RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

By: THOMAS P. LIDDY (Bar No. 019384)
JOSEPH J. BRANCO (Bar No. 031474)
JACK O'CONNOR (Bar No. 030660)
KAREN J. HARTMAN-TELLEZ (Bar No. 021121)
JOSEPH E. LA RUE (Bar No. 031348)
Deputy County Attorneys
liddy@mcao.maricopa.gov
brancoj@mcao.maricopa.gov
oconnorj@mcao.maricopa.gov
hartmank@mcao.maricopa.gov
laruej@mcao.maricopa.gov

CIVIL SERVICES DIVISION
225 West Madison Street
Phoenix, Arizona 85003
Telephone (602) 506-8541
Facsimile (602) 506-4316
ca-civilmailbox@mcao.maricopa.gov
MCAO Firm No. 0003200

Attorneys for Maricopa County Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

REPUBLICAN NATIONAL COMMITTEE, *et al.*, Plaintiffs, vs. STEPHEN RICHER, *et al.*, Defendants.	No. CV2022-013185 **REPLY IN SUPPORT OF MARICOPA COUNTY DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED VERIFIED SPECIAL ACTION COMPLAINT** (The Honorable Katherine Cooper.)

Introduction

The 2022 General Election is well and truly over. All of the ballots have been cast, and counted, and recounted. The temporary election workers hired to assist the defendants – Maricopa County Recorder Stephen Richer, Co-Directors of Elections Rey Valenzuela and Scott Jarrett, the members of Maricopa County Board of Supervisors, and Maricopa County (collectively, the "Maricopa County Defendants") – conduct the election have gone home. In these circumstances, Plaintiffs' First Amended Complaint (the "FAC"), which sought this Court's intervention in the working conditions of those temporary election workers, should be dismissed.

The sole count of the FAC alleges that the Maricopa County Defendants have "failed to adopt policies and practices sufficient to ensure compliance with" what they call the "Equal Access Statutes" and has imposed "onerous" work requirements on Republican board worker nominees.[1] [FAC, ¶¶ 61-62] The statutes at issue, however, are more appropriately described as the "Election Board Statutes" because they are about election board workers – poll workers, and other temporary workers – who help the Maricopa County Defendants administer elections. While the Election Board Statutes require the Maricopa County Defendants to strive for parity between Republicans and Democrats on the election boards, they do not require the Maricopa County Defendants to achieve absolute equality to administer a lawful election. The Maricopa County Defendants go to great lengths to recruit persons of all political parties, as well as those without a political party preference, to serve on its election boards. And as Plaintiffs have conceded, the Maricopa County Defendants achieved the parity that Plaintiffs desired for the 2022 General Election.

In these circumstances, and for the reasons set forth in the County's Motion to Dismiss, Plaintiffs' FAC should be dismissed.

[1] The cited statutes are A.R.S. §§ 16-531, 16-532, 16-549, 16-551, 16-552, and 16-621 as well as related provisions of the Secretary of State's 2019 Elections Procedures Manual ("EPM").

Argument

I. This action is moot as to the 2022 election cycle and not ripe for future elections.

In the FAC, Plaintiffs concede that the Maricopa County Defendants satisfied its obligation to maintain political party parity of election workers for the 2022 General Election. [FAC, ¶ 7] Plaintiffs, however, asserted that the future conditions for Republican election workers related to any post-election recount kept their claims alive. [*See id.* at ¶¶ 7-9, 42-59] In fact, there was a recount for two statewide offices and one legislative race. But that recount is completed, and there will be no more participation by temporary election workers in the 2022 election cycle. It is beyond question that Plaintiffs' claims are now moot.

Plaintiffs attempt to salvage this lawsuit by also asserting that they seek relief not solely for the 2022 General Election, but also for "future elections." [FAC, Prayer for Relief, ¶ D] As is clear from the fact that the Maricopa County Defendants hired a sufficient number of Republican election workers in 2022, there is simply no basis for this Court to conclude that Plaintiffs will have any claim for relief in the 2024 election cycle or beyond. Any claim regarding the hiring of temporary election workers for future elections is not ripe and should be dismissed.

