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8 *Hamadeh*

9
10 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 No.CV2022-015915

13 IN THE MATTER OF the November 8,
14 2022, General Election for Attorney
15 General; Superintendent of Public
16 Instruction; and State Representative for
17 District 13

18 **MOTION FOR STAY**

19 (assigned to the Honorable Timothy J.
20 Thomason)

21 Abraham Hamadeh respectfully moves that this Court stay any orders in this matter
22 related to the Arizona Attorney General race.

23 Arizona Revised Statutes Section 16-667 provides “[t]his article is supplemental to
24 and not in derogation of the law relating to contest of elections and, upon the initiation of
25 such a contest, a proceeding begun under this article shall abate.” The Intervenor filed
26 suit in Mohave County (CV2022-01468). This suit was unsuccessful at the trial level, but
27 the Intervenor will seek appellate court review today via a special action. And the time
28 limit for a Motion for a New Trial has not even run.

The Secretary of State has pushed for certification of this matter despite the
extraordinarily close nature of this race and the significant questions, which will only be

1 amplified if media reports of a large swing in votes towards Mr. Hamadeh are true. If
2 media reports suggesting a significant swing to Mr. Hamadeh are unfounded, this Motion,
3 along with the Motion to Intervene, will be withdrawn.

4 It is also ironic that despite the current posture of the Arizona Secretary of State,
5 she demanded that a previous election contest lawsuit be dismissed because it was
6 premature. That was Maricopa County Superior Court case number CV2022-015455, and
7 it was dismissed by Judge Warner back in November (“Predecessor Election Contest”).
8 So in other words, the Secretary of State has contributed to the time pressure here, and
9 seems to have done so to be able to subsequently claim that time will not permit further
10 election contest proceedings.

11 It was actually the Democratic candidate for Attorney General Kris Mayes, who,
12 through her attorney, offered a solution in the Predecessor Election Contest. In the
13 hearing on the Secretary of State, and Contestee Mayes’ Motion to Dismiss, Judge Warner
14 asked the following question:

15 “What happens if the recount or an election contest isn't done by, I guess the first
16 day under the holiday scheme would be January 3rd? I'll hear from anybody on that¹...”

17 Ms. Mayes’ attorney responded as follows:

18 Your Honor, this is Paul Eckstein. If you follow the practice that happened
19 in 1991, when the election of governor was not resolved because it was a
20 majority vote, Governor Mofford stayed in office until her successor
21 qualified. I don't know whether that procedure would obtain here, but it
22 makes sense that it would².

23 Mr. Hamadeh understands the serious nature of these proceedings. The timeliness
24 of final election results, and any ensuing transfers of offices pursuant to those results, is of
25

26 _____
27 ¹ Transcript (attached), p. 12, line 25, p. 13, lines 1-2.

28 ² Transcript p. 13, lines 17-23.

1 great concern. But so is accuracy. Given the close nature of this matter, a stay of any
2 orders related to the Attorney General's race should be granted while the Supreme Court
3 decides whether to grant review.

4 **RESPECTFULLY SUBMITTED** this 29th day of December, 2022.

5 By: /s Timothy A. La Sota

6 Timothy A La Sota, SBN # 020539

7 **TIMOTHY A. LA SOTA, PLC**

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11
12 **ORIGINAL** of the foregoing was e-
13 filed via TurboCourt this 29th day of
14 December, 2022 with the Maricopa
County Superior Court Clerk.

15 **COPY** of the foregoing emailed this 29th day
16 of December, 2022 to:

17 D. Andrew Gaona (028414)

18 Kristen Yost (034052)

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11 /s/ Timothy A. La Sota

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REPORTER'S TRANSCRIPT OF ELECTRONIC PROCEEDINGS
ORDER TO SHOW CAUSE RETURN HEARING

Page 1

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 2 IN AND FOR THE COUNTY OF MARICOPA
 3
 4 ABRAHAM HAMADEH, et al.,) Case No.
 5 Plaintiff,) CV2022-015455
 6 vs.)
 7 KRIS MAYES, et al.,)
 8 Defendants.)
 9 _____)
 10
 11
 12
 13 REPORTER'S TRANSCRIPT OF ELECTRONIC PROCEEDINGS
 14 ORDER TO SHOW CAUSE RETURN HEARING
 15 BEFORE THE HONORABLE RANDALL H. WARNER
 16 November 28, 2022
 17 2:05 p.m.
 18 Phoenix, Arizona
 19
 20
 21
 22
 23 Prepared by:
 24 Jennifer Honn, RPR
 25 Arizona CR No. 50885

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1 APPEARANCES (continued):
 2 Defendants Sadie Jo Bingham (in her official capacity as
 3 the Gila County Recorder) and the Gila County Board of
 4 Supervisors:
 5 Jefferson Dalton, Esq.
 6 Defendants Wendy John (in her official capacity as the
 7 Graham County Recorder) and the Graham County Board of
 8 Supervisors:
 9 Allan Perkins, Esq.
 10 Defendants Sharie Milheiro (in her official capacity as
 11 the Greenlee County Recorder) and the Greenlee County
 12 Board of Supervisors, are neither present nor represented
 13 by counsel.
 14 Defendants Richard Garcia (in his official capacity as
 15 the La Paz County Recorder) and the La Paz County Board
 16 of Supervisors:
 17 Jason Mitchell, Esq.
 18 Defendants Stephen Richer (in his official capacity as
 19 the Maricopa County Recorder) and the Maricopa County
 20 Board of Supervisors:
 21 Karen Hartman-Tellez, Esq.
 22 Defendants Kristi Blair (in her official capacity as the
 23 Mohave County Recorder) and the Mohave County Board of
 24 Supervisors:
 25 Ryan Esplin, Esq.
 Defendants Michael Sample (in his official capacity as
 the Navajo County Recorder) and the Navajo County Board
 of Supervisors:
 Jason Moore, Esq.
 Defendants Gabriella Cazares-Kelly (in her official
 capacity as the Pima County Recorder) and the Pima County
 Board of Supervisors:
 Daniel Jurkowitz, Esq.

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1 REPORTER'S TRANSCRIPT OF ELECTRONIC
 2 PROCEEDINGS, ORDER TO SHOW CAUSE RETURN HEARING, BEFORE
 3 THE HONORABLE RANDALL H. WARNER, was reported from
 4 electronic media by before JENNIFER HONN, a Certified
 5 Reporter, Certificate No. 50885, for the State of
 6 Arizona.
 7 * * * * *
 8 APPEARANCES: (All appearances are via videoconference.)
 9 Plaintiffs:
 10 Timothy A. La Sota, Esq.
 11 Kory A. Langhofer, Esq.
 12 Thomas Basile, Esq.
 13 Defendant Kris Mayes:
 14 Daniel C. Barr, Esq.
 15 Paul Eckstein, Esq.
 16 Defendant Katie Hobbs (in her official capacity as
 17 Secretary of State):
 18 David A. Gaona, Esq.
 19 Sambo "Bo" Dul, Esq.
 20 Defendants Larry Noble (in his official capacity as the
 21 Apache County Recorder) and the Apache County Board of
 22 Supervisors:
 23 Celeste Robertson, Esq.
 24 Defendants David W. Stevens (in his official capacity as
 25 the Cochise County Recorder) and the Cochise County Board
 of Supervisors, are neither present nor represented by
 Counsel.
 Defendants Patty Hansen (in her official capacity as the
 Coconino County Recorder) and the Coconino County Board
 of Supervisors:
 Mark Byrnes, Esq.

