First Request to Maricopa County on September 27, 2021, to notify Maricopa County that all materials related to the 2020 elections should be preserved, including all potentially relevant materials related to the 2020 General, Primary, and Presidential Preference Election. Maricopa County initially interpreted the letter as an attempt to sequester all election equipment and twice threatened legal action. The EIU reiterated the letter's stated purpose, to *preserve the data* contained on the equipment, not to sequester or prevent its ordinary use.

The EIU sent the Second Request to Maricopa County on October 7, 2021, requesting Maricopa County provide "all written procedures, policies, guidelines, and manuals (excluding the 2019 Elections Procedures Manual and the related Addendum) used by Maricopa County to conduct the 2020 General Election, whether official or unofficial, whether issued or written by Maricopa County or another county, agency, vendor, or third-party, including the original and

² The Attorney General's Office filed an amicus brief in support of the State Senate's ability to subpoena information from Maricopa County involving the 2020 elections. *See* Minute Entry *supra* note 1, at p. 3.

subsequent updates to those documents” and included “emails, memos, or other communications that provided temporary, preliminary, or permanent changes to any procedures, policies, guidelines, and manuals during the course of the 2020 General Election.”

Maricopa County provided the first set of responsive documents on or around February 1, 2022, nearly four months after the initial request. The EIU’s initial review found several deficiencies, including Maricopa County’s failure to provide internal policies and procedures that had been disclosed to litigants in various court proceedings, but were noticeably absent from the document set.

The EIU sent the Third Request to Maricopa County on March 9, 2022, renewing the request for *all* written procedures, policies, guidelines, and manuals, noting certain documents known to exist, but not provided. In addition, the Third Request included a new request for records related to mismatched signatures initially identified by a third-party review of ballot affidavit signatures but also independently verified by the EIU as potentially problematic ballot affidavit signatures. Notably, it was on March 23, 2022, only after Senator Kelly Townsend issued a subpoena to Maricopa County, that it acknowledged receipt of the Third Request. In Maricopa County’s response, three of the documents identified as missing from the initial response were provided, but documents such as any written procedures regarding the extra-statutory “Household Exchange” program used by Maricopa County to rehabilitate early ballot affidavits signed by the wrong household member remain outstanding. In addition, no emails or internal communications relating to the informal procedures have been provided to date.

On March 24, 2022, Maricopa County provided a partial response to our request for the signature files of the ballot affidavits that the EIU identified as being problematic. Instead of sending *all* signatures on file, as well as any historical records of attempts to cure, Maricopa County sent the ballot affidavit signature and one exemplar from the file. Many of the exemplars were from the August 2020 Primary, and virtually none were from the original voter registration form.

The Office is still receiving new information that is relevant to its ongoing review of the Maricopa County election systems. This includes materials from Maricopa County, which has not fully complied with the Office’s document requests. It also includes the completion of Special Master Shadegg’s report that was released on March 23, 2022, and the Auditor General’s Report on voting systems and private monies that was released on March 30, 2022. *See* Section V, *infra*. The Office is also reviewing newer analyses of early ballot signatures and potential ballot harvesting.

Conclusion: The Office’s investigation is still developing in material ways. The Office has been sending repeated requests for information from Maricopa County, and new information is coming in, including as recently as yesterday. This Interim Report comes at the six-month mark after the Senate sent its reports to the Attorney General. Investigations (civil and criminal) of this magnitude and complexity take many months if not years to complete.

To address the deficiencies and delays in the manner in which Maricopa County has chosen to cooperate with the EIU, we recommend that the laws be changed to require the

immediate production of information when requested by the Arizona Attorney General. Notably, if Senate Bill 1475 had passed, it would have provided the Attorney General civil subpoena power, mirroring the AGO's civil powers under Arizona's Open Meeting Laws. *See* A.R.S. § 38-431.06. Absent such civil subpoena power, the AGO remains limited to submitting public records requests. Such power will help expedite the Office's review, but investigations of this magnitude take substantially longer than the present six months to complete.

