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15 *Attorneys for Plaintiff/Contestant Abraham Hamadeh*

16 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

17 **IN AND FOR THE COUNTY OF MOHAVE**

18 JEANNE KENTCH, an individual; TED BOYD,
19 an individual; ABRAHAM HAMADEH, an
20 individual; and REPUBLICAN NATIONAL
COMMITTEE, a federal political party committee

21 Plaintiffs/Contestants,

22 v.

23 KRIS MAYES,

24 Defendant/Contestee,

25 and

26 ADRIAN FONTES, *et al.*,

27 Defendants.

No. S8015CV202201468

NOTICE OF APPEAL

(assigned to Hon. Lee F. Jantzen)

1 Notice is hereby given that Plaintiffs/Contestants appeal to the Court of Appeals
2 from the judgment entered in this case on September 6, 2023, as follows:

3 **I. Caption and Case Number.**

4
5 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MOHAVE**

7 JEANNE KENTCH, an individual; TED
8 BOYD, an individual; ABRAHAM
9 HAMADEH, an individual; and
10 REPUBLICAN NATIONAL COMMITTEE,
11 a federal political party committee

No. CV-2022-01468

12 Plaintiffs/Contestants,

13 v.

14 KRIS MAYES,

15 Defendant/Contestee,

16 and

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KATIE HOBBS, in her official capacity as the Secretary of State; LARRY NOBLE, in his official capacity as the Apache County Recorder; APACHE COUNTY BOARD OF SUPERVISORS, in their official capacity; DAVID W. STEVENS, in his official capacity as Cochise County Recorder; COCHISE COUNTY BOARD OF SUPERVISORS, in their official capacity; PATTY HANSEN, in her official capacity as the Coconino County Recorder; COCONINO COUNTY BOARD OF SUPERVISORS, in their official capacity; SADIE JO BINGHAM, in her official capacity as Gila County Recorder; GILA COUNTY BOARD OF SUPERVISORS, in their official capacity; WENDY JOHN, in her official capacity as Graham County Recorder; GRAHAM COUNTY BOARD OF SUPERVISORS, in their official capacity; SHARIE MILHEIRO, in her official capacity as Greenlee County Recorder; GREENLEE COUNTY BOARD OF SUPERVISORS, in their official capacity; RICHARD GARCIA, in his capacity as the La Paz County Recorder; LA PAZ COUNTY BOARD OF SUPERVISORS, in their official capacity; STEPHEN RICHER, in his official capacity as the Maricopa County Recorder; MARICOPA COUNTY BOARD OF SUPERVISORS, in their official capacity; KRISTI BLAIR, in her official capacity as the Mohave County Recorder; MOHAVE COUNTY BOARD OF SUPERVISORS, in their official capacity; MICHAEL SAMPLE, in his official capacity as Navajo County Recorder; NAVAJO COUNTY BOARD OF SUPERVISORS, in their official capacity; GABRIELLA CAZARES-KELLY, in her official capacity as the Pima County Recorder; PIMA COUNTY BOARD OF SUPERVISORS, in their official capacity; DANA LEWIS, in her official capacity as the Pinal County Recorder; PINAL COUNTY BOARD OF SUPERVISORS, in their official capacity;

1 SUZANNE SAINZ, in her official capacity as
2 the Santa Cruz County Recorder; SANTA
3 CRUZ COUNTY BOARD OF
4 SUPERVISORS, in their official capacity;
5 MICHELLE M. BURCHILL, in her official
6 capacity as the Yavapai County Recorder;
7 YAVAPAI COUNTY BOARD OF
8 SUPERVISORS, in their official capacity;
9 RICHARD COLWELL, in his official
10 capacity as the Yuma County Recorder; and
11 YUMA COUNTY BOARD OF
12 SUPERVISORS, in their official capacity,

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Defendants.

The docket reflects that, subsequent to the initial case filing, the following Rule 25(d) substitutions of public officials were made: Secretary of State, Adrian Fontes; Graham County Recorder, Polly Merriman. Upon information and belief, other elected or appointed Defendants have subsequently been replaced but have not filed a Rule 25(d) notice. Where a public officer has been named in the suit and a new elected or appointed officer has taken that officer's place subsequent to the filing of the initial complaint, this appeal should be construed as being taken against the new official as appropriate.