II. The RNC and AZGOP lack standing.

Plaintiffs rely on *Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. 58, 62, ¶ 11 (2020), for the proposition that they have standing to seek mandamus and declaratory relief. [Resp. at 7-9] However, even under the "more relaxed standard" set forth in that case, Plaintiffs lack standing. Indeed, Plaintiffs fail to acknowledge that it is the county political party, not the Republican National Committee (the "RNC") or the Republican Party of Arizona (the "AZGOP"), that is the "party beneficially interested" in this action. *See Barry v. Phx. Union High Sch. Dist.*, 67 Ariz. 384, 388 (1948) (finding beneficial interest because plaintiff "had a direct official interest or duty to serve in the proceeding"); *Ariz. Pub. Integrity All.*, 250 Ariz. at 62, ¶ 12 (finding beneficial interest because voters had an interest in ballot instructions that comply with the law). Here, neither the RNC nor the AZGOP

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003

have a direct official interest or a duty to serve in the proceedings, and further, the County already satisfied its obligation under the law to seek to achieve parity of election workers, as Plaintiffs concede. Plaintiffs, therefore, do not have standing to pursue this special action even under a liberal application of the standing doctrine.

III. The County has authority to direct the working conditions of all its employees.

The gravamen of Plaintiffs' FAC is that the Maricopa County Defendants have no authority to control the employment conditions of election workers appointed pursuant to the Election Board Statutes. Instead, Plaintiffs assert, that authority rests with the "Republican Party."[2] [Resp. at 6] Plaintiffs further characterize the election workers as the Republican Party's "nominees" and its "appointees." [*Id*.] From that starting point, Plaintiffs assert that only the Republican Party may impose work requirements on Republican election board workers, including poll workers.

If that were the case, there is no need for County Election Department officials to create or define poll worker job duties because those duties would be left to the parties to decide. And, each party would decide the job requirements for its members. This argument quickly becomes absurd, leading to the bizarre conclusion that the Election Department would be unable to set uniform, standard work requirements for its temporary employees. Rather, the Republican Party would set durational and job-duty requirements for its appointed election board workers, including poll workers, which might be very different from the requirements that the Democratic Party sets for its members. Yet, to conduct an election, the Elections Department needs *all* its poll workers to arrive at the polling location in time for the election to begin at 6 a.m. and to engage in the duties necessary to serve the voters. There cannot be one set of work requirements for Democrats and another for Republicans. Elections would be impossible to administer were that the case. And, that is

[2] It is not clear exactly which entity Plaintiffs mean when they say the "Republican Party." Plaintiffs are the Republican National Committee and the Republican Party of Arizona, neither of which have authority with respect to appointment of election workers. Instead, the nonparty Maricopa County Republican Committee is the body charged by Arizona law with nominating Republican election workers to be appointed by the County Board of Supervisors. A.R.S. § 16-531(A).

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003

not the case.

The law is clear, temporary election workers are appointed by the Board of Supervisors, and the Board has the authority to define their employment conditions, including working hours and number of shifts required. *See* A.R.S. § 16-531(A).

Plaintiffs argue that the Maricopa County Defendants have only that authority over temporary election workers that the Legislature has expressly provided and assert that the only authority granted is to require that election workers attend instructional classes, citing A.R.S. § 16-532. [Resp. at 5-6 (citing *Mohave County v. Mohave-Kingman Estates, Inc*., 120 Ariz. 417, 420 (1978)] As a general matter, Plaintiffs are correct about the limitations of county authority, but they wholly ignore that the Legislature has granted counties authority to control the working conditions of all of their employees, including temporary election workers. For example, while a county may not require private employers within its jurisdiction to "alter or adjust any employee scheduling unless the alteration or adjustment is required by state or federal law," that restriction does not apply to "county scheduling requirements that apply to employees of the . . . county." A.R.S. § 23-205(A), (B)(1). Indeed, the Legislature has granted the County broad authority to regulate the employment conditions and benefits of its employees. *See, e.g.*, A.R.S. § 11-251(3) (providing for appointment of election judges and inspectors), (38) (establish salary and wage plans), (50) (provide employee benefits plans), and (51) (allow for sick leave, personal leave, vacation and holiday pay and jury duty pay).

