

LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION

1 **LAURA CONOVER**  
2 **PIMA COUNTY ATTORNEY**  
3 **CIVIL DIVISION**  
4 Daniel Jurkowitz, SBN 018428  
5 Ellen Brown, SBN 012329  
6 Deputy County Attorney  
7 32 North Stone Avenue, Suite 2100  
8 Tucson, Arizona 85701  
9 Telephone: 520-724-5700  
10 Daniel.Jurkowitz@pcao.pima.gov  
11 Ellen.Brown@pcao.pima.gov  
12 *Attorneys for Pima County Defendants*

ARIZONA SUPERIOR COURT

MOHAVE COUNTY

11 JEANNE KENTCH, an individual; TED  
12 BOYD, an individual; ABRAHAM  
13 HAMADEH, an individual; and REPUBLICAN  
14 NATIONAL COMMITTEE, a federal political  
15 party committee,

Plaintiffs/Contestants,

vs.

17 KRIS MAYES,

Defendant/Contestee,

and

20 KATIE HOBBS, in her official capacity as the  
21 Secretary of State; LARRY NOBLE, in his  
22 official capacity as the Apache County  
23 Recorder; APACHE COUNTY BOARD OF  
24 SUPERVISORS, in their official capacity;  
25 DAVID W. STEVENS, in his official capacity  
26 as Cochise County Recorder; COCHISE  
COUNTY BOARD OF SUPERVISORS, in  
their official capacity; PATTY HANSEN, in her  
official capacity as the Coconino County

No. S8015CV202201468

**PIMA COUNTY DEFENDANTS'  
MOTION TO DISMISS**

(Election Contest)

(The Hon. Lee F. Jantzen)

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1 Recorder; COCONINO COUNTY BOARD OF  
2 SUPERVISORS, in their official capacity;  
3 SADIE JO BINGHAM, in her official capacity  
4 as Gila County Recorder; GILA COUNTY  
5 BOARD OF SUPERVISORS, in their official  
6 capacity; WENDY JOHN, in her official  
7 capacity as Graham County Recorder;  
8 GRAHAM COUNTY BOARD OF  
9 SUPERVISORS, in their official capacity;  
10 SHARIE MILHEIRO, in her official capacity as  
11 Greenlee County Recorder; GREENLEE  
12 COUNTY BOARD OF SUPERVISORS, in  
13 their official capacity; RICHARD GARCIA, in  
14 his capacity as the La Paz County Recorder; LA  
15 PAZ COUNTY BOARD OF SUPERVISORS,  
16 in their official capacity; STEPHEN RICHER,  
17 in his official capacity as the Maricopa County  
18 Recorder; MARICOPA COUNTY BOARD OF  
19 SUPERVISORS, in their official capacity;  
20 KRISTI BLAIR, in her official capacity as the  
21 Mohave County Recorder; MOHAVE  
22 COUNTY BOARD OF SUPERVISORS, in  
23 their official capacity; MICHAEL SAMPLE, in  
24 his official capacity as Navajo County  
25 Recorder; NAVAJO COUNTY BOARD OF  
26 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;

1 YAVAPAI COUNTY BOARD OF  
2 SUPERVISORS, in their official capacity;  
3 RICHARD COLWELL, in his official capacity  
4 as the Yuma County Recorder; and YUMA  
5 COUNTY BOARD OF SUPERVISORS, in  
6 their official capacity,  
7  
8 Defendants.

9 The Pima County Recorder Gabriella Cázares-Kelly and the Pima County Board  
10 of Supervisors (“Pima County Defendants”) hereby join in the Secretary of State’s  
11 Motion to Dismiss as to Pima County Defendants and separately move to dismiss  
12 Counts III & IV of Plaintiffs’ Contest as to Pima County Defendants pursuant to Ariz.  
13 R. Civ. P. 12(b)(6).

14 **I. Laches bars the consideration of allegations against Pima County  
15 Defendants.**

16 As the Court is aware, Plaintiff Hamadeh filed a previous lawsuit contesting the  
17 election results, including in Pima County, with the same allegations. *See* CV2022-  
18 015455 filed November 22, 2022. Plaintiff Hamadeh never served Pima County  
19 Defendants in that matter and his Counsel was informed of Pima County’s objections  
20 to the contest on November 28, 2022. Plaintiffs nevertheless filed this instant matter  
21 with the same allegations on December 9, 2022. Plaintiffs then unnecessarily and  
22 unreasonably delayed serving Pima County Defendants. It was not even until  
23 December 15, 2022, that Plaintiffs sent Pima County Defendants a waiver of service  
24 form. Even if this met the requirements for a waiver of service request, under Ariz. R.  
25 Civ. P. 4.1(c)(1)(F), a defendant must have a reasonable time to return the waiver,  
26 which must be at least 30 days after the request was sent. Pima County Defendants had

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1 not yet determined whether to return the waiver. Pima County Defendants were not  
2 actually served with process until the afternoon of December 21, 2022. Pima County  
3 Defendants were not parties to this matter during the oral argument on December 19,  
4 2022, and the Court lacked personal jurisdiction over Pima County Defendants when it  
5 issued its decision on December 20, 2022. It is a fundamental due process right for  
6 Pima County Defendants to have their objections heard and considered by the Court  
7 and Pima County has been denied this right by Plaintiffs’ dilatory conduct. Pima  
8 County has been served with process less than a day and a half before trial. Pima  
9 County Defendants are thus very much prejudiced in their defense of this matter and  
10 the allegations against Pima County Defendants should be barred by laches.

