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27 ARIZONA SUPERIOR COURT  
28 MARICOPA COUNTY

29 KARI LAKE,  
30 Plaintiff/Contestant,  
31 v.  
32 KATIE HOBBS,  
33 Defendant/Contestee.

No. CV2022-095403

**GOVERNOR KATIE HOBBS'S  
RENEWED MOTION TO  
DISMISS COUNT III**

Assigned to Hon. Peter Thompson

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## INTRODUCTION

More than six months ago, the people of Arizona elected Governor Katie Hobbs by a margin of more than 17,000 votes. Dissatisfied with her loss, Ms. Lake filed a 10-count election contest. *See generally* Compl. Each of the counts was subsequently dismissed or denied by this Court. The Arizona Supreme Court affirmed this Court’s rulings on all but one count—Count III regarding “Mail-In Ballots with Invalid Signatures”—which is now on remand. Specifically, the question before the Court is whether Count III “fails to state a claim” under Ariz. R. Civ. P. 12(b)(6) “for reasons other than laches.” Order, Case No. CV-23-0046-PR, at 3-4 (Ariz. Mar. 22, 2023). The answer to that question is unequivocally yes. Count III fails to adequately allege *any* failure to comply with the signature matching statute, A.R.S. § 16-550(A), let alone any misconduct or illegal votes sufficient to change the results of the election. Lake’s complaint also seeks relief for Count III not contemplated by the election contest statute, § 16-672, *et seq.* Because Lake’s signature verification claim fails to state a claim upon which relief can be granted and seeks impermissible relief, it must be dismissed pursuant to Arizona Rule of Civil Procedure 12(b)(6).<sup>1</sup>

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## LEGAL STANDARDS

Election contests may only be brought on certain limited statutory grounds. *See* A.R.S. § 16-672. Those grounds include, in relevant part, 1) official misconduct on the part of the election boards, and 2) illegal votes. *Id.* The contestant has the burden of showing that her claims fall strictly within the statutory terms. *Henderson v. Carter*, 34 Ariz. 528, 534 (1928). Given the “strong public policy favoring stability and finality of election results,” *Donaghey v. Att’y Gen.*, 120 Ariz. 93, 95 (1978), the burden on a contestant is high, and courts must apply all reasonable presumptions “in favor [of] the validity of an election,” *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986), and “in favor of the good

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<sup>1</sup> Governor Hobbs incorporates by reference in their entirety all arguments raised in her December 15, 2022 Motion to Dismiss against Lake’s Count III. Governor Hobbs further incorporates by reference the arguments made in the Maricopa County Defendants’ Memorandum of Law Supplementing Their Motion to Dismiss and Secretary of State Adrian Fontes’ Supplemental Memorandum in Support of Motion to Dismiss.

1 faith and honesty of the members of the election board.” The “returns of the election  
2 officers are prima facie correct.” *Hunt v. Campbell*, 19 Ariz. 254, 268 (1917); *see also*  
3 Order, Case No. 1 CA-CV 22-0779 (Ariz. Ct. App. Feb. 16, 2023). Absent a clear showing  
4 of fraud or that the election result would have been different but for actual misconduct or  
5 illegal votes, the election returns must stand. *See Moore*, 148 Ariz. at 159, 166–67; *see also*  
6 Order, Case No. 1 CA-CV 22-0779 at ¶ 6 (Ariz. Ct. App. Feb. 16, 2023) (mere technical  
7 violations, mistakes, or omissions are not alone sufficient to invalidate an election;  
8 challenger must show “ballots procured in violation of a non-technical statute in sufficient  
9 numbers to alter the outcome of the election”) (internal citations omitted).

10 In evaluating a motion to dismiss, “courts must assume the truth of all well-pleaded  
11 factual allegations” in the complaint, but “mere conclusory statements are insufficient.”  
12 *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 9 (2012) (citing *Cullen v. Auto-Owners*  
13 *Ins. Co.*, 218 Ariz. 417, 419 ¶ 7 (2008)). The court need not accept as true “inferences or  
14 deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences  
15 or unsupported conclusions from such facts, or legal conclusions alleged as facts.” *Jeter v.*  
16 *Mayo Clinic Ariz.*, 211 Ariz. 386, 389 ¶ 4 (App. 2005). When a complaint fails to state a  
17 valid claim for an election contest, the court should dismiss it with no further action. Courts  
18 are not required to “hold an evidentiary hearing on an election contest that, like this one, is  
19 subject to dismissal for failure to state a claim.” Ex. A to Governor Hobbs’s Motion to  
20 Dismiss, *Camboni v. Brnovich*, No. 1 CA-CV 15-0014, 2016 WL 388933, at \*2 (Ariz. Ct.  
21 App. Feb. 2, 2016).