II. Early Voting Signature Verification

Mail-in voting is and has been a facet of Arizona law, but the opportunity for fraud increases the moment a ballot leaves the protective custody of the election official and enters the postal system. The bipartisan Commission on Federal Election Reform chaired by former President Jimmy Carter and former Secretary of State James Baker identified this concern and noted that absentee ballots are vulnerable to abuse in several ways that are difficult to detect, and therefore steps must be taken to reduce the risks of fraud and abuse. Report of the Comm'n of Fed. Election Reform, *Building Confidence in U.S. Elections 46-47* (Sept. 2005). Although steps have been taken to reduce this fraud, including the enactment of Arizona's ballot harvesting ban, it is imperative that additional steps be taken to provide for a stronger and more uniform early ballot signature verification system and to increase transparency so that party observers can actually see the signature verification process in real time and lodge any objections, which should then be adjudicated in a fair manner. Each of these recommendations is discussed below.

There must be stronger procedures in place for early-ballot signature verification, and those procedures need to be uniform across the state. Under state law, an early ballot is not complete, and cannot be counted, unless and until it includes a signature on the ballot affidavit. Once received, election workers at the county recorder's office are required to compare the signature on the affidavit with the signature in the voter's registration record. A.R.S. § 16-550(A). If election officials determine that the signature matches that on file, the ballot is counted. If, on the other hand, election officials determine that the signature on the ballot affidavit does not match that on file, then the ballot cannot be counted unless the voter verifies the signature. Requiring a match between the signature on the ballot affidavit and the signature on file with the State is currently the most important election integrity measure when it comes to early ballots.

The Ninth Circuit acknowledged, in response to a constitutional challenge to the deadline for submitting signed ballot affidavits, that "Arizona requires early voters to return their ballots along with a signed ballot affidavit in order to guard against voter fraud." *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081, 1085 (9th Cir. 2020). Election officials, therefore, must be extremely diligent in ensuring that early ballot affidavit signatures match those on file with the State. Regardless of the sheer quantity of early ballots received, the administrative burdens imposed by verifying each one, or for any other reason, election officials and their staffs cannot violate their statutory duty to match *every* signature.

Early voting is widely used in Arizona: 79% of Arizona voters cast early ballots in 2018 and that number reportedly increased to 89% for the 2020 General Election. With over 3.4 million ballots cast in the General Election, Arizona elections officials were required to match

signatures on over 3 million early ballot affidavits during a five to six-week period in 2020. This large number of early ballots combined with the administrative burden of confirming every one of the signatures submitted in a very short period of time, when not administered diligently, could result in election officials accepting early ballot affidavits that should not otherwise be approved without further verification.

Statistics for Maricopa County, for example, over the last three election cycles reflect that the number of early ballots rejected because of missing and mismatched signatures is trending down. During the 2016 General Election, when Helen Purcell was county recorder, Maricopa County received 1,249,932 mail-in ballots. Of that amount, Maricopa County rejected 2,209 early ballots because of missing signatures and 1,451 early ballots because of mismatched signatures.

Just two years later, during the 2018 General Election, after Adrian Fontes became county recorder, Maricopa County received 1,184,791 early ballots, just 65,141 less than in 2016. Yet the number of early ballots rejected in 2018 because of missing signatures (only 1,856) and mismatched signatures (only 307) declined significantly—the number of missing signature ballots decreased by 353 and the mismatched signature ballots decreased by 1,144 (a 79% decrease). By comparison, Pima County received 302,770 early ballots (882,081 less than Maricopa) and rejected 488 (135 more than Maricopa) because of mismatched signatures.