II. Parties Taking Appeal.

All Plaintiffs/Contestant: Jeanne Kentch; Ted Boyd; Abraham Hamadeh; Republican National Committee.

III. Judgment or Portion of Judgment from Which the Parties Are Appealing.

Plaintiffs/Contestants appeal the final judgment entered September 6, 2023 (**Exhibit A**), and August 31, 2023 (**Exhibit B**), denying all of Plaintiffs' requested relief and dismissing the case and, among other things, granting Contestee Kris Mayes' Ballot Inspection Fees of \$2,892.50. Incorporated into the judgment from which Plaintiffs/Contestant appeal are all intermediary rulings, orders, and decisions, including but not limited to those delineated in:

- 1 (i) the December 28, 2022, Evidentiary Hearing Minute Entry (**Exhibit C**);
2 (ii) the July 14, 2023, Court Order/Notice/Ruling (**Exhibit D**); and
3 (iii) the July 17, 2023, Court Order/Notice/Ruling (**Exhibit E**).

4 **IV. Court to Which the Parties Are Appealing.**

5 The Arizona Court of Appeals (Division One).

6 RESPECTFULLY SUBMITTED this 6th day of September 2023.

7
8 By: /s/ Jennifer J. Wright

Jennifer J. Wright (027145)

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Attorney for Plaintiffs/Contestants

1 ORIGINAL efiled and served via electronic means
2 this 6th day of September, 2023, upon:

3 Honorable Lee F. Jantzen
4 Mohave County Superior Court c/o
5 Danielle Lecher
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17 /s/ Jennifer J. Wright

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EXHIBIT

A

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1 Mayes was elected as Arizona Attorney General.

2 **IT IS FURTHER ORDERED** otherwise reaffirming the content of this Court's
3 August 31, 2023 Order, except as modified herein.

4 **IT IS FURTHER ORDERED** finding that no further matters pending before this
5 Court, and therefore final judgment is entered pursuant to Arizona Rule of Civil Procedure
6 54(c).

7 DATED September 6, 2023.

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Hon. Lee F. Jantzen

Division IV

Judge of the Mohave County Superior Court

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EXHIBIT

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FILED

TIME 4:57p M

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

AUG 31 2023

IN AND FOR THE COUNTY OF MOHAVE

CHRISTINA SPURLOCK
CLERK SUPERIOR COURT
BY: [Signature] DEPUTY
*DL

HONORABLE LEE F. JANTZEN
DIVISION 4
DATE: AUGUST 31, 2023

COURT ORDER/NOTICE/RULING

JEANNE KENTCH, et al., et ux.,
Plaintiffs,

vs.

CV-2022-01468

KRIS MAYES, et al., et ux.,
Defendants.

This matter comes before the Court to request to rule on outstanding motions. The Court has previously denied Plaintiffs' Petition to Contest the Elections after a trial and the Court has denied Plaintiffs' Motion for New Trial.

The remaining motions include Plaintiffs' Motion for an Order Reflecting Additional Rulings of the Court, filed December 28, 2022. This was not addressed because of the pending Motion for New Trial. The Court has considered the motion and the responses.

IT IS ORDERED denying the Contestant's Motion for an Order Reflecting Additional Rulings of the Court.

If this has not already been done in writing, based on the evidence presented at the trial that the Plaintiff failed to provide proof mistakes made were sufficient to change the outcome of the trial;

IT IS ORDERED denying Plaintiffs' Petition to Change the Results of the Election and denying any request to count any additional votes.

IT IS FURTHER ORDERED denying Plaintiffs' Motion for a New Trial for the reasons listed in the Court's minute entry dated July 14, 2023.

Other pending motions include Defendant Kris Mayes' Motion for Attorneys' Fees, filed January 3, 2023 and supplemented January 17, 2023, which was joined by Defendant/Arizona Secretary of State Kris Mayes. The Court has read the motions and the responsive pleadings and considered the applicable statutes, case law and rules.

IT IS ORDERED denying both Defendants' Motion for Attorneys' Fees under A.R.S. § 12-349.

