



Maricopa County

Board of Supervisors

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May 17, 2021

VIA EMAIL ONLY

The Honorable Karen Fann
President of the Arizona Senate
Fifty-Fifth Legislature
1700 West Washington
Senate Building
Phoenix, Arizona, 85007
kfann@azleg.gov

Re: Response to your May 12, 2021 letter to Chairman Sellers

Senate President Fann,

We write in response to your May 12, 2021 letter. We also write in response to the May 12th social media post from the Twitter account, run by you or your designee/s, which accused Maricopa County of “deleting a directory full of databases from the 2020 election cycle days before the election equipment was delivered to the audit,” and went on to accuse the County of “spoliation of evidence.”

These accusations are false, defamatory, and beneath the dignity of the Senate. They are an insult to the dedicated public servants in the Maricopa County Elections Department and Office of the Recorder, who work incredibly long hours conducting the County’s elections with integrity and honor.

1. Your accusation, that Maricopa County deleted data, is false.

You claim “the entire ‘Database’ directory from the D drive of the machine EMSPrimary has been deleted.” This is false: the “Database” was not deleted from the server. And an analysis of the screenshot you provided (the “screenshot”), which we reproduce below, further proves that fact.

We demand that you immediately rescind your false and malicious tweet asserting that Maricopa County “spoiled evidence” in the days before we provided the server to the Senate. Your tweet, which relies on the “modified date” shown in the screenshot as evidence of wrongdoing, is demonstrably false; the only thing it does demonstrate is your auditors’ incompetence. Their stunning lack of a basic understanding for how their software works is egregious and only made worse by the false tweet sent defaming the

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hardworking employees of Maricopa County.

That the Senate would launch such a grave accusation via Twitter not only before waiting for an answer to your questions, but also *before* your so called “audit” demonstrates to the world that the Arizona Senate is not acting in good faith, has no intention of learning anything about the November 2020 General Election, but is only interested in feeding the various festering conspiracy theories that fuel the fundraising schemes of those pulling your strings. You have rented out the once good name of the Arizona State Senate to grifters and con-artists, who are fundraising hard-earned money from our fellow citizens even as your contractors parade around the Coliseum, hunting for bamboo and something they call “kinematic artifacts” while shining purple lights for effect. None of these things are done in a serious audit. The result is that the Arizona Senate is held up to ridicule in every corner of the globe and our democracy is imperiled.

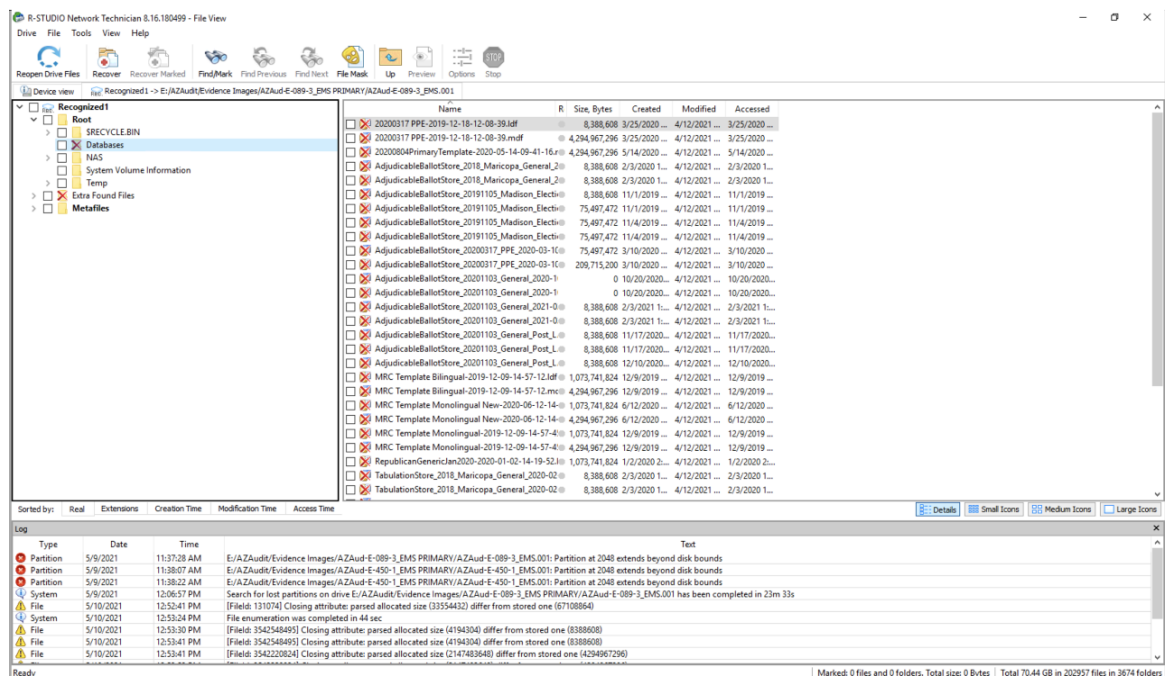
On April 12, 2021, the Elections Department shut down the server to be packed up and made ready for delivery to the Senate. At no point was any data deleted when shutting down the server and packing up the equipment. Windows Servers will often change the “metadata” (additional data on files such as creation date, access date, modified date, owner, etc.) on Microsoft SQL database files based on actions performed on the Microsoft SQL (MSQL) Services that are needed to run the databases. The modified dates on the files are identical in the screen shots because that is when the server was shut down, and the [\(MSQL\) services themselves were shut down](#), causing the server to update the metadata on all the files to the specific time when the services were shut down. Nothing was “deleted” on April 12, 2021.