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1 APPEARANCES (continued):
 2 Defendants Dana Lewis (in her official capacity as the
 3 Pinal County Recorder) and the Pinal County Board of
 4 Supervisors:
 5 Craig Cameron, Esq.
 6 Defendants Suzanne Sainz (in her official capacity as the
 7 Santa Cruz County Recorder) and the Santa Cruz County
 8 Board of Supervisors:
 9 Kimberly Hunley, Esq.
 10 Defendants Michelle M. Burchill (in her official capacity
 11 as the Yavapai County Recorder) and the Yavapai County
 12 Board of Supervisors:
 13 Colleen Connor, Esq.
 14 Defendants Richard Colwell (in his official capacity as
 15 the Yuma County Recorder) and the Yuma County Board of
 16 Supervisors:
 17 William Kerekes, Esq.
 18 * * * * *
 19
 20
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REPORTER'S TRANSCRIPT OF ELECTRONIC PROCEEDINGS
ORDER TO SHOW CAUSE RETURN HEARING

11/28/2022

<p style="text-align: right;">Page 5</p> <p>1 (Beginning of recording.) 2 (2:05 p.m.) 3 THE COURT: All right. Good afternoon, 4 everybody. This is Judge Warner speaking. We're going 5 to call our two o'clock case, Civil 2022-015455. It's a 6 return hearing in an election contest. 7 I need to take roll, and so bear with me. I'm 8 going to call one by one. I know we have a lot of 9 counties present. 10 First of all, counsel for -- oh, I'm sorry, with 11 regard to every -- every party, I just want to hear from 12 one person. And if there are other people with you, just 13 state name so -- so we don't have to go through 14 everybody. 15 Counsel for plaintiffs, please. Still muted, 16 Mr. Langhofer. 17 MR. LANGHOFER: Good afternoon, Your Honor. 18 Kory Langhofer for Tim -- with Tim La Sota and Tom Basile 19 for the plaintiffs. 20 THE COURT: Thank you. 21 Counsel for Candidate Mayes. 22 MR. BARR: Good afternoon, Your Honor. Daniel 23 Barr for Candidate Kris Mayes. 24 THE COURT: Thank you. 25 Candidate for Secretary of State -- sorry.</p>	<p style="text-align: right;">Page 7</p> <p>1 County Attorney -- 2 THE COURT: Jess? J-e-s-s and Dalton 3 spelled the normal way? 4 MR. DALTON: No, it's Jeff, J-e-f-f. 5 THE COURT: I'm sorry. Our connection was 6 bad and I heard S's. J-e-f-f. Thank you. 7 MR. DALTON: Yes. 8 THE COURT: All right. And Graham County? 9 MR. PERKINS: Allan Perkins, Graham County 10 Attorney's Office. Allan is spelled A-l-l-a-n, Perkins 11 standard spelling. 12 THE COURT: Thank you. 13 Greenlee? Nobody present for Greenlee 14 County. 15 La Paz? 16 MR. MITCHELL: Good afternoon, Your Honor. 17 Jason Mitchell for La Paz County. 18 THE COURT: Thank you. 19 Maricopa? 20 MS. HARTMAN-TELLEZ: Good afternoon, Your 21 Honor. Karen Hartman-Tellez from Maricopa County 22 Attorney's Office on behalf of the Maricopa County 23 defendants. 24 THE COURT: Thank you. 25 Mohave?</p>
<p style="text-align: right;">Page 6</p> <p>1 Counsel for Secretary of State. 2 MR. GAONA: Good afternoon, Your Honor. 3 Andy Gaona with Coppersmith Brockelman and Bo Dul with 4 States Unified Democracy Center on behalf of Secretary 5 Hobbs. 6 THE COURT: Thank you. I'm going to go 7 through the counties in alphabetical order, or at least 8 in the order in which they appear in the caption. 9 Apache County? 10 MS. ROBERTSON: Good afternoon, Your Honor. 11 Celeste Robertson for Apache County. 12 THE COURT: Celeste Robertson? 13 MS. ROBERTSON: Yes, Your Honor. 14 THE COURT: Thank you. I just want to make 15 sure my clerk spells everybody right. 16 And Cochise County? 17 Don't hear anybody for Cochise County. 18 We'll stay tuned. 19 Coconino County? 20 MR. BYRNES: This is Mark Byrnes, Deputy 21 County Attorney on behalf of Coconino County defendants. 22 Last named is spelled B-y-r-n-e-s. 23 THE COURT: Thank you, Mr. Byrnes. 24 Gila County? 25 MR. DALTON: This is Jeff Dalton, Deputy</p>	<p style="text-align: right;">Page 8</p> <p>1 MR. ESPLIN: Good afternoon, Your Honor. 2 Ryan Esplin from the Mohave County Attorney's Office on 3 behalf of the Mohave County defendants. 4 THE COURT: And I see your name is 5 E-s-p-l-i-n; correct? 6 MR. ESPLIN: That is correct. Thank you. 7 THE COURT: Great. 8 Navajo? 9 MR. MOORE: Your Honor, this is Jason 10 Moore, Deputy County Attorney appearing on behalf of the 11 Navajo County defendants. 12 THE COURT: Thank you. 13 Next up is Pima. 14 MR. JURKOWITZ: Good afternoon, Your Honor. 15 Daniel Jurkowitz on behalf of Pima County defendants, 16 specially appearing as we have not yet been served. 17 THE COURT: Thank you. 18 Pinal? 19 MR. CAMERON: Craig Cameron on behalf of 20 Pinal County Attorney's Office on behalf of the Pinal 21 County defendants. 22 THE COURT: Will you just spell the last 23 name so that we're clear? 24 MR. CAMERON: C-a-m-e-r-o-n. 25 THE COURT: Thank you.</p>