This case was not brought frivolously by the Plaintiffs. The Court has noted from the outset that this case has not been brought on partisan lines asserting malicious and outrageous behavior by the Defendants in which they have accused parties of outlandish conspiracies or other criminal offenses. This case, in the Court's view, after hearing the arguments and evidence, was brought by Plaintiffs based on their belief that this extremely close election could have been overturned if certain procedures had been different.

The Court acknowledges at the trial the Plaintiffs did not present large amount of evidence. They did get to inspect thousands of ballots, but the limited discovery in an emergency contested election procedure did not result in discovering the number of mistakes they believed it might. That led to a short presentation by Plaintiffs and even an acknowledgment during the trial that they did not have the evidence to prevail.

However, the Court does not believe sanctions are appropriate. Just because Plaintiffs did not prevail, this does not mean this action is the type of groundless lawsuit based on false speculation that would require sanctions under A.R.S. § 12-349.

The final set of pending motions are Navajo County's Motion to Compensate Ballot Inspectors filed January 4, 2023, Mohave County Defendants' Joinder in Navajo County Defendants' Motion to Compensate Ballot Inspectors filed January 9, 2023 and April 17, 2023, and Defendant Kris Mayes' Joinder in Motion to Compensate Ballot Inspectors, filed January 11, 2023.

Having received and considered the Motion to Compensate Ballot Inspectors filed by the Navajo County Defendants, as well as the Joinder filed by Defendant Kris Mayes, and any response filed by Plaintiffs thereto, and good cause appearing,

IT IS ORDERED that the each of the Motions to Compensate Ballot Inspectors is GRANTED.

IT IS FURTHER ORDERED that, under A.R.S. § 16-677(C), Plaintiffs shall compensate Defendant Kris Mayes in the amount of \$2,892.50 for her ballot inspector.

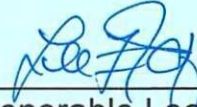
Navajo County and Mohave County are directed to provide orders with specific amounts for the Plaintiffs to reimburse based on reasonable fees for the ballot inspectors' normal jobs and any mileage accrued to the court within 30 days.

IT IS FURTHER ORDERED that, under A.R.S. § 12-341, Ms. Mayes is entitled to \$1,065.46 in taxable costs as the successful party.

There is nothing else pending in these matters and this Judgment is entered under Rule 54(c).

August 31, 2023

Date



Honorable Lee F. Jantzen
Division 4

cc:

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Honorable Lee F Jantzen
Division 4

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EXHIBIT

C

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**IN THE SUPERIOR COURT
MOHAVE COUNTY, STATE OF ARIZONA**

**HONORABLE LEE F. JANTZEN
DIVISION: IV COURTROOM: 201
COURT REPORTER: STEVE GARWOOD**

**CHRISTINA SPURLOCK, CLERK OF SUPERIOR COURT
M. BROOKS, DEPUTY CLERK
HEARING DATE: 12/23/2022**

<p>JEANNE KENTCH, an individual; TED BOYD, an individual; ABRAHAM HAMADEH, an individual and REPUBLICAN NATIONAL COMMITTEE, a federal political party committee,</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>KATIE HOBBS, et al.,</p> <p style="text-align: right;">Defendant(s).</p>		<p>CASE NO: CV-2022-01468</p> <p>EVIDENTIARY HEARING</p> <p>START: 9:00 A.M.</p>
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REMOTE APPEARANCES: Timothy LaSota, David Warrington (Pro Hac Vice) and Gary Lawkowski (Pro Hac Vice), Attorneys for Plaintiffs; Ted Boyd, Plaintiff; Abraham Hamadeh, Plaintiff; Jeanne Kentch, Plaintiff; Andrew Gaona and Sambo Dul, Attorneys for Defendant Secretary of State Katie Hobbs; Daniel Barr, Alexis Danneman, Austin Yost, Samantha Burke, Rahgen Jensen, and Matthew Koerner, Attorneys for Defendant Kris Mayes; Joseph La Rue, Craiger, Jack O'Connor, Rosa Aguilar, Joe Branco, and Karen Hartman-Tellez, Attorneys for Maricopa County; Daniel Jurkowitz, Attorney for Pima County; Jason Moore, Attorney for Navajo County; Ryan Esplin, Attorney for Mohave County, appearing in the courtroom.

