David A. Warrington*
Gary Lawkowski*
DHILLON LAW GROUP, INC.
2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314
703-574-1206
DWarrington@dhillonlaw.com
GLawkowski@dhillonlaw.com

**Pro hac vice forthcoming*

Timothy A La Sota, Ariz. Bar No. 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016
(602) 515-2649
tim@timlasota.com

Dennis I. Wilenchik, #005350
John D. "Jack" Wilenchik, #029353
WILENCHIK & BARTNESS, P.C.
2810 North Third Street
Phoenix, Arizona 85004
602-606-2810
admin@wb-law.com

Attorneys for Plaintiffs/Contestants

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, an individual; TED BOYD, an individual; ABRAHAM HAMADEH, an individual; and REPUBLICAN NATIONAL COMMITTEE, a federal political party committee Plaintiffs/Contestants, v. KRIS MAYES, Defendant/Contestee, and	No. CV-2022-01468 **NOTICE OF SUPPLEMENTAL AUTHORITY** (assigned to the Honorable Lee F. Jantzen)

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; SUZANNE SAINZ, in her official capacity as the Santa Cruz County Recorder; SANTA CRUZ COUNTY BOARD OF SUPERVISORS, in their official capacity; MICHELLE M. BURCHILL, in her official capacity as the Yavapai County Recorder; YAVAPAI COUNTY BOARD OF SUPERVISORS, in their official capacity; RICHARD COLWELL, in his official capacity as the Yuma County Recorder; and YUMA COUNTY BOARD OF SUPERVISORS, in their official capacity,

Defendants.

Plaintiffs hereby give notice of supplemental authority. Maricopa County Superior Court Judge Peter Thompson issued the attached minute entry ruling granting the request of the Plaintiff in that case, Kari Lake, to inspect certain ballots, in the face of opposition from the Secretary of State and Maricopa County's opposition. Case No. CV 2022-095403.

This case is presented for the following points. First, it reaffirms the right to access ballots that the statutes grant to contestants. In addition, the Court also found that a party's argument that a case should be dismissed altogether is not relevant to the separate consideration of ballot inspection.

RESPECTFULLY SUBMITTED this 19th day of December, 2022.

By: /s/ Timothy A. La Sota
Timothy A La Sota, SBN # 020539
TIMOTHY A. LA SOTA, PLC
2198 East Camelback Road, Suite 305
Phoenix, Arizona 85016

/s/ David A. Warrington
David A. Warrington*
Gary Lawkowski*
DHILLON LAW GROUP, INC.
2121 Eisenhower Avenue, Suite 608
Alexandria, VA 22314

**Pro hac vice forthcoming*

/s/ John D. "Jack" Wilenchik
Dennis I. Wilenchik, #005350
John D. "Jack" Wilenchik, #029353
WILENCHIK & BARTNESS, P.C.
2810 North Third Street
Phoenix, Arizona 85004

Attorneys for Plaintiffs/Contestants

ORIGINAL efiled and served via electronic means
this 19th day of December, 2022, upon:

Honorable Lee F. Jantzen
Mohave County Superior Court c/o
Danielle Lecher
division4@mohavecourts.com

David A. Warrington
Gary Lawkowski
Dhillon Law Group, Inc.
2121 Eisenhower Avenue, Suite 608
Alexandria, Virginia 22314
DWarrington@dhillonlaw.com
GLawkowski@dhillonlaw.com
Attorneys for Plaintiffs/Contestants

D. Andrew Gaona (028414)
Kristen Yost (034052)

COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1900
Phoenix, Arizona 85004
T: (602) 381-5478
agaona@cblawyers.com

Sambo (Bo) Dul
bo@statesuniteddemocracy.org
Attorneys for Secretary of State Katie Hobbs

Daniel C. Barr
Alexis E. Danneman
Austin Yost
Samantha J. Burke
Perkins Coie LLP
2901 North Central Avenue
Suite 2000
Phoenix, AZ 85012
dbarr@perkinscoie.com
adanneman@perkinscoi
ayost@perkinscoie.com
sburke@perkinscoie.com
Attorneys for Kris Mayes