<p style="text-align: right;">Page 9</p> <p>1 Santa Cruz? 2 MS. HUNLEY: Kimberly Hunley appearing on 3 behalf of the Santa Cruz County defendants. 4 THE COURT: Thank you. 5 And Yavapai? 6 MS. CONNOR: Good afternoon, Your Honor. 7 Colleen Connor on behalf of the Yavapai County 8 defendants. 9 THE COURT: Right. And then Yuma is last. 10 MR. KEREKES: Bill Kerekes, Deputy County 11 Attorney on behalf of the Yuma County defendants, Your 12 Honor. 13 THE COURT: Thank you. Did I miss any 14 party? Okay. 15 A few things I want to talk about. I 16 guess, first, let me get a sense of -- of timing. When 17 do we expect -- putting aside the recount, I want to talk 18 about that in a second -- but when do we expect 19 certification of elections that aren't subject to a 20 recount? 21 Mr. Langhofer, you want to help me out? 22 MR. LANGHOFER: Yeah, the -- the 23 presumptive deadline is December 5th. I was informed, 24 though, just a couple of hours ago that apparently 25 Cochise County, which is one of the counties that did not</p>	<p style="text-align: right;">Page 11</p> <p>1 canvass up until December 8th if -- if the -- that 2 litigation hasn't been resolved or if Cochise County does 3 not certify by that point. So that would be the, you 4 know, absolute last day by which the canvass would be 5 completed would be the 8th. 6 THE COURT: Does that get filed in Cochise 7 County? 8 MR. GAONA: The special action, Your Honor? 9 THE COURT: Yes. 10 MR. GAONA: Yes, it will be filed in 11 Cochise County. 12 THE COURT: Okay. Thank you. All right. 13 And then let's talk about recount. I 14 realize we don't know exactly how long that would take, 15 but you all are more expert than I am. How long do 16 people think it would take for a recount? 17 MR. LANGHOFER: Kory Langhofer for the 18 plaintiffs, Your Honor. I'll go first here, but the 19 counties are probably the experts on this. 20 My estimation is it would be a couple of 21 weeks. And some of that depends on the process that we 22 agree to for a recount. 23 You know, this is not the recount case. I 24 think Mr. Gaona will be instituting -- initiating that 25 when the time comes.</p>
<p style="text-align: right;">Page 10</p> <p>1 appear on the call, has not done its canvass today. And 2 so I don't -- I just don't know what happens in that 3 scenario, if they delay, whether the statewide canvass 4 will also be delayed. 5 THE COURT: I don't know either. I can 6 imagine all the possibilities, but at least we expect it 7 to be done by the 5th. Yeah. 8 MR. GAONA: All right. 9 THE COURT: Okay. 10 MR. GAONA: Your Honor -- Your Honor, if 11 you'd like to hear the Secretary's perspective on that, I 12 can give you some color there. 13 THE COURT: Yeah, I'd love to. Thank you. 14 MR. GAONA: And for the record, this is 15 Andy Gaona on behalf of the Secretary. 16 Your Honor, the canvass is currently 17 scheduled to occur on December 5th, but as Mr. Langhofer 18 said, Cochise County did refuse to certify its canvass by 19 the statutory deadline today. 20 The -- the Secretary will be filing a 21 special action to compel Cochise County to complete its 22 canvass, and we are asking that it be done by 23 December 1st so that the canvass can proceed on the 5th. 24 There is a buffer built into the statute 25 where the Secretary can delay the certification of the</p>	<p style="text-align: right;">Page 12</p> <p>1 There is some overlap between what we're 2 talking about in this case and what would happen to 3 recount, adjudication in particular. We may be able to 4 agree on a process in the recount case that makes it 5 unnecessary to resolve the adjudications that happened in 6 the first count. 7 And so there will be a little bit of 8 overlap there, but my -- my over-under would be on two 9 weeks from that. 10 THE COURT: Ms. Hartman-Tellez, are your 11 people saying about two, three weeks? 12 MS. HARTMAN-TELLEZ: I think closer to 13 three weeks. I mean, the -- the goal is to be finished 14 before Christmas. 15 THE COURT: Uh-huh. 16 MS. HARTMAN-TELLEZ: That's what I have 17 heard. But, yeah, it will -- it certainly will be a few 18 weeks. 19 THE COURT: And, Mr. Jurkowitz -- I'm not 20 going to go every county, but the two largest counties 21 are going to have the most work to do. So Mr. Jurkowitz? 22 MR. JURKOWITZ: I don't know exactly, Your 23 Honor, but it would be many days. 24 THE COURT: Yeah. What happens if the 25 recount or an election contest isn't done by, I guess,</p>

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1 the first day under the holiday scheme would be
2 January 3rd? I'll hear from anybody on that.
3 MR. LANGHOFER: So, Your Honor, that's one
4 of the big questions that we have as well. I don't think
5 there's a clear answer to it. In a worst case scenario,
6 we're repeating 1916 where we have, you know, dueling
7 officials and/or a delay in inauguration. And I think
8 that's just a nightmare scenario.

9 I think what we want to do is wrap all this
10 up, even if it involves doing the recount and election
11 contest at the same time -- happy to talk to you about
12 that in more detail -- so that we don't have an
13 unanswered question on January 2nd.

14 THE COURT: All right. So -- so let's --

15 MR. ECKSTEIN: Your Honor --

16 THE COURT: Yeah.

17 MR. ECKSTEIN: Your Honor, this is Paul
18 Eckstein. If you follow the practice that happened in
19 1991, when the election of governor was not resolved
20 because it was a majority vote, Governor Mofford stayed
21 in office until her successor qualified. I don't know
22 whether that procedure would obtain here, but it makes
23 sense that it would.

24 THE COURT: Okay. Thank you. And I --
25 we're just talking to get a sense of things for case

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1 and the president of the senate elect have taken steps to
2 file an amicus brief on this. I think they'd like to
3 weigh in. And so apart from that, I think we've briefed
4 our position, but I -- I think they'd like to be heard on
5 the question.

6 THE COURT: How soon is that going to
7 happen?

8 MR. LANGHOFER: Well, they asked me to ask
9 you for a deadline of Monday, and I said I could not make
10 that guarantee but I would make the request.

11 THE COURT: Yeah, I -- I'm -- whether I'll
12 let them be amicus or not, you know, I'm -- I'm inclined
13 to be -- to be liberal on amicus, as I always am, but I
14 can't wait for a week.

15 MR. BARR: Yeah, Your Honor, this -- this
16 is Dan Barr.

17 THE COURT: Please.

18 MR. BARR: You know, the plaintiffs could
19 have from now until the end of eternity here to -- to
20 address this issue, and it's not going to change. It's,
21 you know, their complaint is premature and fails to meet
22 the two predicates necessary to file an elections
23 challenge.

24 THE COURT: Let's do this. I'm going to
25 hear argument now. And when we're done with argument,

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1 management purposes. I'm not expecting anybody to commit
2 to positions.

3 But let's talk about the timeliness issue.
4 I got a couple of motions to dismiss this morning, and I
5 got a response to the motion to dismiss maybe an hour,
6 hour and half ago.

7 Although I will say that as soon as I heard
8 about this lawsuit, before I heard it was going to be
9 mine, my first reaction was is this timely.

10 So my real question to you all is does it
11 need to be briefed further, or are we prepared to argue
12 that issue now.