Prior to convening, exhibits were uploaded into the court's digital evidence portal, CaseLines (See Attached).

This is the time set for an Evidentiary Hearing.

Counsel Esplin notes for the record that there was ex parte communication with the Court on December 21, 2022 regarding the appointment of an inspector; notes the Court inquired as to how the County would find an inspector, stating discussion has been conducted regarding such.

The Court has reviewed the file; has received and reviewed Trial Briefs, Memoranda and Briefs from the Mayes Defendants and the Hobbs Defendants, as well as a Motion from Counsel La Sota to grant an order of inspected ballots to be released, noting there did not appear to be any opposition to the order in the Motion which the Court granted.

Counsel Jurkowitz informs the Court Pima County conducted ballot inspection according to the Court's order yesterday, stating no inaccuracy was found on any ballot pulled by the inspection team; states ballots are being transferred to the Treasurer's office; and strongly objects the ballots to be pulled a second time.

Counsel La Sota informs the Court they are not requesting for Pima County ballots to be produced to the Court.

Counsel La Rue clarifies that the Court ordered that the ballots produced be entered as exhibits; states that they have no objections; and requests the ballots in Plaintiff's exhibits be kept under seal and not be shown to the public.

IT IS ORDERED Plaintiff's exhibits of ballots are to be kept under seal.

Counsel La Sota informs the Court their inspectors have reviewed ballots; requests there be a stipulation that any ballots that any party wants admitted be admitted to this court; states they will ask for a ruling on the ballots that are submitted as exhibits; notes the county believed a Court order was needed before sharing their exhibits and has not uploaded any yet for that reason; and requests Court make a ruling on how the ballots fall out in terms of erroneous ballots.

Counsel La Sota states they will renew their Petition to Inspect Ballots; and renews their Motion to Expedite Discovery.

Counsel Barr stipulates to the admission of Plaintiff's exhibits; Counsel Gaona states they take no position, subject to the limitation mentioned by Counsel La Rue that ballot images not be broadcasted to the public; and Counsel La Rue states he does not object.

Counsel La Sota informs the Court the ballots contained in the exhibits are from Maricopa County.

Counsel Moore states, with regard to the ballot images requested, pursuant to the Court order and limitations on making those public, they are working on sending nine (9) ballot images to Counsel La Sota.

Counsel La Sota informs the Court they are not requesting the ballots from Navajo County; Counsel Barr informs the Court they are also not requesting the ballots from Navajo County.

Pursuant to stipulation by all relevant parties to the ballots requested by Counsel La Sota from Maricopa County, **IT IS ORDERED** admitting Plaintiff's Exhibits A0001 through A0014.

Counsel Barr provides their opening statement to the Court.

Discussion ensues regarding Counsel La Sota's evidence to be presented today.

Counsel Gaona provides their opening statement to the Court.

Counsel La Rue requests a 10-minute recess to allow Counsel La Sota to upload his exhibits to CaseLines; noting they expect to call Scott Jerrett, Co-Elections Director, to walk through the ballots to explain Maricopa County's processes.

Counsel Gaona requests Counsel La Sota provide the ballot images to Secretary's counsel, subject to the Court's sealing Order, noting they shall not disseminate beyond counsel. Counsel La Rue concurs and requests the same.

The Court informs all parties to follow the same order of the ballot exhibits being sealed in this matter.

The Court stands in recess at 9:22 a.m.

The Court reconvenes at 9:46 a.m.; all parties mentioned heretofore are present, now show Counsel Esplin appearing by Zoom.

The Court notes that prior to convening, 14 new exhibits have been uploaded into CaseLines by Counsel La Sota.

Pursuant to the stipulation before the break, **IT IS ORDERED** admitting Plaintiff's Exhibits A0001 through A0014, all-inclusive, into evidence for the Court to consider in this matter.

IT IS FURTHER ORDERED Exhibits A001 through A0014 be sealed, stating they are private ballots not to be made available to the public; noting the Court shall review and give them proper consideration.

Counsel La Sota states though the exhibits were uploaded, there is no explanation of how ballots were counted, stating they can call Heidi Grande as a witness to explain the undervotes found for Mr. Hamadeh; states he has six (6) ballots he would like to present to the Court; and calls Heidi Grande as a witness who is duly sworn.