1 **ARGUMENT**

2 **I. Lake fails to state a claim for relief in Count III of her complaint.**

3 **A. The complaint does not adequately a violation of Arizona’s**  
4 **signature matching policy.**

5 Lake fails to allege *any* failure to comply with the signature matching statute, A.R.S.  
6 § 16-550(A), much less the misconduct or illegal votes necessary to state a claim in an  
7 election contest.<sup>2</sup>

8 In Arizona, early ballot voters must return their completed ballots in specially  
9 provided ballot return envelopes and sign an affidavit printed on those envelopes. *See*  
10 A.R.S. §§ 16-545, 16-547. Once received, the county recorder or other designated election  
11 officials “compare the signatures” on the early ballots “with the signature of the elector on  
12 the elector’s registration record” to verify that the ballot returned was cast by the voter  
13 associated with that ballot. A.R.S. § 16-550(A). The operative Election Procedures  
14 Manual’s corresponding guidance provides that election officials conducting signature  
15 verification should consult the voter registration form as well as “additional known  
16 signatures from other official election documents in the voter’s registration record” such  
17 as “signature rosters or early ballot/PEVL request forms[.]” Ariz. Sec’y of State, 2019  
18 Elections Procedures Manual (“EPM”) (rev. Dec. 2019) at p. 68; *see Ward v. Jackson*, No.  
19 CV2020-015285, 2020 WL 8617817, at \*2 (Ariz. Dec. 8, 2020) (the EPM “has the force  
20 of law”).<sup>3</sup> If the signature on the ballot return envelope does not match a voter’s known  
21 signatures, election officials must allow “the voter to correct or the county to confirm the  
22 inconsistent signature” within five business days after a general election. *Id.*; A.R.S. § 16-  
23 550.

24 <sup>2</sup> While this motion makes clear Lake’s failure to establish misconduct or illegal votes  
25 under the election contest statute, Count III of Lake’s complaint only alleges “misconduct”  
26 under A.R.S. § 16-672(A)(1). *See* Compl. at 59. Thus, Lake is precluded—both in response  
27 to this motion and in any subsequent hearing—from raising arguments and evidence of  
28 “illegal votes” under A.R.S. § 16-672(A)(4). *See* Maricopa County Defendants’  
Memorandum of Law Supplementing Their Motion to Dismiss at 12-13.

<sup>3</sup>The Elections Procedures Manual is available at the Arizona Secretary of State’s website,  
<https://azsos.gov/elections/about-elections/elections-procedures-manual> (last accessed  
May 9, 2023).

1 Lake fails to allege that Maricopa officials committed “misconduct,” A.R.S. § 16-  
2 672(A)(1), by violating any of these requirements under Arizona law. Instead, the bulk of  
3 Lake’s factual allegations pertain to investigations into the *2020 election* conducted by  
4 Attorney General Brnovich and an organization called We the People AZ Alliance. Compl.  
5 ¶¶ 46-62. Lake’s reliance on 2020 “evidence” fails for at least two reasons. First, Lake’s  
6 allegations regarding the 2020 election have no bearing on Maricopa’s compliance with  
7 signature verification procedures in 2022. Lake impermissibly asks the Court to make  
8 inferences about the 2022 election based on findings from the 2020 election that are not  
9 supported by any actual allegations in her complaint or in the declarations she incorporates.  
10 *See Cullen*, 218 Ariz. 417, 419, ¶ 7. Second, even if Lake could use 2020 allegations to  
11 support a 2022 election contest, Lake’s suspicions about the 2020 election are undermined  
12 by binding precedent: Maricopa County’s 2020 signature verification review processes  
13 were previously challenged and found lawful. *See Ward v. Jackson*, No. CV2020-015285  
14 (Maricopa Cty. Super. Ct., December 4, 2020), affirmed No. CV-20-0343-AP/EL (Ariz. S.  
15 Ct., December 8, 2020).

16 Lake’s allegations involving the sworn declarations of three signature verification  
17 workers also cannot support a claim that Maricopa County committed misconduct by  
18 failing to comply with signature verification procedures. Lake relies on the affidavits of  
19 three signature verification workers, all of whom describe Maricopa’s multi-level signature  
20 verification process to review early ballot signatures. Compl. ¶¶ 54-62; *see also* Olsen  
21 Declaration at Ex. 6, Declaration of Andrew Myers; Ex. 7, Declaration of Yvonne  
22 Nystrom; Ex. 8, Declaration of Jacqueline Onigkeit. Notably, their observations about the  
23 signature verification process are consistent with the 2022 Maricopa Elections Plan, under  
24 which first-level reviewers, who have access to only a limited number of signatures in a  
25 voter’s registration record, are tasked with flagging potential signature mismatches for  
26 manager-level review and decision-making. *See* Ex. 3, Governor Hobbs Reply in Supp.