Maricopa County provided you the actual Dominion server as commanded by your subpoena and we did not transfer or delete from that server *any* data from the 2020 General Election that was subject to your subpoena. You have now returned that server to us. Evidently your “auditors” made a copy of that server and are conducting their analysis on the copy.

The screenshot reveals that your “auditors” were using R-Studio Network Technician to conduct their analysis. That software is used to identify files that are *missing* at the spot the software is told to search. Yet you provided the screenshot falsely asserting that these identified “missing files” were deleted and evidence was “spoiled”. Nothing in this screenshot indicates that any file was deleted or spoiled. At most what can be discerned from this screenshot is that R-Studio, as used by your “auditors,” did not locate within the copy your vendor created the particular files listed in the column on the right.

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Still, these files, and the Database, have the ominous red X-mark. We cannot say for certain what that mark indicates—other than that it likely indicates that R-Studio was unable to locate the files. The screenshot does not identify what type of search your “auditors” ran, and you conveniently failed to provide the full report the search generated. However, the table at the bottom of the screenshot appears to indicate that certain data is missing because it “extends beyond disk bounds” of the copied hard drive searched. Perhaps these files have the red X-mark because your “auditors” copied them to a segment of the hard drive that, in lay terms, is unreadable by the R-Studio software. Or because your “auditors” set the R-Studio search parameters incorrectly, such that it searched for these files in an area of the hard drive where they do not reside. There could be other explanations as well, including the possibility that your “auditors” inadvertently, or purposefully, moved—or even deleted—certain data.



Regardless, the failure of your so called “auditors” to locate data files on the copy *they* made of the County’s server speaks more to their ineptitude than it does to the integrity and actions of our dedicated public employees who effectively and accurately run the elections in the fourth largest county in the United States.

2. Your various questions about our election procedures reveal a serious lack of understanding of election law, as well as the best

practices utilized by Maricopa County and other jurisdictions for the conduct of elections.

In your letter, you asked a number of questions. We will answer each in turn.

Your First Question: The County has not provided any chain-of-custody documentation for the ballots. Does such documentation exist, and if so, will it be produced?

The Answer:

We are stunned that you are asking us this question. It demonstrates a spectacular lack of understanding on your part of what occurred during the County's transfer of its material to your custody. Simply stated, your liaison, Ken Bennett, was provided with the documentation demonstrating chain of custody. And your counsel, Mr. Langhofer, was consulted as to the final form of that chain of custody documentation. To summarize:

- The Elections Department transported the subpoenaed material from the Maricopa County Tabulation and Election Center (MCTEC) to your custody at the Arizona Veterans Memorial Coliseum in box trucks secured with a tamper-evident seal after being loaded at MCTEC.
- MCSO deputies observed the trucks being loaded and then escorted the trucks to the Coliseum.
- Mr. Bennett gave approval to unload each truck. All the tamper-evident seals were photographed by the Senate's contractors as well as by County representatives to confirm that the seals were still intact. And, Mr. Bennett or his designee personally observed each seal being broken before the trucks were unloaded.
- Each truck had a detailed manifest prepared by the Elections Department listing with specificity every item on the truck, including serial numbers for all of the equipment, and the identifying information for each box of ballots.
- Mr. Bennett and Co-Elections Director Scott Jarrett together reviewed the delivery, comparing each item that had been delivered to the manifest for that truck.
- Each confirmed, together, that the items identified on the manifest were delivered by the County to the Senate.
- Each signed the manifest, attesting to its accuracy. After that point in time, County personnel no longer touched the material that had been

transferred to the Senate's custody, and the Senate's contractors moved the material to the areas of the Coliseum in which they determined to store it.