Counsel La Rue notes that there are media present and addresses concerns as to images being shared via Zoom video.

Counsel La Sota states they shall reference the ballot number to the witness during testimony so as to not share ballot images with the public.

Heidi Grande testifies to the Court.

Discussion ensues regarding exhibit numbers.

Heidi Grande continues to testify to the Court, and is excused.

Counsel La Sota rests his presentation of evidence.

Counsel Craiger calls Scott Jerrett, Co-Elections Director, as a witness, who is duly sworn and begins to testify to the Court.

Counsel Craiger moves for the admission of Exhibit B0016. Counsel La Sota states he does not object.

IT IS ORDERED admitting Exhibit B0016 into evidence.

Scott Jerrett, Co-Elections Director, continues to testify to the Court.

Counsel Craiger moves for the admission of Exhibit B0015. Counsel La Sota states he does not object.

IT IS ORDERED admitting Exhibit B0015 into evidence.

Scott Jerrett, Co-Elections Director, continues to testify to the Court.

Counsel Craiger moves for the admission of Exhibit C0001. Counsel La Sota states he does not object.

IT IS ORDERED admitting Exhibit C0001 into evidence.

Scott Jerrett, Co-Elections Director, continues to testify to the Court and is excused.

Counsel Craiger rests their presentation of evidence.

Discussion ensues regarding the remainder of this hearing.

The Court stands in recess at 11:16 a.m.

The Court reconvenes at 11:30 a.m.; all parties mentioned heretofore are present.

The Court finds that all parties have rested their presentation of evidence at this time.

Counsel La Sota, Counsel Barr, Counsel La Rue, Counsel Gaona and Counsel Jurkowitz present closing arguments.

Counsel La Sota provides rebuttal closing argument to the Court.

The Court states its findings for the record; specifically finding that this Petition is unsuccessful.

IT IS ORDERED granting in favor of the Defendants.

IT IS ORDERED denying the Petition to change the results of the election or count any additional votes.

The Court notes it shall not order the election be recounted, nor any ballots be recounted, based on the evidence presented in this Court.

The Court recesses at 12:10 p.m.

cc:

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Division IV

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EXHIBIT

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE LEE F. JANTZEN

DIVISION 4

DATE: JULY 14, 2023

*DL

COURT ORDER/NOTICE/RULING

JEANNE KENTCH, et al., et ux.,

Plaintiffs,

vs.

CV-2022-01468

KRIS MAYES, et al., et ux.,

Defendants.

This matter comes before the Court on Plaintiff's Motion for a New Trial. The Court held Oral Argument on this motion on May 16, 2023 and took the matter under advisement.

The Court has been working on a minute entry explaining its ruling and had hoped to have that full minute entry done prior to this afternoon, but a weekend fire in the Court's home and some emergencies added to my calendar have prevented the completion of that minute entry.

The Court has reviewed the record in this case and considered the argument of counsel, the applicable case law and statutes, the Arizona constitution and all evidence presented. This is a close call in a closely contested election.

IT IS ORDERED denying Plaintiff's Motion for a New Trial.

The Court will have a full written minute entry discussing this ruling and addressing other pleadings that have been filed in this case by Monday, July 17, 2023 at noon.

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Honorable Lee F Jantzen
Division 4

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EXHIBIT

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE LEE F. JANTZEN
DIVISION 4
DATE: JULY 17, 2023

*DL

COURT ORDER/NOTICE/RULING

JEANNE KENTCH, et al., et ux.,
Plaintiffs,

vs.

CV-2022-01468

KRIS MAYES, et al., et ux.,
Defendants.

This matter came before this Court on a Motion for New Trial filed by the Plaintiffs against all the Defendants, including current Secretary of State, Kris Mayes. The Court denied the Motion for New Trial in a separate ruling on July 14, 2023.

Mayes and Plaintiff Abraham Hamaden were involved in one of the closest elections in Arizona history and perhaps the history of the United States. With more than 2.5 million voters in the election, after a mandatory recount, Mayes was declared the winner by a mere 280 votes.

The recount results have not been appealed.

