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ARIZONA SUPERIOR COURT
MARICOPA COUNTY

KARI LAKE,

Plaintiff/Contestant,

v.

KATIE HOBBS,

Defendant/Contestee.

No. CV2022-095403

GOVERNOR KATIE HOBBS'S RESPONSE IN OPPOSITION TO MOTION FOR RELIEF FROM JUDGMENT

Assigned to Hon. Peter Thompson

INTRODUCTION

After failing repeatedly at this Court, the Court of Appeals, and the Arizona Supreme Court, Ms. Lake returns here with an extraordinary motion seeking to revive her election contest six months after the 2022 general election. Though a single, narrow issue was remanded by the Arizona Supreme Court for this Court's consideration, *see* Order, Case No. CV-23-0046-PR, at 3-4 (Ariz. Mar. 22, 2023) (the *only* question presently 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"), Lake has seized on this opportunity to throw the kitchen sink of her failed claims back into the spotlight.

The procedural and substantive reasons why Lake's motion for relief from judgment fails are manifold, to say the least. They include all of the reasons articulated in the response briefs submitted by Secretary of State Fontes and Maricopa County, both of which Governor Hobbs joins and incorporates by reference here. Additionally, as Governor Hobbs addresses below, even setting aside those numerous, fatal deficiencies, Lake still fails to plead any basis for relief for the claims she attempts to resurrect. Lake's motion should be denied in its entirety.

LEGAL STANDARD

Reconsideration under Rule 60(b) "is primarily intended to allow relief from judgments that, although perhaps legally faultless, are unjust because of extraordinary circumstances that cannot be remedied by legal review." *Francine C. v. Dep't of Child Safety*, 249 Ariz. 289, 298 ¶ 23 (App. 2020) (quoting *Hyman v. Arden-Mayfair, Inc.*, 150 Ariz. 444, 446 (App. 1986)). A Rule 60(b) motion may not be used "as a substitute for appeal, . . . or to circumvent statutory and rule deadlines where a circumstance—such as mistake, newly discovered evidence, or fraud—does not alter the judgment[.]" *State v. Crain*, 253 Ariz. 243, 512 P.3d 97, 99 ¶ 8 (App. 2022).

ARGUMENT

I. Lake's Count V and VI are still fatally flawed and warrant dismissal.

Lake seeks, in a single footnote, "relief from judgment with respect to Counts V (equal protection) and VI (due process) as applied to logic-and-accuracy testing and the tabulator issues that hampered voting on Election Day." Mot. at 1. Even if a single footnote unsupported by any argument or evidence were sufficient to raise a claim to relief from judgment under Rule 60, *cf. Power Glob. Trading Co. v. Grdina*, No. 1 CA-CV 21-0475, 2022 WL 1315623, at *3 (Ariz. Ct. App. May 3, 2022) (citing *Davis v. Davis*, 143 Ariz. 54, 57 (1984)) (noting that motions under Rule 60(b)(6) "require[] a showing of extraordinary hardship or injustice to justify relief"), these claims still fail as a matter of law. Nothing has changed in the intervening five months since this Court first dismissed all of Lake's constitutional claims. Those claims continue to warrant dismissal for the same reasons this Court previously found, *see* Under Advisement Ruling (Dec. 19, 2022) at 9-12 ("December 19 Ruling") (dismissing Counts V, VII, and X)—reasons which have been twice affirmed on appeal, *see* Order, Case No. 1 CA-CV 22-0779, ¶ 31 (Ariz. Ct. App. Feb. 16, 2023) (affirming dismissal of constitutional claims); Order, Case No. CV-23-0046-PR, at 2 (Ariz. Mar. 22, 2023) (same).

First, Counts V and VI fall "outside the scope of Plaintiff's Section 16-672 election contest." December 19 Ruling at 10. The five exclusive grounds for an election contest are circumscribed by statute, *see* A.R.S. § 16-672(A)(1)-(5), and the burden is on Lake to show her case falls within those grounds, *Henderson v. Carter*, 34 Ariz. 528, 534 (1928). Counts V and VI are not now, and never were, permitted under the election contest statute.