13 I'm happy to hear -- I've got a response,
14 so I'm happy to hear argument, and I would take the
15 matter under advisement and make a decision just on the
16 timeliness issue.

17 There are other issues. There are, you
18 know, 12(b)(6) issues that go in those motions that we're
19 going to have to deal with down the road. But in terms
20 of timeliness, I think we can talk about it now.

21 Does anybody object to hearing argument
22 right now and then we can make those decisions?

23 MALE VOICE: No, Your Honor.

24 MR. LANGHOFER: Your Honor, this is Kory
25 Langhofer. I know that the speaker of the house elect

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1 I'll decide whether I'm going to delay rulings so
2 somebody else can file a brief on it if they want. But I
3 suspect I have everything in front of me that I need to
4 decide that issue.

5 And let me start with Mr. Barr, since you
6 filed the first of the motions to dismiss. What's your
7 response to the -- to the argument that the recount
8 statute specifically allows for an election contest
9 during a recount and it abates the recount?

10 MR. BARR: Well, your Honor, I -- I think
11 what -- you have to look at what the -- the factual
12 predicates are for filing the election contest in the
13 first place. I mean, the case that was cited in the
14 response to the motion to dismiss had to do with an
15 instance where the recount was already occurring and then
16 the elections challenge was filed.

17 For the recount to be filed,
18 A.R.S. 16-673(A) states the elector contesting a state
19 election shall, within five days after completion of the
20 canvass and declaration of the result of the secretary of
21 state or the governor.

22 Well, neither of those things have
23 happened, Your Honor.

24 THE COURT: Well, let -- let's split those
25 into two. So I guess --

REPORTER'S TRANSCRIPT OF ELECTRONIC PROCEEDINGS
ORDER TO SHOW CAUSE RETURN HEARING

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<p style="text-align: right;">Page 17</p> <p>1 MR. BARR: Sure. Sure.</p> <p>2 THE COURT: -- what I want to know is, is it</p> <p>3 your position that they've got to file it after the</p> <p>4 canvass, which will not declare a winner in this</p> <p>5 election, or it's going to have to happen after the</p> <p>6 recount?</p> <p>7 MR. BARR: Well, I think you'd have to say</p> <p>8 it would have to happen after the recount here because a</p> <p>9 winner is not going to be declared until the recount</p> <p>10 is -- is completed and the Court opens up the envelope</p> <p>11 and sees who the winner is.</p> <p>12 THE COURT: Right. So, but what do you do</p> <p>13 about the statute that says if an election contest is</p> <p>14 filed and there's a recount, the recount abates?</p> <p>15 MALE VOICE: Your Honor --</p> <p>16 MR. BARR: Well, I think it -- go ahead.</p> <p>17 MR. ECKSTEIN: Your Honor, this is Paul --</p> <p>18 could I be heard on this, Your Honor?</p> <p>19 THE COURT: Sure, if Mr. Barr wants to</p> <p>20 yield the floor to you, go ahead.</p> <p>21 MR. ECKSTEIN: Okay.</p> <p>22 MR. BARR: Please do.</p> <p>23 MR. ECKSTEIN: The -- the statute that is</p> <p>24 cited by the petitioner/contestant is 667. And it is</p> <p>25 under Article 12, I believe --</p>	<p style="text-align: right;">Page 19</p> <p>1 canvass has to be done, and until the canvass is done,</p> <p>2 you can't even initiate this lawsuit. You don't have to</p> <p>3 wait, given 667, until the recount is complete, although,</p> <p>4 you know, that would make eminent good sense. But you</p> <p>5 don't have to do that. And, in fact, the statute says it</p> <p>6 will abate. That's a proper reading.</p> <p>7 But to ignore 672, which says you must have</p> <p>8 a declaration, is to forget that that is a separate</p> <p>9 article.</p> <p>10 THE COURT: All right.</p> <p>11 MR. ECKSTEIN: It's not -- it's not in</p> <p>12 Article 12. And 667 does not say that if a recount is</p> <p>13 contemplated or an automatic recount is necessary, that</p> <p>14 you wait until you -- you can have the election contest</p> <p>15 and the recount will be abated. It does -- it says that</p> <p>16 you cannot file an election contest until there's been a</p> <p>17 declaration. That's clear.</p> <p>18 THE COURT: So what I hear you saying is</p> <p>19 Monday the 5th, or maybe at the latest the 8th, if some</p> <p>20 things happen, we expect a canvass. And the results will</p> <p>21 be declared for everything except for the elections that</p> <p>22 require a recount -- and it may just be this one, I don't</p> <p>23 know if there's another one. And at that point,</p> <p>24 Mr. Langhofer and Mr. La Sota have to file their lawsuit.</p> <p>25 Then we're going to do an election contest</p>
<p style="text-align: right;">Page 18</p> <p>1 THE COURT: Right. It's under the recount</p> <p>2 statute.</p> <p>3 MR. ECKSTEIN: -- and it's this article is</p> <p>4 supplemental to, and then it goes on. The -- the</p> <p>5 provision that Mr. Barr was referring to is under</p> <p>6 Article 13, a different article. And so by its terms,</p> <p>7 that language in 667 does not apply.</p> <p>8 The language that is -- that Mr. Barr was</p> <p>9 referring to is 16-672, and it says an elector of the</p> <p>10 state may contest an election and the person declared</p> <p>11 elected to state office. That has not happened. And the</p> <p>12 contestant's argument is, well, it will happen. That</p> <p>13 isn't good enough. It has to have happened --</p> <p>14 THE COURT: Let me -- let me get back to --</p> <p>15 MR. ECKSTEIN: -- in that order --</p> <p>16 THE COURT: -- what my question is,</p> <p>17 Mr. Eckstein. What do you make of 16-667? Doesn't that</p> <p>18 say -- so what I hear you saying is the canvass hasn't</p> <p>19 happened yet, so they need to file their lawsuit after</p> <p>20 the canvass. But then I hear you saying they have to</p> <p>21 file a lawsuit after the -- after the recount. But this</p> <p>22 statute seems to contemplate that the contest would be</p> <p>23 filed after the canvass while the recount is going on.</p> <p>24 Do you disagree with that?</p> <p>25 MR. ECKSTEIN: No, I agree that -- that the</p>	<p style="text-align: right;">Page 20</p> <p>1 in a very accelerated time frame, and that's going to</p> <p>2 abate, which I think means the same thing as stay, the</p> <p>3 recount. We're going to decide these issues, and then</p> <p>4 the recount is going to happen. And if that all happens,</p> <p>5 I guarantee you it's not done by Christmas. So I think</p> <p>6 that's what --</p> <p>7 MR. ECKSTEIN: Well, Your Honor --</p> <p>8 THE COURT: -- you're saying. Yeah, go</p> <p>9 ahead.</p> <p>10 MR. ECKSTEIN: The -- but, the timing, the</p> <p>11 timing on an election contest is much tighter than that.</p> <p>12 Has to be filed within five days.</p> <p>13 THE COURT: Right.</p> <p>14 MR. ECKSTEIN: Then you have to have the</p> <p>15 hearing within ten days; you can extend it by five days.</p> <p>16 So the statutes on recounts contemplated -- contemplated</p> <p>17 an accelerated litigation.</p> <p>18 THE COURT: Absolutely. But I'm doing the</p> <p>19 math on -- on the calendar, and if the lawsuit is filed,</p> <p>20 let's say, on the 5th, I don't think Mr. Langhofer and</p> <p>21 Mr. La Sota are going to wait until that Friday, so let's</p> <p>22 say it's filed on the 5th, our ten days takes us to</p> <p>23 the 19th. Actually, I'm assuming it's ten business days.</p> <p>24 Maybe it's ten -- ten calendar days, but even ten</p> <p>25 calendar days takes us to the 15th. And depending on</p>

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1 what the results are of this, there's probably going to
2 still be a recount one way or the other.