The Arizona Constitution gives the Arizona legislature the right to make the rules concerning elections and they have created specific rules to handle election contests. See A.R.S. § 16-671, *et seq.* The expedited time limits mandated by the legislature preclude issuing a new trial with extended discovery in election contests.

The manner in which to contest an election in Arizona is outlined in the statutes. Specifically, Plaintiffs filed an A.R.S. § 16-672 election contest, which reads (in relevant part) as follows:

A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:

1. For misconduct on the part of election boards or any members thereof in any of the

counties of the state, or on the part of any officer making or participating in a canvass for a state election.

3. That the person whose right is contested, or any person acting for him, has given to an elector, inspector, judge or clerk of election, a bribe or reward, or has offered such bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise.

5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

B. The contest may be brought in the superior court of the county in which the person contesting resides or in the superior court of Maricopa county.

C. In a contest of the election of a person declared elected to a state office or of an initiated or referred measure, constitutional amendment, or other question or proposal, which has been declared carried, the attorney general may intervene, and upon demand, the place of trial of the contest shall be changed to Maricopa county, if commenced in another county.

The time constraints for a contested election are found in A.R.S. § 16-676, which reads in section A: *In any contest brought under the provisions of § 16-672... the court shall set a time for the hearing of the contest, not later than ten days after the date on which the statement of contest was filed, which may be continued for not to exceed five days for good cause shown.* (emphasis added)

This Court had jurisdiction over this statewide case because one of the Plaintiffs is a resident of Mohave County. These statutes govern this Court's actions in addressing the election. The time frames used in this statute are quick and designed to be outside of the normal processes of a civil case. There are obviously reasons for that, including getting some finality in the results. Time elements in election contests must be strictly construed. *Bohart v. Hanna*, 231 Ariz. 480 (2006).

This Court held a bench trial on December 23, 2023, within the timelines of the statutes and after hearing evidence from the Plaintiff. The trial covered the following four counts

Count I: against Maricopa County and alleged "Erroneous Count of Votes and Election Board Misconduct; Wrongful Disqualification of Provisional and Early Ballots. (Ariz.

Const. art. II §§ 13, 21; A.R.S. §§ 12-2021, 16-672(A)(1) and (A)(5)).”

Count II: against Maricopa County and allegation of “Erroneous Count of Votes and Election Board Misconduct; Wrongful Exclusion of Provisional Voters.” (A.R.S. §§ 16-584, 12-2021, 16-672(A)(1) and (A)(5)).

Count III: Erroneous Count of Votes: Inaccurate Ballot Duplications. (A.R.S. §§ 16-672(A)(1) and (A)(5)).

Count IV: Votes and Erroneous Count of Votes: Improper Ballot Adjudications. (A.R.S. §§ 16-621, 16-672A(1) and (A)(5)).

The Court held the trial after thousands of ballots were inspected. Plaintiff offered only one witness and at the end of the day, the evidence showed that only about six votes difference would have been found after reviewing the numerous undercounted ballots. Following the trial and after review of the evidence, the Court denied the election contest in a timely manner as contemplated by the statutes.

Of note in relation to this current Motion for New Trial, is the lack of evidence presented in the December trial concerning Counts I and II of the Complaint as they relate to provisional ballots in Maricopa County. Plaintiff was alleging issues with provisional ballots from the opening of this case but provided no significant evidence of specific problems at the trial on the merits. The Plaintiff is now requesting additional discovery to investigate if a problem exists with provisional ballots. There is only limited discovery allowed in elections contests. See A.R.S. § 16-677. The only discovery allowed in these contested elections is a limited inspection of ballots which was done prior to trial.

The Court finds the Certified Recount, which announcement was stayed pending the result of this Court’s trial, was the final decision in this election. The Plaintiff can appeal the decision made in this Court and could have appealed the recount, but a new trial with extended discovery is not available under the road map laid out by the Legislature.

If the Court is incorrect about the statutory interpretation, the Court further finds that the allegations in the Motion for New Trial do not rise to the level of granting a new trial and extended discovery. The Motion for New Trial alleges discoveries made from work done during the mandatory recount process should open the door in this contested election case for new proceedings with additional discovery.