Moreover, County authority regarding employment conditions may be implied, not express. *Maricopa Cnty. v. Black*, 19 Ariz. App. 239, 241 (1973) (stating that a county has "such powers as have been expressly or by necessary implication delegated to it by the legislature"). The County's power to set work schedules and other employment conditions for election workers is implied by the many laws giving the County oversight of elections. Indeed, the statute governing appointment of election board members provides that it "does not prevent the board of supervisors or governing body from refusing for cause to reappoint, or from removing for cause, an election board member." A.R.S. § 16-531(I).

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003

That provision makes clear that the County may set and enforce work requirements for election workers.

Simply put, the County as an employer may regulate the terms and conditions of its employees' work as any employer would. And nothing in the Election Board Statutes or EPM, which permit a county political party committee to nominate some election workers, gives the Plaintiffs or the nonparty Maricopa County Republican Committee the right to direct or control such workers once the County appoints them.

IV. The County complied with Ariz. R. Civ. P. 12(j).

Finally, Plaintiffs assert that this Court cannot grant the Maricopa County Defendants' Motion to Dismiss because "the County failed to confer by telephone with counsel for the Arizona Republican Party." [Resp. at 14] It is not entirely clear from this argument if Plaintiffs are arguing that the good faith consultation did not occur at all or if it required participation of all counsel for Plaintiffs. In any event, the Maricopa County Defendants' counsel has certified to the Court that he spoke by telephone to Mr. La Sota, the only attorney who signed the First Amended Complaint, who agreed that "the parties would be unable to reach any agreements that would make the filing of the County's motion to dismiss unnecessary." [Maricopa County Defendants' Rule 7.1(h) Good Faith Consultation Cert., ¶ 3] If Mr. La Sota lacked authority to speak on behalf of the Arizona Republican Party for the purpose of the Rule 7.1(h) consultation, he did not make that clear. Consequently, the Maricopa County Defendants met their good faith consultation obligations, and Rule 12(j) provides no basis to deny the Motion to Dismiss.

Conclusion

For the foregoing reasons, the Court should dismiss the Complaint pursuant to Ariz. R. Civ. P. 12(b)(6) for failure to state a claim on which relief can be granted.

//

//

//

//

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003

RESPECTFULLY SUBMITTED this 27th day of December, 2022.

RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: */s/Joseph E. LaRue*
THOMAS P. LIDDY
JOSEPH J. BRANCO
JACK L. O'CONNOR III
KAREN J. HARTMAN-TELLEZ
JOSEPH E. LA RUE
Deputy County Attorneys
Attorneys for Maricopa County Defendants

ORIGINAL of the foregoing E-FILED
this 27th day of December, 2022 with
AZTURBOCOURT, and copies e-served / emailed to:

HONORABLE KATHERINE COOPER
MARICOPA COUNTY SUPERIOR COURT
Avery Vaughn, Judicial Assistant
avery.vaughn@jbazmc.maricopa.gov
Brandon Powell, Bailiff
brandon.powell@jbazmc.maricopa.gov

Timothy A. La Sota
TIMOTHY A. LA SOTA, PLC
tim@timlasota.com
Attorney for Plaintiff RNC

Alexander Kolodin
Roger Strassburg
Veronica Lucero
Jackie Parker
DAVILLIER LAW GROUP, LLC
akolodin@davillierlawgroup.com
rstrassburg@davillierlawgroup.com
vlucero@davillierlawgroup.com
jparker@davillierlawgroup.com
phxadmin@davillierlawgroup.com
Attorneys for Plaintiff AZGOP

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003

Roy Herrera
Daniel A. Arellano
Jillian L. Andres
Austin T. Marshal
HERRERA ARELLANO LLP
roy@ha-firm.com
daniel@ha-firm.com
jillian@ha-firm.com

David R. Fox
Joel J. Ramirez
Ian U. Baize
ELIAS LAW GROUP LLP
dfox@elias.law
jramirez@elias.law
jbaize@elias.law
Attorneys for Intervenors

/s/Joseph E. La Rue

MARICOPA COUNTY
ATTORNEY'S OFFICE
CIVIL SERVICES DIVISION
225 WEST MADISON STREET
PHOENIX, ARIZONA 85003