3 I can't imagine the recount is going to be
4 done between December 15th and December 25th. I think.

5 Ms. Hartman-Tellez, do you disagree with
6 that?

7 MR. ECKSTEIN: You're asking if I dis --

8 THE COURT: No, I'm sorry. I'm sorry. I
9 moved to Ms. Hartman-Tellez. The eye contact is hard on
10 Zoom. So sorry.

11 MS. HARTMAN-TELLEZ: Your Honor, I don't
12 disagree with that prospect. I can tell you that in --
13 in 2016, the primary, when there were sort of multiple --
14 there was a pre-contest lawsuit, there was a contest, and
15 there was a recount, the -- the actual sort of counting
16 of the ballots went forward, although the court -- the
17 court proceedings --

18 THE COURT: Yeah.

19 MS. HARTMAN-TELLEZ: -- were not going
20 forward because the court had already ordered the
21 Secretary who then assigns it to the counties to do the
22 recounting process. That's just my recollection of what
23 has happened in the past.

24 THE COURT: All right.

25 MR. GAONA: Your Honor, Ms. Dul can provide

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1 the Secretary's perspective on this issue to you as well.

2 THE COURT: Please.

3 MS. DUL: Thank you, Your Honor. So Dul on
4 behalf of the Secretary.

5 So the Secretary's view on the interplay
6 between the contest statute and the recount statute is
7 that the -- even if the race is going to go to a recount,
8 the period for filing election contest is still that five
9 days after the canvass. And the statute 16-667 would
10 only abate the recount proceeding, the court proceeding,
11 because the filing officer has to go to court to file an
12 action to get a court order to initiate the recount.

13 So the proceeding, the court proceeding,
14 would abate, but as Ms. Hartman-Tellez just said, the
15 counting of ballots itself would proceed. So that
16 wouldn't delay the process of getting the recount
17 completed before Christmas as Maricopa County hopes to
18 do.

19 And then also as to 16-667, I think I'd
20 direct the Court to the Babnew case, which is 154 ARIZ
21 90. And in that case, the court made clear that the
22 obvious purpose of abating the recount proceeding is to
23 spare the expense of a recount if it's possible that the
24 contest could bring the margin of votes no longer within
25 the recount margin.

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1 And, here, because the margin between the
2 top two candidates is so slim, the likelihood that the
3 contest would bring the vote totals outside of the
4 recount margins seems pretty farfetched.

5 And -- but the -- I don't think the
6 scenario that Your Honor is concerned about that the --
7 the contest cannot be brought until after the recount is
8 complete and we face this kind of chaotic situation where
9 the recount isn't done before the January 2nd
10 constitutional swearing-in date for state officials is
11 not likely, at least not under the state's -- the
12 Secretary's interpretation of how these two statutes work
13 together.

14 THE COURT: All right. Thank you. Let --
15 let me turn to Mr. Langhofer, and then we can turn back
16 after that.

17 MR. LANGHOFER: Thank you, Your Honor.

18 THE COURT: Mr. Langhofer, it sounds like,
19 I guess I'd understood at least part of the argument was
20 can't be filed until recount's over, but I think that's
21 not the position or doesn't seem to me. So -- so
22 where --

23 MR. LANGHOFER: Well --

24 THE COURT: Tell me why we should proceed
25 with this lawsuit when we don't have the canvass yet.

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1 MR. LANGHOFER: So I -- I think you weren't
2 confused, Your Honor. I think that the contestee has
3 changed her position in this hearing. The initial
4 position was we couldn't bring this until after the
5 recount and there was a certification. Now it's after
6 the canvass.

7 And of course that -- that itself is not
8 faithful to the statutory text, right, because they've
9 got to reconcile 667 somehow, and so they're taking
10 liberties there.

11 The best authority on this issue is 667,
12 which contemplates an election contest before the
13 certification. And let's look at the EPM, which says the
14 canvassing and the certification are non-discretionary,
15 ministerial acts. Right? This wasn't true in 1924 when
16 a case went differently, but now it is under the EPM.
17 And I think -- I think it's not saying too much to say
18 that everyone on this call wants this to be true.

19 If you can really have discretion to just
20 say, no, I reject this canvass for political reasons,
21 that is a path no one wants to go down here. Once the
22 canvass is complete, it needs to be without discretion
23 administered by the boards.

24 Finally, Brush & Nib speaks to
25 (indiscernible). Of course, the recent decision from the

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1 Arizona Supreme Court, and they say it's ripe if there's
2 an actual controversy even if no action yet has been
3 taken.

4 And we've pleaded in our complaint -- for
5 present purposes, our allegations have to be taken as
6 correct -- that the certification and the canvass are
7 imminent and unavoidable given where the count is.

8 There is no practical reason to put off the
9 issues in the election contest.

10 Also, I want to respond to something
11 Ms. Dul said. She -- she correctly recites what the --
12 the case that she cited to you says, but there is another
13 reason why the election contest should be considered
14 before the recount proceeds, or why we would abate the
15 recount. And that is that there are sometimes questions
16 about what exactly should happen in the recount.

17 So in this case, for example, if there
18 is -- if there is no intervention of the court, what the
19 county is going to do is take the same ballots, run
20 through the same tabulators with the same process, and
21 going to get basically the same answer.

22 In 19 -- excuse me, 2016, there was
23 actually what I thought was a surprising variance in that
24 process; it would translate to roughly a thousand vote
25 variance in this case. But who knows what caused that

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1 be filed before an election, after an election, during an
2 election. And if what we are -- you know, we've properly
3 pled a mandamus claim, if -- there's no reason, even if
4 you were to decide that the recount was not yet ripe, we
5 could move forward at least on the mandamus issues.