Joseph La Rue
Joe Branco
Karen Hartman-Tellez
Maricopa County Attorney's Office
225 West Madison St.
Phoenix, AZ 85003
laruej@mcao.maricopa.gov
brancoj@mcao.maricopa.gov
hartmank@mcao.maricopa.gov
c-civilmailbox@mcao.maricopa.gov
Attorneys for Maricopa County

Celeste Robertson
Joseph Young
Apache County Attorney's Office
245 West 1st South
St. Johns, AZ 85936
crobertson@apachelaw.net
jyoung@apachelaw.net
Attorneys for Defendant, Larry Noble, Apache County Recorder, and Apache County Board of Supervisors

Christine J. Roberts
Paul Correa
Cochise County Attorney's Office
Bisbee, AZ 85603
croberts@cochise.az.gov
pcorrea@cochise.az.gov
Attorneys for Defendant, David W. Stevens, Cochise County Recorder, and Cochise County Board of Supervisors

Bill Ring
Coconino County Attorney's Office 110
East Cherry Avenue
Flagstaff, AZ 86001
wring@coconino.az.gov
Attorney for Defendant, Patty Hansen, Coconino County Recorder, and Coconino County Board of Supervisors

Jeff Dalton
Gila County Attorney's Office 1400
East Ash Street
Globe, AZ 85551
Attorney for Defendant, Sadie Jo Bingham, Gila County Recorder, and Gila County Board of Supervisors

Jean Roof
Graham County Attorney's Office
800 West Main Street
Safford, AZ 85546
jroof@graham.az.gov
Attorneys for Defendant, Wendy John, Graham County Recorder, and Graham County Board of Supervisors

Scott Adams
Greenlee County Attorney's Office
P.O. Box 1717
Clifton, AZ 85533
sadams@greenlee.az.gov
Attorney for Defendant, Sharie Milheiro, Greenlee County Recorder, and Greenlee County Board of Supervisors

Ryan N. Dooley
La Paz County Attorney's Office
1320 Kofa Avenue

Parker, AZ 85344
rdooley@lapazcountyaz.org
Attorney for Defendant, Richard Garcia, La Paz County Recorder, and La Paz County Board of Supervisors

Ryan Esplin
Mohave County Attorney's Office Civil Division
P.O. Box 7000
Kingman, AZ 86402-7000
EspliR@mohave.gov
Attorney for Defendant, Kristi Blair, Mohave County Recorder, and Mohave County Board of Supervisors

Jason Moore
Navajo County Attorney's Office
P.O. Box 668
Holbrook, AZ 86025-0668
jason.moore@navajocountyaz.gov
Attorney for Defendant, Michael Sample, Navajo County Recorder, and Navajo County Board of Supervisors

Daniel Jurkowitz
Ellen Brown
Javier Gherna
Pima County Attorney's Office
32 N. Stone #2100
Tucson, AZ 85701
Daniel.Jurkowitz@pcao.pima.gov
Ellen.Brown@pcao.pima.gov
Javier.Gherna@pcao.p
Attorney for Gabriela Cázares-Kelley, Pima County Recorder, and Pima County Board of Supervisors

Craig Cameron
Scott Johnson
Allen Quist
Jim Mitchell
Pinal County Attorney's Office
30 North Florence Street
Florence, AZ 85132
craig.cameron@pinal.gov
scott.m.johnson@pinal.gov
allen.quist@pinal.gov
james.mitchell@pinal.gov

Attorneys for Defendant, Dana Lewis, Pinal County Recorder, and Pinal County Board of Supervisors

Kimberly Hunley
Laura Roubicek
Santa Cruz County Attorney's Office
2150 North Congress Drive, Suite 201
Nogales, AZ 85621-1090
khunley@santacruzcountyaz.gov
lroubicek@santacruzcountyaz.gov
Attorneys for Defendant, Suzanne Sainz, Santa Cruz County Recorder, and Santa Cruz County Board of Supervisors

