

1 RACHEL H. MITCHELL
2 MARICOPA COUNTY ATTORNEY

3 By: Thomas P. Liddy (Bar No. 019384)
4 Joseph J. Branco (Bar No. 031474)
5 Joseph E. La Rue (Bar No. 031348)
6 Karen J. Hartman-Tellez (Bar No. 021121)
7 Jack L. O'Connor III (Bar No. 030660)
8 Sean Moore (Bar No. 031621)
9 Rosa Aguilar (Bar No. 037774)
10 Deputy County Attorneys
11 liddy@mcao.maricopa.gov
12 brancoj@mcao.maricopa.gov
13 laruej@mcao.maricopa.gov
14 hartmank@mcao.maricopa.gov
15 oconnorj@mcao.maricopa.gov
16 moores@mcao.maricopa.gov
17 aguilarr@mcao.maricopa.gov
18 Deputy County Attorneys
19 MCAO Firm No. 0003200

20 CIVIL SERVICES DIVISION
21 225 West Madison Street
22 Phoenix, Arizona 85003
23 Telephone (602) 506-8541
24 Facsimile (602) 506-4316
25 ca-civilmailbox@mcao.maricopa.gov

26 Emily Craiger (Bar No. 021728)
27 emily@theburgesslawgroup.com
28 THE BURGESS LAW GROUP
3131 East Camelback Road, Suite 224
Phoenix, Arizona 85016
Telephone: (602) 806-2100

Attorneys for Maricopa County Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, *et al.*,

Plaintiffs/Contestants,

v.

KRIS MAYES,

No. S8015CV2022-01468

**MARICOPA COUNTY DEFENDANTS'
RESPONSE OPPOSING PETITION TO
INSPECT BALLOTS**

1 Defendant/Contestee
2 and
3 KATIE HOBBS, *et al.*,
4 Official Capacity Defendants.

(Expedited Challenge Matter)
(Honorable Lee F. Jantzen)

5 INTRODUCTION

6 Pursuant to A.R.S. § 16-677 Plaintiffs have asked this Court to allow them to inspect
7 (a) every duplicated and electronically adjudicated ballot and (b) every ballot that shows an
8 undervote in the Arizona Attorney General contest. Plaintiffs' request far exceeds that
9 allowed by statute in Arizona election contests. The factual allegations, or lack thereof, set
10 forth in Plaintiffs' Complaint and Petition are insufficient to support this overly broad
11 request for inspection of the ballots; there is no reasonable basis for their assertion that this
12 inspection will prepare them for trial. Therefore, they have failed to satisfy the statutory
13 requirements of A.R.S. § 16-677 and the Maricopa County Defendants ask this Court to deny
14 the Petition.

15 Argument

16 "Election contests are purely statutory. They are unknown to the common law. They
17 are neither actions at law nor suits in equity. They are special proceedings." *Grounds v.*
18 *Lawe*, 67 Ariz. 176, 186 (1948), *quoting McCall v. City of Tombstone*, 21 Ariz. 161, 185
19 (1919). Consequently, election contests are "dependent upon statutory provisions for their
20 conduct." *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966); *Grounds* 67 Ariz. 184. In
21 developing an election contest's rules of conduct, the Legislature provided that upon filing
22 a petition to inspect ballots, "either party may have the ballots inspected before preparing
23 for trial". A.R.S. § 16-677 (A), (B). The petition must state that the elector "cannot properly
24 prepare for trial without an inspection of the ballots". A.R.S. § 16-677 (B).

25 "A basic tenet of statutory construction requires that we determine and give effect to
26 legislative intent and when we are uncertain of legislative intent, we must read the statute as
27 a whole and give meaningful operation to each of its provisions. In determining legislative
28 intent, one of the factors to consider is the statute's effects and consequences." *Kaku v.*

1 *Arizona Bd. of Regents*, 172 Ariz. 296, 297 (Ct. App. 1992). (Citations omitted).