6 THE COURT: All right. Thank you. Let's
7 go back to Mr. Barr and Mr. Eckstein, and we'll come back
8 to --

9 MR. BARR: Thank you, Your Honor. I'll
10 take the last point first.

11 First of all, you know, mandamus is not a
12 remedy under the election contest statutes. I mean, this
13 is a statutory action, and the remedies are spelled out
14 by the statute. Much of what Mr. Langhofer had to say, I
15 think while interesting, would be an argument to go to
16 the legislature and deal with amending the statutes.

17 What we have here is that the statute
18 couldn't be any more clear about when you can file an
19 elections challenge. And it's clear that neither of the
20 factual predicates have taken place here.

21 And, you know, you don't have to -- we
22 don't have to argue about it. They say in their own
23 complaint that these events haven't happened yet. And
24 when the statute says that you must file something after
25 a certain event occurs, it doesn't give you liberty to

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1 variance? There certainly won't -- we are not going to
2 get the same number at the end of the process.

3 But the reason you would want to do the
4 election contest before the recount proceeds, another
5 reason, is that where you've got an issue with the
6 original process such that you can persuade a court the
7 same process shouldn't be followed during the recount,
8 there's a more precise way of doing it, like we have with
9 the adjudication issue here. You want go to through the
10 election contest, hear that complaint, say okay, was
11 there -- is there some evidence that the adjudication
12 process is incorrect? If so, when you do the recount,
13 let's do it right. Like, let's all agree that the
14 adjudicated ballots are done correctly here.

15 And that, not just judicial -- or the
16 economy of the process, is why you'd prioritize the
17 election contest over the recount.

18 THE COURT: All right. Let me go back to
19 Mr. Barr and Mr. -- oh, I'm sorry, was there something
20 else? Go ahead.

21 MR. LANGHOFER: Yeah, there was just one
22 more point. And maybe I should have led with this.

23 Focusing on the statutory requirements for
24 the recount, I think, misses the point, which is the
25 complaint also pleads mandamus. Right? And mandamus can

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1 say, well, we think it will occur in the future and we're
2 reasonably certain of it, so, therefore, we can file it
3 now. I think the issue before the court is very
4 straightforward here.

5 THE COURT: All right. Thank you.

6 Anything else? Mr. Gaona, did you want to
7 add anything?

8 MR. GAONA: Yeah. Yes, Your Honor, two
9 things briefly. I agree with Mr. Barr with respect to
10 the mandamus, the claim for mandamus rather, and that
11 this is a purely statutory cause of action, and that
12 mandamus is not appropriate relief to seek alongside an
13 election contest. So the court should disregard that --
14 that part of the complaint.

15 The second thing I would say, and this goes
16 to Mr. Langhofer's indication of Brush & Nib, I think
17 this goes without saying, but Brush & Nib was not a
18 statutory election contest proceeding.

19 And so this is not a question about
20 ripeness. This is a question of the rules prescribed by
21 the legislature in the contest statutes. And, in fact, I
22 think that it's -- that 16-673(A) is jurisdictional for
23 the court, that -- that the court does not have
24 jurisdiction to entertain this proceeding given that
25 election contests are purely statutory until those

1 predicates have been met.
 2 So that's all I would add to this
 3 discussion at this point, Your Honor.
 4 THE COURT: All right.
 5 MR. BARR: Your Honor, I -- I just have one
 6 brief thing that we didn't cover.
 7 Regarding the Republican National
 8 Committee. I mean, they are under no stretch of the
 9 imagination a qualified elector in the state of Arizona,
 10 which you must be to file an elections challenge. So
 11 they should certainly be dismissed from this lawsuit.
 12 THE COURT: And I put that in the category
 13 of things I don't have to decide right now.
 14 MR. BARR: Yeah.
 15 THE COURT: I really was trying to focus on
 16 the time --
 17 MR. BARR: Okay. That's fine.
 18 THE COURT: I appreciate that's a genuine
 19 issue.
 20 Mr. Langhofer, did you want to add
 21 anything.
 22 MR. LANGHOFER: Yeah, I did. Thank you,
 23 Your Honor.
 24 I won't respond to the RNC point, if you --
 25 if you don't need to decide it today.

1 But let's -- let's put that aside, and
 2 assuming this case goes forward, I'd like to have a
 3 conversation about what we envision there being.
 4 Obviously briefing, there's a motion to dismiss, and
 5 there are legal issues to decide.
 6 But, Mr. Langhofer, you anticipate an
 7 evidentiary hearing, and I'd like to know what you
 8 contemplate.
 9 MR. LANGHOFER: Well, Your Honor, I think
 10 what we need to get in order to do this in an orderly
 11 way, is -- well, let me -- let me mention if it wasn't
 12 clear in our filing, a couple of things that should
 13 simplify the case somewhat.
 14 Our clients have looked at Count 5 and
 15 decided to dismiss that without prejudice in this case,
 16 bring it as a standalone claim seeking prospective relief
 17 only. So it streamlines this case somewhat.
 18 As a consequence, we don't need the county
 19 recorders in the case because -- we needed them for
 20 Rule 19 purposes if mandamus relief was going to issue.
 21 But without Count 5, we don't need the recorders anymore.
 22 Second, to streamline the case --
 23 THE COURT: Sorry. Help me out with that.
 24 I don't have which counts are which memorized. So tell
 25 me --

1 But I will say, yes, mandamus and election
 2 contests are different. They're both pleaded. We pinned
 3 the side of the paragraphs where they're pleaded. We've
 4 cited the rules of special actions in the complaint and
 5 in -- in our response to the motion to dismiss.
 6 Even if you conclude that it's untimely for
 7 an election contest, the mandamus allegations are still
 8 there. There's no reason we can't proceed. And what
 9 would be the effect of not proceeding? It's that we're
 10 going to come back in two weeks or three weeks, whenever
 11 they, you know, finish fighting with Cochise County and
 12 get the certification to get the recount going. And
 13 that's also inconsistent with their initial argument
 14 about a statutory text. We have to get this going or
 15 Arizonans are going to be deprived of their duly-elected
 16 representative. There's no -- there's no strong reason
 17 why this shouldn't be heard right now.
 18 THE COURT: All right. So I'm going to
 19 take that under advisement.
 20 Let me just say having had the discussion
 21 about timing, I'm not going to wait for amicus on this
 22 issue. In normal circumstances I would. We just don't
 23 have the time to do it. So I'm going to decide this
 24 issue, and only that portion of the motion to dismiss, in
 25 hopefully the next day or two.