Lake recognizes but disregards this statutory limitation, arguing that the Supremacy Clause somehow abrogates Arizona's jurisdictional rules, *see* Mot. at 13, and that convenience favors cramming extra-statutory claims into this case rather than bringing a separate federal case, *id*. (citing the "[v]iability of suing in federal court under § 1983"). Lake's threat of federal litigation, however, does not support expanding these state court

proceedings. As this Court has previously noted, Lake is free to attempt to file her "civil rights claims in a separate action," but her constitutional claims are squarely "out of the scope" of *this* action. December 19 Ruling at 12.

Second, Lake's constitutional claims "are merely cumulative and unnecessary to successfully plead an election contest." December 19 Ruling at 9; *see also id.* at 10 ("[A] finding of either violation is not necessary ultimately to succeed in an election contest under either Section 16-672(A)(1) or (A)(4)."). Thus, even if Counts V and VI were permitted under the election contest statute, a ruling from this Court in favor of those claims would provide no greater relief than Lake would otherwise be entitled to under Count II.

Third, Lake has not adequately "pled a successful due process or equal protection challenge at all." *Id*. at 9. As Governor Hobbs previously argued in her December 15 Motion to Dismiss (at 5-9) and her December 18 Reply in Support (at 3-4), both of which are incorporated by reference here, Lake's invocation of constitutional rights fails to satisfy the pleading standards for those claims. *See also* December 19 Ruling at 9 ("Plaintiff does not clearly allege that any actor actually discriminated against a class (i.e. Republicans) or that this discrimination could actually alter the outcome given ticket splitters even among election day voters.").

II. Lake fails to allege that enough votes were excluded to change the outcome of the election.

Lake's Motion also fails because it does not meet her burden under A.R.S. § 16-672 to allege that her claim implicates a sufficient number of votes. Election results are not rendered uncertain unless votes are affected "in sufficient numbers to alter the outcome of the election." *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994); *see also Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986) (requiring "a showing of fraud or . . . a showing that had proper procedures been used, the result would have been different"). As the Court of Appeals explained, "this rule requires a competent mathematical basis to conclude that the outcome would plausibly have been different, not

simply an untethered assertion of uncertainty." Order, Case No. 1 CA-CV 22-0779 at ¶ 11 (Ariz. Ct. App. Feb. 16, 2023).

Here, "untethered" is an understatement. In a single sentence at the end of her brief, Lake brazenly asserts: "In fact, the evidence shows that over 8,000 ballots, maliciously misconfigured to cause a tabulator rejection, were not counted." Mot. at 16. Her only "support" for this audacious claim is three paragraphs of her newly-submitted Parikh Declaration. *See id.* But that declaration says *no such thing*. While Parikh "estimate[s]" that "8,000 or more Election Day ballots [were] affected by the 19" ballot image issue," Parikh Decl. ¶ 39, at no point does he suggest that *any* (let alone all) of those ballots "were not counted," Mot. at 16. To the contrary, he states that he has never seen any duplicated ballots and thus "had and ha[s] *no way of knowing* if the original ballots were duplicated at all, let alone duplicated accurately, let alone tabulated and counted." Parikh Decl. ¶ 38 (emphasis added). Lake's misrepresentation of her own expert's testimony provides no basis for rehearing.[1]

But even accepting all of her baseless allegations as true, Lake's Motion fails to allege that enough votes were excluded to have affected the outcome of the election. Lake lost the 2022 gubernatorial election by over 17,000 votes. Her present motion points to some "8,000" purportedly uncounted ballots—*less than half* the final margin. Lake Mot. at 16. Even if every single one of those hypothetical uncounted ballots were voted for Lake, she would still fall far short of the pleading standard for an election contest.

CONCLUSION

For all the foregoing reasons, and those articulated in the response briefs filed by Secretary of State Fontes and Maricopa County, Lake's motion for relief from judgment should be denied.

[1] The Arizona Supreme Court recently sanctioned Lake's counsel for similarly asserting that several thousand ballots "were added to the total number of ballots at a third party processing facility" when there was "no evidence" supporting that claim. *See* Order, Case No. CV-23-0046-PR, at 4–6, (Ariz. May 4, 2023).

DATED: May 10, 2023

By: */s/ Abha Khanna*

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