- Once delivery was complete, counsel for the County prepared a document evidencing the chain of custody of the materials delivered, with the manifests as an exhibit stating that the items in the manifests had been delivered from the County to the Senate's custody.
- Alexander Kolodin, then counsel for the Senate's contractor, Cyber Ninjas, sent a copy of the document to your attorney, Kory Langhofer, so he could provide any input.
- Mr. Jarrett signed the letter on April 29, 2021, attesting that the delivered materials had been in the County's custody and control at all times from the November 3, 2020 election until it was delivered to the Senate.
- Mr. Bennett subsequently signed the letter and he has a fully executed copy of it.

In short, both the Senate and the County have been given sufficient chain of custody documentation for the ballots, which currently remain in your custody. Your suggestion to the contrary is demonstrably wrong.

Your Second Question: The bags in which the ballots were stored are not sealed, although the audit team has found at the bottom of many boxes cut seals of the type that would have sealed a ballot bag. Why were these seals placed at the bottom of the boxes?

The Answer:

The bags in which Election Day ballots were stored *were* sealed, and the seals you found in the bottom of boxes containing Election Day ballots came off these bags. Pursuant to law (A.R.S §16-608 and Chapter 9 of Elections Procedures Manual), all Election Day ballots are transported by bi-partisan teams from vote centers to MCTEC in tamper evident sealed black canvas bags. After the Statewide Canvass and the subsequent five-day contest period concludes, teams of bi-partisan employees transfer the contents of the black canvas bags, along with the tamper evident seals that were affixed on the bag, to the long-term ballot storage boxes. Below are examples of the canvas bags and seals (they made be red, green or blue) used during transport and short-term storage.



Your Third Question: Batches within a box are frequently separated by only a divider without any indication of the corresponding batch numbers. In some cases, the batch dividers are missing altogether. This lack of organization has significantly complicated and delayed the audit team’s ballot processing efforts. What are the County’s procedures for sorting, organizing, and packaging ballot batches?

The Answer:

It is the Elections Department’s practice to divide batches of ballots using the Early Voting Transmittal Slips. But no law requires the Elections Department to do that—it is something that its staff try to do as a best practice. It is possible that a slip log fell out from between the ballots during transport to the Coliseum, or due to handling by your contractors—we cannot say. Regardless, the slip logs should still be in the boxes.

It is obvious your “audit” of the ballots is moving at a slower pace than you planned. Our organization of the ballots in the boxes—an organization that complies with the laws that the Senate helped write—is no excuse for why you are some 1.5 million ballots behind schedule in your “recount”, as your letter comically insinuates.

Your Fourth Question: Most of the ballot boxes were sealed merely with regular tape and not secured by any kind of tamper-evident seal. Is that the County’s customary practice for storing ballots?

The Answer:

Yes, that is the County’s customary practice. As required by law (A.R.S. § 16-624 and Chapter 13, Part VI of the Elections Procedures Manual at 248), the Elections Department seals each box of ballots for long-term storage with the County Treasurer. For Election Day ballots, we use tamper evident tape. As described above, Election Day ballots are temporarily stored in black canvas bags. Transferring the Election Day ballots from the canvas bag to a long-term storage box requires transport from a secure storage cage to the ballot tabulation center and vault. Even though the ballot storage cage and vault are only a short distance of less than 100 feet, we add the security

precaution of tamper evident tape to ensure that the boxes are not tampered with during transport. Ballots tabulated at central count are immediately placed in long-term ballot storage boxes and moved to our secure ballot vault.

The vault is one of the most secure areas within the Elections Department and has highly restricted access among numerous overhead security cameras. The boxes are sealed with standard clear sturdy packing tape. While in the custody of the Elections Department and with the exception of the batches of ballots used for the Hand Count, these ballots never leave the custody of the ballot tabulation center and secure ballot vault.