1 MR. LANGHOFER: Oh, yeah.
 2 THE COURT: -- what Count 5 is and why
 3 that's different.
 4 MR. LANGHOFER: Count 5 is the argument
 5 relating to the signature verification process for early
 6 ballots. And that one uniquely involved the recorders
 7 because the recorders are responsible for the signature
 8 verifications -- the board is generally responsible for
 9 tabulation and canvassing. And so if Count 5 is going to
 10 proceed as a separate case seeking prospective relief
 11 only, there is no need for the recorders to be in the
 12 case, so we --
 13 THE COURT: So I guess I don't -- I don't
 14 know what you mean by prospective relief. You mean not
 15 pertaining to this election, so you're not going to be
 16 challenging decisions on signatures in this election?
 17 MR. LANGHOFER: That's correct. The claim
 18 will focus on 2024 or, conceivably, a special election
 19 2023.
 20 THE COURT: Okay. Thank you.
 21 MR. LANGHOFER: So that's a simplification.
 22 Also, you know, as you noticed, of course,
 23 taking roll call, we've got a lot of county boards
 24 involved, and, again, they were included for -- to avoid
 25 a Rule 19, like necessary parties problem, if mandamus

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1 relief issues. And as long as the boards of supervisors
2 will agree to abide by a ruling of this court, you know,
3 they're nominal in the complaint, but there's no need to
4 keep them around even nominally as long as they abide by
5 Your Honor's orders. So I'd hate to impose on the
6 Court's calendar and their time, if, you know, there's no
7 dispute about them following the court's order.

8 So I want to first flag that, and then I
9 can talk about how else we might be able to proceed
10 efficiently here.

11 THE COURT: So I -- I appreciate you
12 raising the issue. I don't want anybody to have to
13 decide that now. They can make those decisions later.

14 I mean, much of what you've contemplated is
15 going to require evidence from all 15 counties, correct?

16 MR. LANGHOFER: That's correct. So let me
17 speak to that. I think what we need from all counties
18 would be the evidence of their duplicated ballots. And
19 so there should be an original ballot with the serial
20 number sticker and then a duplication of that ballot with
21 the corresponding serial number sticker, so we can just
22 do the audit, make sure the AG's race was transposed
23 correctly, and -- but we need that from all the counties
24 because it's not limited to Maricopa.

25 Another issue that pertains to all the

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1 counties is the adjudication process. I've talked about
2 that a little bit here. Two ways of doing this. One
3 would be to get from them all of the ballots that were
4 adjudicated for just the AG's race. You know, we don't
5 need if they were adjudicating, you know, judges or
6 secretary of state, just the AG's race. And their
7 disposition of that. But, really, that's a retrospective
8 thing, right, we'd be examining what they've already
9 done. I do think it's far more efficient to just agree
10 on a process where we have eyes on their adjudication in
11 the recount because it's got to be done anyway. And then
12 we can avoid discovery on the sort of adjudications
13 they've already done, which seems like unnecessary work
14 to me.

15 We additionally, then, have some items that
16 we would need from all of the counties and -- or excuse
17 me, from just Maricopa County. And that relates to this
18 check-in, check-out issue that we had on election day.

19 We've submitted a number of public records
20 requests to them. We've got some information from them
21 and phone calls, but no documents yet. And so we need
22 more information on how many people and who specifically
23 checked in, didn't check out, went to another voting site
24 and cast a provisional ballot, and whether that was
25 counted. We've received conflicting information from

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1 them on that point.

2 Also, people who went to an original voting
3 site, didn't check out, then just got frustrated and
4 dropped off their mail-in ballot, which wasn't counted,
5 and who those people are so we can, you know, talk to
6 them, examine, before you, most likely, whether they left
7 a ballot at the first place.

8 And then third, people who checked in,
9 didn't check out, went to another place and were told
10 they just couldn't vote. They weren't -- they weren't
11 given the option of voting provisionally.

12 So once we have that information from them,
13 we obviously need to talk to all those folks and decide
14 who to call and which of those may be rehabilitatable.

15 So I think once we get that information
16 from the counties, we're going to need, you know, a week
17 or so to go through that and get time on your calendar to
18 present the evidence after we've, you know, worked it
19 through.

20 THE COURT: So in a ten-day period, we're
21 going to do discovery, give you a week to go through the
22 discovery, and then have an evidentiary hearing? I'm
23 concerned about the time. And one of the decisions I'm
24 going to have to make is exactly what discovery is
25 contemplated in a statutory action like this.

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1 And I'm not prepared to discuss -- now I
2 know people are going to want to weigh in, but what I'd
3 like to do is to create a process to tee up that issue so
4 that it can be briefed and the court can decide it.

5 But let's put that aside for now. I'll get
6 back to it. How long of an evidentiary hearing are you
7 going to need?

8 MR. LANGHOFER: Well, I'm hopeful that we
9 may be able to -- to the extent we have a bunch of
10 witnesses who say they didn't leave a ballot the first
11 place and they were denied a chance to go to the second
12 place, for example, we can do that through declaration or
13 deposition, so we can trim down courtroom time even if
14 we're taking testimony from everyone.

15 There's some uncertainty around that. I
16 think we should start thinking of this as like a two-day
17 hearing. But if we get into this and there's more
18 witnesses than we would -- than I would expect at the
19 moment, you know, I may come back and amend that. But I
20 think we're looking for best guesses at this point,
21 right, so I would say two days.

22 THE COURT: Okay.

23 MR. BARR: Your Honor, let me state the
24 obvious point here.

25 THE COURT: Let me turn to Mr. Barr.

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1 Mr. Barr, do you have anything you'd like to add?

2 MR. BARR: Yeah, and let me just state the
3 obvious point here having to do with the motions to
4 dismiss. I mean, this is a lawsuit in search of facts,
5 and I think Mr. Langhofer just admitted all of that,
6 saying he doesn't -- he didn't have any of these facts to
7 file this lawsuit in the first place.

8 And this is very much of our -- you know,
9 filing a lawsuit unsupported by facts and saying, "I need
10 discovery to try to find some facts to support a
11 lawsuit." And, you know, that's not how we litigate
12 cases in this country.

13 MR. LANGHOFER: Your Honor, I have to
14 respond to that.

15 THE COURT: Please do. I -- I'm not sure
16 either one your comments are advancing the ball, because
17 what I want to is set up a process by which I can get the
18 legal issue briefed. But I'm happy to have you respond,
19 Mr. Langhofer.

20 MR. LANGHOFER: I -- I am deeply offended
21 at the suggestion that we have transgressed some rule or
22 norm in filing what has been a very carefully drafted and
23 narrow complaint on just a handful of issues that after
24 research we think were handled improperly and there's
25 votes there.

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1 And Mr. Barr knows very well we have been
2 requesting documents from the County. The County has not
3 given them. His standard would mean that this election
4 is unreviewable and, in fact, it would be unethical for
5 someone to ask questions about this election.

6 Let's be clear: This is the closest
7 candidate election for a state-wide office in the history
8 of the state. No one on this call will probably ever see
9 an election this close. And to say that we've --

10 MR. BARR: That's not true.

11 MR. LANGHOFER: -- been unethical, by -- by
12 vote share, by absolute number of votes there has been --
13 there has been something smaller, but the electorate was
14 much smaller then. So by vote share, it's the closest.

15 And to say that we've done something
16 unethical by asking the question, saying like we want to
17 see these ballots, which the election contest statute
18 entitles you to, we just have to take their word for it,
19 it's unserious, and I find it deeply offensive.