1 Mot. to Dismiss, 2022 Maricopa Elections Plan at 45.<sup>4</sup> Lake’s declarants collectively claim  
2 they had flagged for further review 15-40% of the signatures they reviewed, and that  
3 ultimately many of those initially flagged ballot envelopes were accepted by upper-level  
4 reviewers, Myers Decl. ¶¶ 6-12, 18-24; Nystrom Decl. ¶¶ 7(a)-(e), 11-16, 21; Onigkeit  
5 Decl. ¶¶ 6-13, 19-25, 28—precisely as contemplated by Maricopa’s multiphase signature  
6 verification process.

7 While Lake’s declarants may have been dissatisfied with the signature verification  
8 process, none of them actually contends that any signature verification worker failed to  
9 comply with the signature matching statute, § 16-550(A), the relevant provision of the  
10 EPM, Ariz. EPM at 68, or the Maricopa Elections Plan. Instead, all that Lake’s declarants  
11 provide is their subjective suspicions devoid of any factual allegations that would transform  
12 those suspicions into a colorable claim. For instance, while these declarants ascribe  
13 improper motivations to signature verification managers, *id.* ¶¶ 59-60, their speculation of  
14 bad faith, which lacks any specific, credible basis, does not amount to a statutory violation,  
15 let alone misconduct. *See Cullen*, 218 Ariz. at 420, ¶ 14 (courts may not “speculate about  
16 hypothetical facts that might entitle the plaintiff to relief”); *see also Donald J. Trump for*  
17 *President, Inc. v. Boockvar*, 502 F. Supp. 3d 899, 906 (M.D. Pa. 2020) (dismissing  
18 complaint which presented baseless allegations of election improprieties and noting that  
19 “[o]ur people, laws, and institutions demand more”). And while Lake’s declarants—who  
20 describe themselves as “the most inexperienced” of those conducting signature review, *see*,  
21 *e.g.*, Myers Decl. ¶ 6—may have expected higher numbers of rejected signatures, Compl.  
22 ¶¶ 54-57, the disparity between their expectations and reality does not violate any law or  
23 procedure, even as alleged.

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25 <sup>4</sup> Neither the complaint nor the accompanying declarations make any mention of the  
26 Maricopa Elections Plan, which was approved and published in May 2022. *See* 2022  
27 Maricopa Elections Plan (May 2022) (describing generally Maricopa chain of custody  
28 processes and forms for 2022 elections), available at  
<https://elections.maricopa.gov/asset/jcr:5cd67713-a05b-4ac7-896a-649a6790934f/FINAL%20-%202022%20Elections%20Plan.pdf> (last accessed May 9,  
2023).

1 All that is left of Lake’s Count III allegations are her counsel’s assertions that that  
2 the signature verification workers’ declarations attached to her complaint show “thousands  
3 of illegal ballots being counted” and the “deep flaws in the ballot signature verification  
4 and/or curing process employed by Maricopa County.” Compl. ¶¶ 54-55. But as explained  
5 above, the declarations themselves, even taken as true, cannot support this conclusion.  
6 Lake’s conclusory statements and unreasonable inferences are woefully insufficient to state  
7 a claim, *see Jeter*, 211 Ariz. at 389, ¶ 4, particularly in an election contest where it is bound  
8 by the presumption in favor of the good faith of election officials and the accuracy of  
9 election results.

10 **B. The complaint does not adequately allege that any misconduct or**  
11 **illegal votes changed the outcome of the election as to Lake’s**  
**signature verification claim.**

12 Lake’s Count III fails to sufficiently allege *any* specific mail-in or early ballots that  
13 were improperly verified, let alone an outcome determinative number. While Lake broadly  
14 asserts that her claim implicates a “material number of early ballots cast,” Compl. ¶ 151,  
15 and that “tens of thousands” of ballots did not “satisfy signature verification requirements,”  
16 Compl. ¶ 14, these claims have no factual basis whatsoever. *See supra* Part I.