2 Although A.R.S. § 16-677(B) requires that, to petition for inspection of ballots, the
3 petitioner must state that the petitioner “cannot properly prepare for trial without an
4 inspection of the ballots,” these words are not some magic talisman such that their mere
5 recitation requires a court to order inspection. Rather, the statute reflects the Legislature’s
6 intent that inspection of ballots is only necessary in preparation for trial, and should only be
7 allowed when such inspection *really is necessary* for that preparation. Indeed, the
8 Legislature did not authorize inspection of ballots during election contest for any other
9 reason.

10 As an initial matter, Plaintiff’s request to personally inspect the ballots is improper.
11 A.R.S. 16-677(B) provides that the Court must appoint a three person panel to conduct this
12 inspection. The panel must consist of an individual chosen by each of the parties and one
13 chosen by the Court. Plaintiffs’ request to have multiple individuals inspecting ballots is
14 improper and would be disruptive to the recount efforts that are currently occurring at the
15 Maricopa County Tabulation and Election Center.

16 Further, for the reasons addressed in the Secretary of State’s Motion to Dismiss, to
17 which the County has joined, Plaintiffs fail to state sufficient facts to support their contest
18 let alone any facts to support a request to personally inspect thousands of ballots. Plaintiffs’
19 claims regarding duplicated and adjudicated ballots have no factual basis. Indeed, with
20 respect to duplicated ballots, Plaintiffs allege a single fact, that a small number of ballot
21 duplication errors occurred in the 2020 election. They have not alleged with anything
22 remotely resembling concreteness that similar errors occurred in the 2022 election.
23 Plaintiffs’ allegation is thus not remotely probative to the 2022 election and is insufficient
24 to justify an inspection of every duplicated ballot.

25 Plaintiffs’ claim regarding adjudicated ballots is similarly without basis. Plaintiff
26 cites to a single instance in which an adjudication board, allegedly, incorrectly adjudicated
27 a vote for the Governor’s race. Plaintiff does not point to any similarly alleged error in the
28 Attorney General’s race, which is the race at issue in this election contest. Moreover,

1 adjudication is a subjective process conducted by a bi-partisan board. Finally, Plaintiff's
2 vague allegation concerning an unidentified observer's belief that tabulation equipment is
3 unable to capture ballot markings is, likewise, insufficient to support this broad request.

4 In short, Plaintiffs have clearly brought a contest claim with no evidentiary support.
5 Instead, they have proposed, through this improper request to inspect ballots and their
6 improper request to conduct other discovery in this matter, to overly burden the counties'
7 election workers and staff so they can go on a fishing expedition to find evidence for their
8 contest. Plaintiffs have had over a month, since election day, to find evidentiary support for
9 their claims. They have none. They cannot use an unreasonable and overly broad request to
10 personally review a massive number of ballots pursuant to A.R.S. § 16-677 to overcome this
11 deficiency. This is improper and should be denied by the Court.

12 CONCLUSION

13 For the foregoing reasons this Court should deny the Plaintiffs' Petition to Inspect
14 Ballots.

15
16 RESPECTFULLY SUBMITTED this 15th day of December, 2022.

17 MARICOPA COUNTY ATTORNEY

18 BY: /s/Joseph E. La Rue
19 Thomas P. Liddy
20 Joseph J. Branco
21 Joseph E. La Rue
22 Karen J. Hartman-Tellez
23 Jack L. O'Connor III
24 Sean Moore
25 Rosa Aguilar
26 Deputy County Attorneys

27 THE BURGESS LAW GROUP

28 BY: /s/Emily Craiger
Emily Craiger

Attorneys for Maricopa County Defendants

1 ORIGINAL of the foregoing E-FILED
2 this 15th day of December 2022 with
3 AZTURBOCOURT, and copies e-served / emailed to:

4 HONORABLE LEE F JANTZEN
5 MOHAVE COUNTY SUPERIOR COURT
6 Danielle Lecher, Judicial Assistant
7 DLecher@courts.az.gov
8 division4@mohavecourts.com

9 David A. Warrington,
10 Gary Lawkowski
11 DHILLON LAW GROUP, INC.
12 DWarrington@dhillonlaw.com
13 GLawkowski@dhillonlaw.com
14 **Pro hac vice forthcoming*