If a new trial is a possibility, then Arizona Rule of Civil Procedure 59 would control. The relevant section of Rule 59 reads as follows:

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues--and to any party--on any of the following grounds materially affecting that party's rights:

- (A) any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial;**
(B) misconduct of the jury or prevailing party;
(C) accident or surprise that could not reasonably have been prevented;
(D) newly discovered material evidence that could not have been discovered and produced at the trial with reasonable diligence;
(E) excessive or insufficient damages;
(F) error in the admission or rejection of evidence, error in giving or refusing jury instructions, **or other errors of law at the trial or during the action;**
(G) the verdict is the result of passion or prejudice; or
(H) the verdict, decision, findings of fact, or judgment is not supported by the evidence or is contrary to law. (emphasis added)

In the trial that was held, the Court followed the contested election rules. The hearings were set quickly. The trial was relatively short, but the Court had set aside time for a longer trial on December 23, 2023 and would have come back after the Christmas holiday if the trial had not concluded. The Court allowed and directed the inspection of ballots to get completed in time. The trial did conclude and the Court, in a timely manner, concluded the Plaintiff did not meet its burden of having the election results changed. There were no irregularities in the proceedings.

The Court further finds there were no errors of law in the Court's denial of a delay to conduct additional discovery. As mentioned before, the Court did allow the discovery the legislature contemplated in A.R.S. § 16-677.

Plaintiff does allege newly discovered material since the trial. In order for newly discovered material to be allowed in a new trial it must be found that the evidence is 1) material, 2) existed at the time of trial, 3) could not have been discovered by due diligence, and 4) would probably change the result.

The Court finds the evidence proffered at oral argument related to provisional ballots is material to this case and did for the most part exist at the time of trial. However, the evidence of potential problems with provisional ballots and people with multiple addresses that was proffered at the time of oral argument was information that was discoverable in November and December with sufficient diligence. Furthermore, even considering the Plaintiff's chart showing how election day voters were trending in Maricopa County, it is still speculation to say that the difference in votes would have been made up with further discovery.

The Court recognizes the difficulty in the task that Plaintiff took on by filing this case. The election contest statutes are extremely difficult to comply with and the time constraints are real. However, the Court also recognizes the difficulty that the State and the counties have in processing these election cases. There were more than 2.5 million votes counted in this election. The short timelines of election cases make it difficult, but if there is an allegation of problems with provisional ballots made in the Complaint, they must be asserted in some detail at the trial and not investigated later.

Plaintiff also alleges newly discovered evidence of human error in Pinal County with regard to some 63 ballots with some unclear marks. This matter came up as a result of the recount process that was being done simultaneously to this case. The record reflects those errors were corrected in the recount and those 63 votes were counted. Plaintiff speculates that this error was repeated in other counties but has no proof. That information was not discoverable until December 29, 2023, based on the recount judge order precluding the sharing of information about the recount prior to the certification.

The Court finds the Defendants did not violate any discovery rules in this case by following the order of the Court in the recount case not to disclose findings found in the recount. The Court further finds that the evidence of the Pinal County errors would not be sufficient to be more than speculation about other errors for which there is no proof.

Rule 59 does not mandate a new trial.

Plaintiffs spent some time in their pleadings discussing *Hunt v. Campbell*, a 1917 Arizona case that stands for the proposition that there are no artificial time restraints on completing the contest of an election. See *Hunt v. Campbell*, 9 Ariz. 254 (1917). The Court agrees with that analysis. But the more important analysis of that case is that at the time of that contested election, there was not an Arizona statute covering contested elections. It was after *Hunt v. Campbell* that the first rules were put in place, and they have been amended over and over since. The statutes would have controlled in 1917 if they existed.

In summary, the Court finds Arizona election contest statutes do not contemplate additional discovery in election cases after the trial on the merits. The trial must be held in an expedited fashion and that was done in this case. The Plaintiffs remedy is appeal. Furthermore, if that analysis is incorrect, the Court finds Plaintiff failed to meet the burden for a new trial under Rule 59. The existence of potential problems with the Maricopa provisional ballots that the Plaintiff wants the Court to consider existed at the time of the filing of the original Complaint and was discoverable with due diligence before the December 23, 2023 trial.

IT IS ORDERED denying Plaintiff's Motion for New Trial.

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