Finally, the long-term storage boxes that include batches of early ballots selected by the political parties and included in the hand count are affixed with tamper evident tape. This extra security measure is provided because these batches of ballots are removed from the vault to be hand counted by the political parties. The hand count boards confirm the tamper evident tape has not been modified prior to beginning the hand count procedures.

Your Fifth Question: The audit team has encountered a significant number of instances in which there is a disparity between the actual number of ballots contained in a batch and the total denoted on the pink report slip accompanying the batch. In most of these instances, the total on the pink report slip is greater than the number of ballots in the batch, although there are a few instances in which the total is lower. What are the reasons for these discrepancies? For your reference, please see several illustrative (*i.e.*, not comprehensive) examples in the table below:

Pallet	Ballot Type	Batch	Pink Slip Total	Actual Total	Discrepancy
5	EV	2104	200	198	-2
5	EV	9276	200	165	-35
15	EV	9278	200	187	-13
15	EV	1643	200	218	18
7	EV	6359	197	187	-10

The Answer:

The slip logs you are referencing are called “Early Voting Transmittal Slips.” Because it is obvious that your contractors have no understanding of these matters, a brief tutorial is in order:

Early ballots returned by voters to MCTEC are placed into batches of approximately 200 ballots and then examined by bipartisan Early Ballot Processing Boards (“EV Processing Boards”). The EV Processing Boards check the ballots in each batch with the human eye to determine whether, in their judgment, the ballots are capable of being tabulated by the tabulation machines, or whether they are damaged such that they will not be read by the machines but must be duplicated pursuant to statute (A.R.S. § 16-621(A)). Examples of damaged ballots that cannot be read by the tabulators include ballots that are ripped or those that have had a drink spilled on them. Because it is obvious the tabulators will not read such damaged ballots, those ballots are removed from the batch and sent to a bipartisan Ballot Duplication Board to be duplicated onto a new ballot as required by statute. (A.R.S. § 16-621(A) and Elections Procedures Manual, Chapter 10, Part II(D) at 201). All such duplicated ballots are then tabulated by the tabulation equipment, as the law requires. The rest of the ballots in the batch are sent to the Central Count Tabulators to be tabulated.

The Early Voting Transmittal Slips that you referenced in your letter are prepared by the EV Processing Boards to track how many ballots from each batch of approximately 200 are sent to the Central Count Tabulators. These Transmittal Slips exist as a three-part carbon copy form. After the EV Processing Board completes the form, the three copies are separated. One copy accompanies the ballots to the tabulation center, so that the elections officials who insert the ballots into the Central Count Tabulators can verify that they have received the correct number of ballots for tabulation. The other two copies of the Transmittal Slip are used for other tracking purposes.

But not every ballot that is sent for tabulation can be read by the tabulators. Sometimes the voters make stray marks that interfere with the tabulation process. Or, the early ballot is printed slightly off-center. These unreadable ballots are rejected when inserted into the Central Count Tabulators. In these instances, those damaged ballots are sent to the bipartisan Ballot Duplication Boards directly from the central count tabulation center.

To maintain the integrity of the data on all copies of the now-separated, three-part Early Voting Transmittal Slip, the Elections Department uses a *separate* set of tabulator logs to track when a damaged ballot is sent to duplication from the central count tabulation center. To the point: the ballots that are sent directly to duplication from the tabulation center are not tracked on the slip logs you referenced in your letter, rather they are tracked on Daily Tabulator Log slips, prepared contemporaneously when the ballots are tabulated.

For example, consider the first slip log you referenced, referring to Batch

2104. We reproduce it here:

Pallet	Ballot Type	Batch	Pink Total	Slip	Actual Total	Discrepancy
5	EV	2104	200		198	-2

This Transmittal Slip records that the EV Processing Board sent all 200 ballots in Batch 2104 to the central count tabulation center. However, when the ballots were inserted into the tabulation equipment, two of the ballots could not be read. Thus, when you examined this batch of ballots, only 198 ballots were included, which is why you erroneously believed there was a discrepancy of 2 ballots. Your contractors misunderstand the purpose of the Transmittal Slip records. That record indicates the number of ballots from Batch 2104 that were transferred by the EV Processing Board directly to the central count tabulation center. In this instance, the Central Count Tabulators were unable to read two of those ballots in the batch of 200. Those two had to be sent from the tabulation center to the bipartisan Duplication Boards. Thus, only 198 ballots in Batch 2104 were immediately tabulated by the Central Count Tabulators, which is why you only found 198 ballots from Batch 2104 in the cardboard box. (The duplicated ballots are kept in other sealed boxes after they are tabulated).