17 Election results are not rendered uncertain unless votes are affected “in sufficient  
18 numbers to alter the outcome of the election.” *Miller v. Picacho Elementary Sch. Dist. No.*  
19 *33*, 179 Ariz. 178, 180 (1994). As the Court of Appeals explained in rejecting Lake’s  
20 signature verification claim, “this rule requires a competent mathematical basis to conclude  
21 that the outcome would plausibly have been different, not simply an untethered assertion  
22 of uncertainty.” Order, Case No. 1 CA-CV 22-0779 at ¶ 11 (Ariz. Ct. App. Feb. 16, 2023)  
23 (citing *Reyes v. Cuming*, 191 Ariz. 91, 94 (App. 1997)). But “an untethered assertion of  
24 uncertainty” is all Lake alleges. The closest Lake comes to alleging a specific, outcome-  
25 determinative effect of the alleged violation is her citation to a study from the 2020 election  
26 conducted by the We the People AZ Alliance, *see* Busch Decl. ¶ 20(a)-(b), which she  
27 claims reveals that certain signatures verified by the County in the 2020 general election  
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1 did not match the signatures in those voters’ registration records. Compl. ¶¶ 47-53. Lake  
2 relies on this “analysis” from 2020 to allege that some of those same voters also exercised  
3 their right to vote in the 2022 election. *Id.* ¶ 53. But her allegations fail to establish a  
4 “competent mathematical basis to conclude that the outcome would plausibly have been  
5 different.”

6 As an initial matter, Lake provides no basis to assume that a mismatched signature  
7 equates to an “illegal ballot[],” Compl. ¶ 54, or that any or all of those purported  
8 mismatches wouldn’t have been resolved during the notice and cure procedures had they  
9 been flagged at the time, *see* A.R.S. § 16-550(A) (notice and cure procedures “allow the  
10 voter to correct or the county to confirm the inconsistent signature”).

11 But even if Lake could establish a precise number of “illegal ballots” from the 2020  
12 election, *but see Ward*, 2020 WL 8617817, at \*2, she provides no basis to infer that a  
13 signature mismatch in one election necessarily preordains a signature mismatch in another  
14 election. The voters Lake believes unlawfully had their votes counted in 2020 are not  
15 presumptively branded as unlawful voters.

16 Moreover, even if these 2020 allegations could theoretically suffice to state a claim,  
17 the complaint itself alleges at most 9,617 questionable ballots, *see* Compl. ¶ 53, far short  
18 of the 17,117 margin by which Governor Hobbs won the November 2022 election. Thus,  
19 the plain language of Lake’s complaint undermines her claim to relief in Count III.  
20 Ultimately, Lake’s wishful thinking that she might one day stumble upon some “material”  
21 number of illegally-verified ballots does not satisfy the pleading standard for an election  
22 contest.

23 \* \* \*

1 Lake's signature verification claim fails to allege any actual ballots that were  
2 improperly verified in the 2022 gubernatorial election. Mere suspicions about the process  
3 do not amount to misconduct, let alone a sufficient number of votes to reverse the election.  
4 Maricopa's signature verification processes complied with A.R.S. § 16-650(A) and all  
5 applicable policies, and none of Lake's allegations sufficiently state a claim to the contrary.  
6 Accordingly, Count III should be dismissed for failure to state a claim.

7 **II. Lake seeks relief not available to her under the election contest statute.**

8 In a final, fatal shortcoming to her signature verification claim, Lake seeks relief  
9 that is unavailable to her under the election contest statute, § 16-672, *et seq.*

10 The election contest statute only provides for three specific remedies: (1) judgment  
11 confirming the election, (2) judgment annulling and setting aside the election, or (3) a  
12 declaration that a different person secured the highest number of legal votes and is elected,  
13 and that "the certificate of election of the person whose office is contested is of no further  
14 legal force or effect." A.R.S. § 16-676(B)-(C). Because "election contests are purely  
15 statutory," *Griffin v. Buzard*, 86 Ariz. 166, 168 (1959), Lake bears "the burden of showing  
16 that [her] case falls within the terms of the statute providing for election contests,"  
17 *Henderson*, 34 Ariz. at 534-35; *see also Lake v. Hobbs*, 525 P.3d 664, 667 (Ariz. Ct. App.  
18 2023) (citing *Henderson*, 34 Ariz. at 534-35 (stating that the "remedy may not be extended  
19 to include cases not within the language or intent of the legislative act")); *Grounds v. Lawe*,  
20 67 Ariz. 176, 186 (1948) (noting under Arizona law, election contests are purely statutory  
21 and that the Election Code "was intended to be a comprehensive code relating to this  
22 special statutory proceeding").

23 Despite this clear prohibition on extra-statutory relief, Lake seeks remedies not  
24 contemplated by the election contest statute: "an order requiring the Maricopa Defendants  
25 to revisit all or a representative sample of the EV ballot envelopes to check for valid  
26 signatures," and "proportionately reducing the tabulated returns of early ballots[.]" Compl.  
27 ¶ 155. Because neither are authorized by the election contest statute, Lake seeks relief that  
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1 DATED: May 9, 2023

2 By: /s/ Abha Khanna

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