Colleen Connor
Thomas Stoxen
Yavapai County Attorney's Office
255 East Gurley Street, 3rd Floor
Prescott, AZ 86301
Colleen.Connor@yavapaiaz.gov
Thomas.Stoxen@yavapaiaz.gov
Attorney for Defendant, Michelle M. Burchill, Yavapai County Recorder, and Yavapai County Board of Supervisors

Bill Kerekes
Yuma County Attorney's Office
198 South Main Street
Yuma, AZ 85364
bill.kerekes@yumacountyaz.gov
Richard Colwell, Yuma County Recorder, a County Board of Supervisors

/s/ Timothy A. La Sota

Clerk of the Superior Court
*** Electronically Filed ***
12/16/2022 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 12/15/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
V. Felix
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
JUDGE THOMPSON

MINUTE ENTRY

I. Background

Following her verified statement of election contest, Plaintiff Kari Lake filed a verified petition to inspect ballots pursuant to A.R.S. § 16-677(B). She then filed an amended verified petition expanding the scope of her inspection request. Defendant Maricopa County filed responses to both the original and amended verified petitions, to which Plaintiff filed a reply. Defendant Secretary of State Katie Hobbs filed a separate objection to the verified amended petition but joins the County's arguments. Katie Hobbs also filed a response in her capacity as election contestee.

The court has considered the original and verified petitions, Maricopa County's responses, the Secretary's objection and her response, and Plaintiff's reply.

II. Sufficiency of Petition

Plaintiff requests the following inspection items pursuant to A.R.S. § 16-677(B):

1) Fifty randomly selected "ballot-on-demand" (BOD) printed ballots cast on Election Day from six vote centers in Maricopa County chosen by her representative,

2) Fifty randomly selected early ballots cast in the 2022 general election from six separate Maricopa County batches chosen by her representative,

3) Fifty randomly selected early ballot envelopes for early ballots cast in Maricopa County in the 2022 general election, and

4) Fifty randomly selected BOD printed ballots that were marked spoiled on Election Day from six separate Maricopa County vote centers chosen by her representative.

The Defendants correctly emphasize that "election contests are purely statutory," s*ee Grounds v. Lawe*, 67 Ariz. 176, 186 (1948), and so are dependent on statutory provisions for their conduct, *see Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966). Arizona's election contest statutes provide that, "[a]fter the statement of contest has been filed and the action is at issue, either party may have the ballots inspected before preparing for trial." A.R.S. § 16-677(A). To do so, the applying party must "file with the clerk of the court a verified petition stating that he cannot properly prepare for trial without an inspection of the ballots. A.R.S. § 16-677(B).

The Defendants do not challenge that Plaintiff "stat[ed]" in her petition "that [s]he cannot properly prepare for trial without an inspection of the ballots," *see* A.R.S. § 16-677(B), but they argue she still fails to meet that statutory requirement because ballot inspection cannot help her prepare to prosecute the specific allegations of her election contest, and the legislature intended that ballot inspection should only be allowed "when such inspection *really is necessary*" to prepare for trial. They support this assertion of the legislature's intent by noting that Arizona law generally prohibits public inspection of ballots and that statutory grounds to contest elections that involve ballots include challenges to information included on ballots. *See* A.R.S. § 16-672(4) (on account of illegal votes) and (5) (erroneous count of votes).

The Defendants correctly argue that giving effect to legislative intent is a basic tenet of statutory construction, but Arizona courts do so first by looking to the statutory language itself. *Baker v. University Physicians Healthcare*, 231 Ariz. 379, 383 ¶ 8 (2013). When the language is "clear and unambiguous[] and thus subject to only one reasonable meaning," courts apply the language without using other means of statutory construction. *Id.* Section 16-677(B) requires only a statement that the petitioner cannot properly prepare for trial without an inspection of ballots.

The legislature may have intended the higher standard argued by the defendants, but this court cannot read into Section 16-677(B) anything "not within the manifest intention of the legislature as gathered from the statute itself." *See City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965). Because Plaintiff represents that she requires this inspection to prepare for trial, she meets this requirement.