Our examination of the corresponding Daily Tabulator Log slips for batch 2104 confirms this. The Daily Tabulator Log slips reveal how many ballots from each batch received by the tabulation personnel are tabulated by the equipment, and how many ballots from each batch that arrive at the tabulation center have to be sent to be duplicated in order to be tabulated. The Daily Tabulator Log slip that includes Batch 2104 reveals that 2 ballots of the 200-ballot batch were rejected by the tabulators and were sent to the bipartisan Duplication Boards.

We likewise determined that, based on the Daily Tabulator Log slips for Batches 9276, 9278, and 6359, the “discrepancies” you identified were not discrepancies, but rather accurately reflected damaged ballots being sent from the tabulation center to be duplicated because they could not be read by the tabulator.

Batch 1643 presents a different issue. We reproduce it here:

Pallet	Ballot Type	Batch	Pink Total	Slip	Actual Total	Discrepancy
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15	EV	1643	200	218	18
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You seem to be stating that you counted 218 ballots in Batch 1643, but our Transfer Transmittal Slip log only recorded 200 ballots. We examined the Daily Tabulator Log slip for Batch 1643, and have verified that there were only 200 ballots in that batch—as there should have been. We also verified that the Daily Tabulator Log slip indicates that zero of the 200 ballots were sent from the tabulation center to be duplicated, but rather all 200 ballots were immediately able to be tabulated by the Central Count Tabulators. Thus, there should have been—and, we believe there were—200 ballots in Batch 1643 in the sealed box, not 218 as your contractors counted.

3. We cannot produce what we do not possess; and, we do not possess additional passwords.

In your letter, you state that Maricopa County “has refused to provide passwords necessary to access vote tabulation devices.” However, as we have previously told you, we have produced every password in our custody and control. You, however, accuse us of lying. You state that we could not have conducted our forensic audits without additional passwords, and that “it strains credulity” to suggest that our contract with Dominion Voting Systems does not allow us to obtain additional, proprietary passwords belonging to Dominion.

The contract is a public record: you could have requested it. Even a cursory review would show there is no contractual provision granting the County the ability to acquire Dominion’s proprietary passwords. Instead you call us liars and insult us, when a simple public records request would have helped you avoid such indecent conduct.

Next, let’s consider the County’s two separate forensic audits conducted in February of this year. You suggest that the Dominion proprietary password would have been necessary to conduct those audits. You are correct: it was. The forensic audit firms that the County hired, Pro V & V and SLI Compliance, are both accredited by the U.S. Elections Assistance Commission as voting system testing laboratories. Because of that accredited status, signifying that these firms are specialists who have expertise with voting systems and understand how to audit them, Dominion Voting Systems provides Pro V & V and SLI Compliance with the necessary passwords to audit their machines.

Your chosen “auditors,” the Cyber Ninjas, are certainly many things. But “accredited by the EAC” is not one of them. Regardless, we cannot give you a password that we do not possess any more than we can give you the

formula for Coca Cola. We do not have it; we have no legal right to acquire it; and so, we cannot give it to you.

4. We will not provide your “auditors” access to the County’s routers because doing so would compromise the security of the County’s network, which in turn could compromise the security of sensitive, protected and critical data.

The County’s routers provide a blueprint to the County’s network. Were that blueprint to fall into the wrong hands, the results could be catastrophic.

We can best explain it, in non-technical terminology, as follows: suppose your house had a hidden wall safe, where you stored your most valuable possessions. You would do everything possible to prevent criminals from finding the location of the safe. You wouldn’t give anyone a blueprint of your house, with the location of the wall safe circled in red marker, because if criminals got ahold of it, they would know exactly where your valuables were. They could be in and out of your house and steal your most important possessions before law enforcement could arrive to stop them.