During the 2020 General Election, Maricopa County saw a significant increase in the number of early ballots, receiving 1,908,067 early ballots (an increase of 723,276 early ballots). Yet the number of early ballots rejected because of missing signatures continued its dramatic decrease (to only 1,455 ballots) and the number of early ballots rejected because of mismatched signatures increased only slightly (to 587 ballots).³ To be sure, Maricopa County has explained that the number of early ballots rejected for mismatched signatures during the 2020 General Election was impacted by the Legislature's creation of a 5-day post-election cure period for mismatched signatures. But the existence of that cure period in 2020 does not explain the dramatic decrease—on an absolute or percentage basis—of ballots with missing signatures from 2016 to 2020⁴ or the dramatic decrease in early ballots with mismatched signatures from 2016 to 2018. One possible explanation for these trends, and the AG acknowledges there could be others, is that Maricopa County became less diligent with signature review beginning in 2018.

Certain data stemming from litigation following the 2020 General Election is also instructive. In November 2020, certain individuals filed an election challenge under A.R.S. § 16-672. In connection with that challenge, the trial court ordered that the parties' counsel and retained forensic experts could review 100 randomly selected early ballot affidavits and conduct a signature comparison of ballot affidavits where a signature match had occurred. *Ward v. Jackson*, CV2020-015285, 2020 WL 13032880, *3 (Maricopa Cnty. Super. Ct. Dec. 4, 2020). Two forensic document examiners testified during an evidentiary hearing, one for the plaintiffs

³ Pima County by contrast rejected nearly the same number of early ballots based on mismatched signatures (572) despite receiving 1,479,386 fewer ballots.

⁴ Early ballots with missing signatures were required to be cured prior to close of polls on election day.

and one for the defendants. The plaintiffs' expert testified that of the 100 ballots reviewed, 6 signatures were "inconclusive," meaning she could not testify that the signature on the envelope/affidavit matched the signature on file." *Id.* at *4. The forensic expert for Defendants, who sought to defeat the election challenge, "testified that 11 of the 100 envelopes were inconclusive, mostly because there were insufficient specimens to which to compare them."⁵ *Id.* Neither of the forensic experts found any sign of forgery. *Id.*

Although the trial court rejected the election challenge and the Arizona Supreme Court affirmed,⁶ that does not render the forensic experts' findings irrelevant for purposes of analyzing whether current election procedures can be improved. And the fact that two forensic experts could differ so widely on whether particular signatures matches were inconclusive (one thought 6 signatures were inconclusive, the other 11) and that defendants' own expert concluded, less than one month after the General Election, that 11% of signatures sampled were inconclusive, suggests that improvement is needed.

The stresses on the mail-in voting system are largely driven by the combined population growth and increased usage of early voting. With over 80 percent of the Maricopa County electors choosing to vote early, there can be insufficient time for the county recorder to process and verify the large volume of early ballot affidavit signatures. Moreover, there is no uniform procedure in place to assure that the ballot affidavit signatures are being processed correctly and uniformly, not only in Maricopa County but throughout the State. The Arizona Secretary of State has offered non-enforceable "guidance" to the county recorders regarding signature verification but has never promulgated uniform procedures as required by A.R.S. § 16-452. Importantly, the Secretary's "guidance," is insufficient and could create more issues than it purports to resolve. *See* Brief of Amicus Curiae Attorney General Mark Brnovich, Section II(C), *Arizona Republican Party v. Hobbs*, No. CV-22-0048-SA (Ariz.).

Our review determined that early ballot affidavit signature verification is often performed in an expedited manner by individuals with limited training in signature analysis. Because of the volume of early ballots that arrive close to or on election day and the limited time allowed by law to verify signatures, the process can be rushed, which weakens the integrity of the verification. Although we may have more to say about this process, we are concerned that the expedited manner in which thousands of early ballot affidavit signatures are processed inevitably leads to a diminished review. At times the election worker conducting the verification process has only seconds to review a signature. For example, on November 4, 2020, the Maricopa County Recorder verified 206,648 early ballot affidavit signatures, which resulted in an average of 4.6 seconds per signature.