20 THE COURT: All right. Let's get past
21 that. I'm going to direct plaintiff no later than -- is
22 Wednesday enough time to give a list of documents?

23 MR. LANGHOFER: I think we could -- we
24 actually have a draft, Your Honor. We could file it this
25 evening.

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1 THE COURT: You might as well, since we're
2 moving quickly, file it. All right. So I'll have you
3 file by Tuesday a list of documents that are requested
4 under the Rules of Civil Procedure.

5 And then what I want to do is have
6 simultaneous briefs by Tuesday of next week, the 6th, on
7 the sole issue of the extent to which discovery is or
8 should be permitted in an election contest. And that's a
9 wide open. I don't have enough now to give you a better
10 articulation of what I think you ought to brief, but you
11 understand the issue. It's a -- you know, it's a 26(D)
12 with an accelerated, lengthier briefing.

13 If I decide to dismiss the case as
14 premature, which I'm still taking under advisement, I
15 would suggest you still follow that process, because we
16 know there's going to be another lawsuit filed, and you
17 might as well get a jump on that issue.

18 From what you said, Mr. Langhofer, I don't
19 think I'm in a position right now to set an evidentiary
20 hearing or a briefing schedule, and so I'm going to defer
21 that. But I will tell you, at least on my calendar, I've
22 got lots of flexibility with the exception of a jury
23 trial on the 19th. But this would take precedence over
24 that, and my hope is we'd get the case resolved by
25 December 19 in any case.

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1 MR. ECKSTEIN: Your Honor, Paul Eckstein.

2 THE COURT: Thanks.

3 MR. ECKSTEIN: I understand and respect
4 your orders, but you -- you might want to take a look at
5 A.R.S. 16-677 that talks about the inspection of ballots
6 before trial. (Indiscernible) --

7 THE COURT: I will take a look at that, and
8 I'm assuming --

9 MR. ECKSTEIN: -- discovery that may be
10 allowed.

11 THE COURT: -- I'll get briefed on that as
12 well. Yeah, thank you.

13 MR. ECKSTEIN: Okay.

14 THE COURT: Okay. I think we've covered
15 everything that we need to.

16 Let me ask you one other question. I have
17 heard in this building of other lawsuits being filed,
18 either pure election contests or related. I just want
19 you to think about consolidation, which makes evidentiary
20 hearings longer, of course, makes the task more
21 difficult. That said, I don't think anybody wants
22 inconsistent rulings, and I don't think anybody wants the
23 counties to be doing multiple different things at once.
24 So I just ask you to consider that. I know there's been
25 one other lawsuit filed. I suspect because the election

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1 contest statute allows a contest by any elector that we
 2 may have a number of just electors out there who file
 3 election contests, with or without lawyers. And so one
 4 of the things we've been talking about over here is what
 5 we're going to do with all that. I don't know the
 6 answer. I just want you to start thinking about it.
 7 Okay. Is there anything else --
 8 MR. GAONA: Your Honor?
 9 THE COURT: Yes, Mr. Gaona, go ahead.
 10 MR. GAONA: I'm sorry, Your Honor. I cut
 11 you off and I didn't mean to. I didn't want to --
 12 THE COURT: I was going to say anything
 13 else, so go ahead.
 14 MR. GAONA: -- I wanted to make sure I got
 15 your attention.
 16 Mr. Langhofer mentioned earlier and it was
 17 also mentioned in his client's response to Ms. Meza's
 18 motion to dismiss, that his clients are withdrawing, I
 19 don't know exactly what word -- verbiage was used,
 20 Count 5. Count 5 is the count that most implicates the
 21 interests of the Secretary, so I just wanted to confirm
 22 on the record that Count 5 of the complaint -- of the
 23 statement of contest, rather, is dismissed without
 24 prejudice as Mr. Langhofer indicated?
 25 THE COURT: Yeah, I think that's what he

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1 said. We'll let him confirm it.
 2 Mr. Langhofer?
 3 MR. GAONA: He appears to be frozen, Your
 4 Honor.
 5 THE COURT: It may just be a brief delay on
 6 his part. Let's -- let's just give him a second. I will
 7 tell you that's exactly --
 8 MR. GAONA: I saw Mr. La Sota, oh, there's
 9 Mr. La Sota, maybe he can respond.
 10 MR. LA SOTA: That's -- that's right,
 11 Counsel and I have dismissed without prejudice.
 12 THE COURT: All right. I'll have the
 13 minute entry reflect that at plaintiffs' request Count 5
 14 is dismissed without prejudice.
 15 MR. GAONA: Thank you, Your Honor.
 16 THE COURT: All right. So let me -- let me
 17 go through real quick.
 18 Plaintiffs, anything else you think we need
 19 to discuss.
 20 MALE VOICE: No, Your Honor.
 21 THE COURT: Defendants, anything else?
 22 Well, sorry, let's go -- Mr. Barr, anything else?
 23 MR. BARR: No, Your Honor.
 24 THE COURT: Mr. Gaona?
 25 MR. GAONA: No, Your Honor.

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1 THE COURT: Any of the county defendants?
 2 FEMALE VOICE: No, Your Honor.
 3 THE COURT: All right. The game plan is
 4 I'm going to rule on that narrow portion of the motion to
 5 dismiss, and I'll probably, you know, let you guys know
 6 what the next steps are. We'll probably need to get back
 7 together toward the end of the week if I don't dismiss
 8 the case. So stay tuned. Thank you all for your time.
 9 We're in recess.
 10 VOICES: Thank you, Your Honor.
 11 (2:49 p.m.)
 12 (End of recording.)
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1 STATE OF ARIZONA) SS.
 2)
 3 COUNTY OF MARICOPA)
 4 BE IT KNOWN that the foregoing proceedings are a
 5 full, true and accurate record of the previously recorded
 6 proceedings, all done to the best of my skill and
 7 ability; that the proceedings were transcribed and
 8 reduced to print under my direction.
 9 I CERTIFY that I am in no way related to any of
 10 the parties hereto nor am I in any way interested in the
 11 outcome hereof.
 12 [] Review and signature was requested.
 13 [] Review and signature was waived.
 14 [X] Review and signature not required.
 15 [] Review and signature was requested, but
 16 deponent did not do so within 30 days after notification.
 17 I CERTIFY that I have complied with the ethical
 18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206
 19 J(1)(g)(1) and (2).
 20 Dated at Phoenix, Arizona, this 20th day of
 21 December, 2022.
 22 /s/ Jennifer Honn
 23 _____
 24 Jennifer Honn, RPR.
 25 Certified Reporter.
 Arizona CR No. 50885
 * * *
 I CERTIFY that ANITA LANDEROS REPORTING, INC.,
 has complied with the ethical obligations set forth in
 ACJA 7-206 (J)(1)(g)(1) through (6).
 /s/ Anita Landeros

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