The County’s routers are also a blueprint. They provide a map showing exactly where in the County’s computer network all the County’s most critical data is hidden—data related to the most sensitive law enforcement programs—including federal law enforcement programs, and data related to Maricopa County’s citizens’ protected health information, financial information, and social security numbers. If a criminal organization or some other bad actor gained access to that blueprint, it could do irreparable damage to the County, the State, and even our Country. That blueprint could allow someone who successfully hacked into our network to quickly copy all of this sensitive information—perhaps before we even knew that our security had been breached – because they would know exactly where to look. This could lead to any number of harms to our citizenry, including disruption to critical services or even identity theft. And, it could lead to the “outing” of undercover law enforcement personnel and the unraveling of critical law enforcement programs. Having this blueprint would also aid a bad actor trying to infect our network with ransomware that might lock us out of our network, further putting our citizens’ protected information, and perhaps even their physical safety, at risk.

You have suggested, however, that we should let your contractors look at the routers anyway. Yet Mr. Bennett publicly acknowledged that your contractors locked him out of your “audit’s” official twitter account, and also acknowledged that he was having difficulty regaining access. There is more we could say to

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explain why we do not believe it prudent to blindly trust your contractors, but we believe that example is enough. President Reagan famously said, “Trust, but verify.” The requisite verification is not present here. Accordingly, we will not endanger the safety and security of our citizens, our law enforcement, our state, and our nation by providing you and your “auditors” access to our routers.

5. We will not attend your meeting on May 18, 2021.

In your letter, you invite us to attend a meeting at the Arizona State Capitol on Tuesday, May 18, 2021, at 1:00 p.m., and you request that we bring Election Department officials who would have knowledge of our elections procedures. We will not be attending. We will not be responding to any additional inquiries from your “auditors”. Their failure to understand basic election processes is an indication you didn’t get the best people to perform in your political theatre. We have wasted enough County resources. People’s tax dollars are real, your “auditors” are not.

6. Your “audit” is harming all of us, and we ask you to end it.

Finally, we express our united view that your “audit”, no matter what your intentions were in the beginning, has become a spectacle that is harming all of us. Our state has become a laughingstock. Worse, this “audit” is encouraging our citizens to distrust elections, which weakens our democratic republic.

Your “auditors” began the “audit” unaware that using blue pens on ballots could harm them, and apparently would have distributed blue pens to those conducting the recount of ballots had a reporter not informed them. It has gone downhill from there. Your “audit,” which you once said was intended to increase voters’ confidence in our electoral process, has devolved into a circus.

You are using purple lights and spinning tables. You are hunting for bamboo. These are not things that serious auditors of elections do.

You are photographing ballots contrary to the laws that the Senate helped enact, and you are sending those images to unidentified places and people. You have repeatedly lost control of your twitter account, which has tweeted things that appear to be the rantings of a petulant child—not the serious statements of a serious audit.

None of this is inspiring confidence. None of this will cause our citizens to

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trust elections. In fact, it is having the opposite result. You certainly must recognize that things are not going well at the Coliseum. You also must know that the County's election was free and fair, and that our Elections Department did an outstanding job conducting it.

Unfortunately, this has become a partisan issue, and it should not be one. It is time to make a choice to defend the Constitution and the Republic. As County elected officials, we come from different political parties, but we stand united together to defend the Constitution and the Republic in our opposition to the Big Lie. We ask everyone to join us in standing for the truth. The November 3, 2020 general election was free and fair and conducted by the Elections Department with integrity and honor.

Regardless of your intentions when you decided to subpoena our equipment and ballots, this cannot really be what you envisioned. You, Senate President Fann, are the only one with the power to immediately end it. We implore you to recognize the obvious truth: your "auditors" are in way over their heads. They do not have the experience necessary to conduct an audit of an election. They do not know the laws, nor the procedures, nor the best practices. It is inevitable that they will arrive at questionable conclusions.

It is time to end this. For the good of the Senate, for the good of the Country and for the good of the Democratic institutions that define us as Americans.

SIGNATURES ON FOLLOWING PAGE

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Sincerely,

Jack Sellers, Chairman
Supervisor, District 1
Maricopa County Board of Supervisors

Stephen Richer
Maricopa County Recorder

Bill Gates, Vice Chairman
Supervisor, District 3
Maricopa County Board of Supervisors

Paul Penzone
Maricopa County Sheriff

Steve Chucri
Supervisor, District 2

Clint Hickman
Supervisor, District 4

Steve Gallardo
Supervisor, District 5