Conclusion: We have reached three primary conclusions on this critical issue. First, the early ballot affidavit signature verification system in Arizona, and particularly when applied to Maricopa County, may be insufficient to guard against abuse. We therefore recommend that the

⁵ There was no indication in the trial court's ruling rejecting the election challenge whether there was overlap between the 6 affidavits that Plaintiffs' expert found inconclusive and the 11 affidavits that Defendants' expert found inconclusive.

⁶ *Ward v. Jackson*, 2020 WL 8617817, *3 (Ariz. Dec. 8, 2020).

law be amended to provide additional security for early ballots, including a requirement that voters who choose to vote by early ballot provide some additional form of government identification. We note that a referendum sponsored by Senator J.D. Mesnard will ask voters at the November 8, 2022 general election to put in place such requirements. *See* SCR 1012, available at <https://apps.azleg.gov/BillStatus/BillOverview/76391>.

Second, the verification standard set forth in statute is insufficient to control the discretion of local officials and must be addressed by Legislation. A.R.S. § 16-550(A) provides that “the county recorder or other officer in charge of election shall compare the signatures [on the early ballot envelopes] with the signature on the elector’s registration records.” This requirement to “compare” should be expanded and clarified to provide what steps election officials must take, including the minimum amount of time that should be spent reviewing each signature and an objection and appeal process. Given how important this check is, there must be more specific requirements contained in statute.

Finally, we conclude that because signature verification is the most important current check on early ballots, there must be opportunities for parties’ election observers to meaningfully observe the signature verification process in real time and to raise objections if officials are not doing their jobs to actually and accurately verify signatures. The Legislature should act to ensure transparency on this check.

III. Early Ballot Drop Boxes

The EIU received a complaint alleging that the Maricopa County Elections Department violated the procedures that govern how early ballots are transferred from drop-off and drop-box ballot locations to the Maricopa County Tabulation and Election Center (MCTEC). These are early ballots that voters drop off at designated locations, including polling locations on election day. The report specifically alleged that the County failed to maintain chain of custody and properly document the retrieval, transportation, and count of the ballots.

The procedures for transporting these ballots to MCTEC during the 2020 general election were governed by the 2019 EPM, which was adopted pursuant to A.R.S. § 16-452. Section 1.7 of the 2019 EPM required at least two individuals with different political party affiliations to retrieve the early ballots. The individuals retrieving the early ballots were then required to document the location, date and time of arrival, time of departure, number of ballots, and follow a strict protocol when securing the container of ballots. These procedures designed to preclude ballot tampering are critical given the volume of early ballots that were dropped at these locations during the 2020 general election. Maricopa County reported that 901,976 ballots were collected from drop box locations. Most of those ballots (729,858) were collected during the early voting period from October 7, 2020 to November 2, 2020. The remaining 172,118 ballots were returned from drop boxes at polling locations.

Our review uncovered multiple violations of ballot transportation procedures. Specifically, our investigation confirmed that out of 1,895 Early Voting Ballot Transportation Statements, 381 forms or 20% were missing required information. This included missing audit signatures, missing ballot count fields, missing Election Department receiver signatures, missing

courier signatures and missing documentation of security seals and lack of the two required seal numbers. In other words, it is possible that somewhere between 100,000 and 200,000 ballots were transported without a proper chain of custody.

Conclusion: Maricopa County failed to follow the EPM procedures when transporting 20% of the early ballots from drop box locations to MCTEC. And because the Secretary of State did not present the Attorney General a lawful EPM for approval in 2021, as required by A.R.S. § 16-452, there is currently *no* EPM in place governing the 2022 elections, exacerbating the issue for the upcoming election.