Plaintiff's specific inspection requests (1), (2), and (4) are for a limited number of ballots unlikely to unduly burden Maricopa County or require much time before trial to complete. They are requests for ballot inspections as the statute requires. However, request (3), for inspection of early ballot envelopes, moves beyond the statutory scope of permitted inspection. Early-ballot return envelopes are not themselves ballots, even if they arrive as a "package" as Plaintiff argues. The defendants are correct that ballots—unlike the return envelopes—do not contain signatures. Indeed, they cannot, as the Arizona Constitution requires that "secrecy in voting shall be preserved," by any voting method prescribed by the legislature. *See* Ariz. Const. Art. 7 § 1. Thus, inspection request (3) is denied because it is not authorized by the inspection statute and such an inspection would violate the Arizona Constitution. Plaintiff is entitled to her other three requests.

III. Further Requirements and Scope of Relief

The requirements of Section 16-677(B) do not end with Plaintiff's representation of necessity. The party applying for inspection must also "file with the petition a bond, approved by the clerk, with two sureties, in the principal amount of three hundred dollars, conditioned that he will pay the costs and expenses of the inspection if he fails to maintain the contest." At this point, the court does not know if Plaintiff has complied with this statutory requirement.

If Plaintiff complies, the court must "appoint three persons, one selected by each of the parties and one by the court, by whom the inspection shall be made." A.R.S. § 16-677(B). The petitioner must be in full compliance with the bonding and inspector selection requirements before proceeding with inspection.

In her objection, the Secretary argued separately that the petition for inspection should be denied "because discovery should not be granted in connection with an invalid election contest." The Court agrees with Secretary Hobbs that an election contest—as any other kind of legal action—must meet threshold pleading requirements to proceed." However, the matter at issue here is Plaintiff's petition to inspect, not the underlying election contest. The Defendants have filed motions to dismiss that are currently being litigated. The court will rule on the sufficiency of Plaintiff's verified statement of election contest after due consideration of all parties' briefing on the matter and expresses no view of the weight or sufficiency of the evidence to be provided through Lake's proposed statistical analysis.

This court must also be sensitive to the strict statutory deadlines for the trial of an election contest. *See* A.R.S. § 16-676(A)-(B). Recognizing that Defendants are confident in their position, the court nonetheless cannot put off all pre-trial discovery on the expectation that the contest will be dismissed. The court is also concerned with preventing any disruption or delay to any ongoing recount pursuant to A.R.S. § 16-661 et seq. *See State ex rel. Montgomery v. Brain*, 244 Ariz. 525, 527, ¶ 7 (App. 2018) (when a case involves the intersection of multiple statutes a court must give meaning to all provisions).

IT IS ORDERED that Lake's petition to inspect is granted as to requests (1), (2), and (4) subject to the following conditions:

1) Plaintiff files with the clerk of the court a bond in accordance with the requirements of A.R.S. § 16-677(B) and submits the name and contact information of her chosen ballot inspector by 12:00 p.m. on Friday, December 15, 2022, and simultaneously files a notice confirming payment of the bond with the court by email, copying all other parties.

2) The inspection does not in any way disturb the integrity of any ballots or their storage or maintenance in the custody of Maricopa County, or disclose the identity of any voter as connected to any given ballot; and

3) The inspection does not in any way interfere with any ongoing recount of the 2022 election results.

4) That the inspection shall begin at 8:00 a.m. Tuesday, December 20, 2022.

5) That this order authorizing an inspection is automatically vacated if the court dismisses Plaintiff's verified petition statement in its entirety following full briefing on the motion to dismiss.

IT IS FURTHER ORDERED that the Maricopa County Defendants provide to the clerk of the court the name and contact information of their preferred ballot inspector by 12:00 p.m. on Friday, December 15, 2022.

IT IS FURTHER ORDERED that the Maricopa County Defendants provide to the court the name of a proposed inspector for the court to name as its representative pursuant to A.R.S. § 16-677(B) by 12:00 p.m. on Friday, December 15, 2022.