15 Timothy A La Sota,
16 TIMOTHY A. LA SOTA, PLC
17 tim@timlasota.com
18 *Attorneys for Plaintiffs/Contestants*

19 D. Andrew Gaona
20 COPPERSMITH BROCKELMAN PLLC
21 agoana@cblawyers.com
22 *Attorney for Defendant Katie Hobbs*

23 Sambo Dul
24 STATES UNITED DEMOCRACY CENTER
25 bo@statesuniteddemocracycenter.org
26 *Attorney for Defendant Katie Hobbs*

27 Daniel C. Barr
28 Paul F. Eckstein
29 Alexis E. Danneman
30 Austin Yost
31 Samantha J. Burke
32 PERKINS COIE LLP
33 dbarr@perkinscoie.com
34 peckstein@perkinscoie.com
35 adanneman@perkinscoie.com
36 ayost@perkinscoie.com
37 sburke@perkinscoie.com
38 *Attorney for Kris Mayes*

Celeste Robertson

Joseph Young

APACHE COUNTY ATTORNEY'S OFFICE

crobertson@apachelaw.net

jyoung@apachelaw.net

Attorneys for Defendants Larry Noble, Apache County Recorder

Christine J. Roberts

Paul Correa

COCHISE COUNTY ATTORNEY'S OFFICE

croberts@cochise.az.gov

pcorrea@cochise.az.gov

Attorneys for Defendants David Stevens, Cochise County Recorder

Bill Ring

COCONINO COUNTY ATTORNEY'S OFFICE

wring@coconino.az.gov

Attorney for Defendants Patty Hansen, Coconino County

Jeff Dalton

GILA COUNTY ATTORNEY'S OFFICE

jdalton@gilacountyaz.gov

Attorney for Defendants Sadie Jo Bingham, Gila County Recorder

Jean Roof

GRAHAM COUNTY ATTORNEY'S OFFICE

jroof@graham.az.gov

Attorney for Defendants Wendy John, Graham County Recorder

Scott Adams

GREENLEE COUNTY ATTORNEY'S OFFICE

sadams@greenlee.az.gov

Attorney for Defendants Sharie Milheiro, Greenlee County Recorder

Ryan N. Dooley

LA PAZ COUNTY ATTORNEY'S OFFICE

rdooley@laspazcountyaz.org

Attorney for Defendants Richard Garcia, La Paz County Recorder

Ryan Esplin

MOHAVE COUNTY ATTORNEY'S OFFICE – CIVIL DIVISION

esplinr@mohave.gov

Attorney for Defendants Kristi Blair, Mohave County Recorder

1 Daniel Jurkowitz

2 Ellen Brown

3 Javier Gherna

PIMA COUNTY ATTORNEY'S OFFICE

Daniel.Jurkowitz@pcao.pima.gov

Ellen.Brown@pcao.pima.gov

Javier.Gherna@pcao.pima.gov

Attorneys for Defendants Gabriella Cazares-Kelly, Pima County Recorder

6 Craig Cameron

7 Scott Johnson

8 Allen Quist

9 Jim Mitchell

PINAL COUNTY ATTORNEY'S OFFICE

craig.cameron@pinal.gov

scott.m.johnson@pinal.gov

allen.quist@pinal.gov

james.mitchell@pinal.gov

Attorneys for Defendants Dana Lewis, Pinal County Recorder

13 Kimberly Hunley

14 William Moran

SANTA CRUZ COUNTY ATTORNEY'S OFFICE

khunley@santacruzcountyaz.gov

wmoran@santacruzcountyaz.gov

Attorneys for Suzanne Sainz, Santa Cruz County Recorder

17 Collen Connor

18 Thomas Stoxen

YAVAPAI COUNTY ATTORNEY'S OFFICE

Colleen.Connor@yavapaiaz.gov

Thomas.Stoxen@yavapaiaz.gov

Attorney for Defendants Michelle M. Burchill, Yavapai County Recorder

22 Bill Kerekes

YUMA COUNTY ATTORNEY'S OFFICE

bill.kerekes@yumacountyaz.gov

Attorney for Defendants Richard Colwell, Yuma County Recorder

25 /s/V. Sisneros