The Arizona Legislature should codify ballot custody and transportation procedures for early ballots using guidelines published by the U.S. Election Assistance Commission. *See* U.S. E.A.C, *Chain of Custody Best Practices* (July 13, 2021) (available at <https://www.eac.gov/election-officials/chain-custody-best-practices>). It is also recommended that the legislature enact laws that increase transparency in early ballot chain of custody, including the ability of observers from the political parties to monitor this process. Finally, because of the security issues associated with voted early ballots sitting in bins and containers in remote locations, the Legislature should enact laws that either prohibit drop box locations altogether or limit them to early ballot voting centers, polling day locations, or other secure locations staffed and closely monitored by election officials. House Bill 2238, sponsored by Representative Jake Hoffman, would accomplish this recommendation by prohibiting the use of an unmonitored drop box for receipt of voted ballots. *See* <https://apps.azleg.gov/BillStatus/BillOverview/76693?SessionId=125>.

IV. Use Of Private Grant Monies

To secure the purity of our elections, our laws prevent election officials and others from influencing the manner in which electors choose to exercise their right to vote. During the 2020 elections almost \$8 million dollars of private, nongovernmental grant monies were used by Arizona Secretary of State Katie Hobbs, Maricopa County, and Pima County for various election purposes as outlined in a report prepared by the Arizona Auditor General dated March 30, 2022. Available at <https://www.azauditor.gov/reports-publications/counties-state-agencies/secretary-state-office/report/arizona-secretary-state>. We are carefully reviewing this report to determine if any election laws were violated through the use of these funds. Although our review is ongoing, our initial findings raise serious concerns regarding the legality of certain expenditures.

As noted by the Auditor General, in the time since Secretary Hobbs, Maricopa County, and Pima County received and used these private, nongovernmental grant monies, Laws 2021, Ch. 199, §1 (adding A.R.S. § 16-407.01), was enacted, which prohibits the State and a city, town, county, school district, or other public body that conducts or administers elections from receiving or expending private monies for preparing for, administering, or conducting an election, including registering voters. Specifically, effective September 29, 2021, the State and its counties (and other political subdivisions) are statutorily prohibited from receiving the aforementioned grant monies or similar monies. As a result of this new law, the election officials may not use private grants or donations to perform their election duties or engage in any type of publicity campaign during the 2022 elections.

V. Future Auditing Of Elections

In addition, the Legislature should enact legislation that expands the powers of the Auditor General to conduct future audits of election systems. The Auditor General is well positioned to perform this function and should be given the resources to handle such audits in house in a professional and prompt manner. The Auditor General should be given authority to request Attorney General assistance in obtaining documents and equipment in the possession and custody of state and local officials. Periodic audits performed by the Auditor General, with reports to the Legislature, will ensure that state and local officials are complying with the law, identify shortcomings, and foster confidence in our state's election systems.

VI. Increase The Penalties For Election Crimes And Protections For Whistleblowers

The Legislature should also consider increasing the penalties for election-related crimes and adding protections for whistleblowers. Due to the difficulty in detecting ballot harvesting, the Legislature should review whether it should increase the classification of the felony for that crime. The Legislature should also consider adding a crime where members of an organization, including a non-profit or non-governmental organization, that knew *or should have known* members (whether employees or volunteers) in their organization are engaged in widespread ballot harvesting are subject to criminal liability.

The Legislature should also enact specific criminal penalties for anyone who tampers with or damages a ballot-drop box in a way that could damage any ballots contained in such drop box. Finally, the Legislature should consider strengthening criminal penalties for failure to comply with a legislative subpoena or request by the Auditor General or Attorney General, and the Legislature should strengthen protections for whistleblowers who are aware of any potential wrongdoing. Such protections should be made retroactive, and permit whistleblowers to come forward with evidence related to past elections as well.

VII. The Attorney General's Office Is Vigorously Defending Arizona's Election Integrity Laws And Protecting The Legislature's Powers

We all share a strong commitment to election integrity, and by any objective measure the Office is fully engaged in successfully defending Arizona's election integrity laws. The U.S. Supreme Court recently observed in *Brnovich v. DNC*, 141 S. Ct. 2321 (2021), that the state has a compelling interest in preserving the integrity of its election process and preventing voter fraud. "Fraud can affect the outcome of a close election, and fraudulent votes dilute the right of citizens to cast ballots that carry appropriate weight. Fraud can also undermine public confidence in the fairness of elections and the perceived legitimacy of the announced outcome." *Id.* at 2340. It is imperative that our election system guard against fraud, abuse, mistake, and oversight. And the Arizona Legislature must therefore be able to enact laws that "secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. art. 7, § 12.

Defending the integrity of our elections is one of my top priorities as Attorney General. We repeatedly and successfully defended Arizona's election integrity laws from an onslaught of

attacks in 2020, which include important victories in the following cases.

- *Brnovich v. DNC*, 141 S. Ct. 2321 (2021) (upholding Arizona’s ballot harvesting and out-of-precinct voting laws against challenge under § 2 of the Voting Rights Act).
- *Miracle v. Hobbs*, 808 F. App’x 470 (9th Cir. 2020) (upholding Arizona’s law requiring petition circulators to show up to court if subpoenaed).
- *Ariz. Democratic Party v. Hobbs*, 976 F.3d 1081 (9th Cir. 2020) (upholding law requiring ballots to be signed by 7 p.m. on election day).
- *Mi Familia Vota v. Hobbs*, 977 F.3d 948, 950 (9th Cir. 2020) (reversing erroneous lower court decision extending voter registration deadline).
- *Arizonans for Fair Elections v. Hobbs*, 454 F. Supp. 3d 910, 915 (D. Ariz. 2020), *appeal dismissed*, No. 20-15719, 2020 WL 4073195 (9th Cir. May 19, 2020) (upholding prohibition on electronic signature gathering for initiatives).
- *Arizonans for Second Chances v. Hobbs*, 249 Ariz. 396 (2020) (also upholding prohibition on electronic signature gathering for initiatives).

Most significant among these is *Brnovich v. DNC*, which was the most important election integrity case decided by the U.S. Supreme Court in years. The case bears my name because I stood up before the U.S. Supreme Court and defended Arizona’s common-sense laws protecting against ballot harvesting and out-of-precinct voting. The Supreme Court ultimately ruled in our favor by a 6-3 majority, decisively rejecting the Ninth Circuit’s erroneous decision that would have hamstrung Arizona’s legitimate election integrity efforts and saddled the state with millions of dollars in attorneys’ fees. You don’t have to take my word for it. Prominent liberal law professor Erwin Chemerinsky lamented it as “**the most important decision of 2021.**”⁷ He said, “*Brnovich* will make it much more difficult to challenge [common-sense election integrity measures enacted by states,] and these laws could play a decisive role in the 2022 and 2024 elections.” *Id.* But for my office’s involvement there would be no *Brnovich v. DNC* decision, period.

The Office is also actively protecting election integrity for the upcoming 2022 elections and beyond. This includes defending against multiple lawsuits that have already been filed. In August, *Mi Familia Vota* filed a lawsuit challenging SB 1003 and SB 1485 from the 2021 legislative session. Case No. 2:21-cv-01423 (D. Ariz.). These laws relate to early voting signature requirements and the active early voting list. The Office vigorously defended this case, and the Plaintiffs conceded that they would not seek any injunctive relief for the 2022 elections.

Just last week, two lawsuits were filed challenging HB 2492 from the 2022 legislative session, which relates to proof of citizenship when registering to vote. *See Mi Familia Vota v. Hobbs*, No. 2:22-cv-00509 (D. Ariz.); *Living United for Change in AZ v. Hobbs*, No. 2:22-cv-00519-SRB (D. Ariz.). The Office is actively defending these cases in advance of the 2022 elections. Finally, the Office is participating in *Arizona Republican Party v. Hobbs*, No. CV-22-

⁷ Available at <https://www.abajournal.com/columns/article/chemerinsky-most-significant-supreme-court-cases-of-2021>

0048, at the Arizona Supreme Court, and asking the court to ensure that there is an Elections Procedures Manual (EPM) in place for the 2022 elections. Having a lawful EPM in place for the 2022 elections is a major election integrity priority for the Office.

It is also important to note that the Office has supported the separation of powers and the Legislature's authority to subpoena election records so that it can have data and information to make informed decisions on potential legislation. In the dispute between Maricopa County and the Senate regarding the Senate's subpoenas, the court ultimately agreed with the Office and the Senate in *Maricopa County et al. v. Fann, et al.*, CV2020-016840, Minute Entry at 15 (Maricopa Cnty. Super. Ct. 3/1/2021).⁸ Later, the Senate issued another subpoena to Maricopa County, which again refused to comply. The Office determined that this refusal was in violation of state law, and Maricopa County subsequently complied.⁹

Arizona is successfully defending its election integrity laws in active litigation. Arizona could have been like other states and had its laws judicially rewritten on the eve of an election.¹⁰ Arizona could have been like the Ninth Circuit majority held (but for *Brnovich*) and been hamstrung in all of its future efforts to secure its elections. But, fortunately, Arizona has the authority to enforce its existing laws and the freedom for its elected legislators to modify those laws as circumstances change and experience shows that additional or different election integrity measures are needed. In sum, Arizona can ensure that it is easy to vote and hard to cheat.

VIII. Conclusion

With each passing election, Americans on all sides of the political spectrum have less confidence in the integrity of our elections. This is a crisis that should be addressed immediately with bipartisan solutions grounded in the rule of law.

Public confidence in the fairness of elections is paramount. As elected officials, we can, and must, do better for our constituents. Whether we agree with peoples' reasons for questioning election integrity or not, we should go above and beyond our call of duty to assure Americans that each legal vote was counted, and no illegal votes were allowed.

This dilemma is not relegated to Republicans and the 2020 election. Democrats spent years in uproar over the 2000 election after George W. Bush defeated Al Gore. And they viciously questioned President Trump's election in 2016. Congressional Democrats also challenged the Electoral College count several times over the past two decades when their candidate lost the race. It is dishonest to pretend that the 2020 election concerns are unprecedented. Both sides have had their share of issues with elections processes and

⁸ Available at https://www.azag.gov/sites/default/files/docs/press-releases/records/3_1%20minutes%20entry.pdf

⁹ See https://www.azag.gov/sites/default/files/docs/complaints/sb1487/21-002/MCBOS_1487_Report-8-26.pdf.

¹⁰ See, e.g., *Pennsylvania Democratic Party v. Boockvar*, 238 A.3d 345, 354 (Pa. 2020), cert. denied sub nom. *Republican Party of Pennsylvania v. Degraffenreid*, 141 S. Ct. 732 (2021).

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procedures, and it is time for Americans' elected representatives to put aside political differences and do what is necessary to reassure their constituents that every legal vote counts.

That's why our office has taken election integrity so seriously—both before and after the 2020 election. Arizonans were extremely frustrated and angry that they were not receiving answers to questions that had been raised about the 2020 election. Our office has left no stone unturned in the aftermath of the 2020 election. We supported the Arizona State Senate's right to conduct the audit of Maricopa County's election, and we have followed up with several investigations into the 2020 election.

As has been stated previously, the 2020 election in Maricopa County left significant holes to be answered and addressed. All branches of government in this state must come together to provide full assurance of the integrity of our elections and answer every outstanding question from the 2020 election. That's what our Office is committed to doing. We hope that this interim report and cooperation with the legislative branch will continue to reassure Arizonans that election integrity is of primary concern in our state.

Sincerely,

A handwritten signature in black ink that reads "Mark Brnovich". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mark Brnovich
Attorney General