11  
12 **II. Counts III & IV violate Ariz. R. Civ. P. 8 and Pima County Defendants**  
13 **should be dismissed.**

14  
15 Counts III & IV simply fail to comply with Ariz. R. Civ. P. 8. Count III alleges,  
16 upon completely unidentified information and belief, that the counties’, including Pima  
17 County’s, ballot duplication boards incorrectly transcribed a material number of voter  
18 selections. Count IV alleges, upon completely unidentified information and belief, that  
19 the counties’, including Pima County’s, electronic adjudication boards<sup>1</sup> erroneously  
20 and improperly counted a material number of ballots.

21  
22 Arizona courts assess the sufficiency of a claim under Rule 8's requirement that  
23 a pleading contain a “short and plain statement of the claim showing that the pleader is  
24 entitled to relief.” Under Rule 8, Arizona follows a notice pleading standard, the  
25 purpose of which is to “give the opponent fair notice of the nature and basis of the

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<sup>1</sup> Pima County does not even have an electronic adjudication board.

1 claim....” *Mackey v. Spangler*, 81 Ariz. 113, 115 (1956). If a pleading does not comply  
2 with Rule 8, an opposing party may move to dismiss the action for “[f]ailure to state a  
3 claim upon which relief can be granted.” Ariz. R. Civ. P. 12(b)(6). When adjudicating  
4 a Rule 12(b)(6) motion to dismiss, Arizona courts look only to the pleading itself and  
5 consider the well-pled factual allegations contained therein.

6  
7 Counts III and IV however are a textbook case of nothing more than conclusory  
8 allegations. There is no objective basis for any of the claims against Pima County  
9 Defendants. Because Arizona courts evaluate a complaint's well-pled facts, mere  
10 conclusory statements are insufficient to state a claim upon which relief can be granted.  
11 The inclusion of conclusory statements does not invalidate a complaint...but a complaint  
12 that states only legal conclusions, without any supporting factual allegations, does not  
13 satisfy Arizona's notice pleading standard under Rule 8. *Cullen v. Auto-Owners Ins. Co.*,  
14 218 Ariz. 417, 419, ¶¶ 6-7 (2008). *See also Matter of ABB Trust*, 251 Ariz. 313 (App.  
15 2021) (When a motion to dismiss for failure to state a claim is before it, a court does not  
16 accept as true allegations consisting of conclusions of law, inferences or deductions that  
17 are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported  
18 conclusions from such facts, or legal conclusions alleged as facts).

19  
20 Instead, Plaintiffs seek to go on a fishing expedition to attempt to find facts to  
21 support their otherwise unsupported allegations. Essentially, Plaintiffs are asking the  
22 Court to verify that the election results in Pima County were accurate without any actual  
23 basis to contest them, but merely for their personal satisfaction. Arizona has already  
24 rejected this as a basis for reviewing election results. *See Barrera v. Superior Court*, 117  
25 Ariz. 528 (App. 1977) (An unsuccessful candidate is not entitled to a recount merely for  
26 personal satisfaction). An election contest is purely a creature of statute and Plaintiffs

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1 have only pled conclusions rather than facts to support a permissible basis under A.R.S. §  
2 16-672(A). The Court should not countenance this. *See Hunt v. Campbell*, 19 Ariz. 254,  
3 263-64 (1917) (an election contest cannot be based upon mere theory, suspicion, or  
4 conjecture). To permit this would be to allow every election to be contested based upon  
5 mere speculation, and elections will not be concluded in time for properly elected  
6 officials to take their positions. This is an abuse of the judicial system and flies in the  
7 face of the strong public policy favoring stability and finality of election results.  
8 *Donaghey v. Attorney Gen.*, 120 Ariz. 93, 95 (1978).

9  
10 Accordingly, Pima County Defendants respectfully request that the Court dismiss  
11 Pima County Defendants and provide such other and further relief as the Court  
12 determines is warranted.

13  
14 RESPECTFULLY SUBMITTED December 21, 2022.

15 LAURA CONOVER  
16 PIMA COUNTY ATTORNEY

17 By:  /s/ Daniel Jurkowitz  
18 Daniel Jurkowitz  
19 Deputy County Attorney  
20  
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23  
24  
25  
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**CERTIFICATE OF SERVICE**

Original of the foregoing efiled with the Mohave County Superior Court and served through AZTurboCourt this 21st day of December 2022:

Hon. Lee F. Jantzen  
Arizona Superior Court in Mohave County  
Danielle Lecher, Judicial Assistant  
DLecher@courts.az.gov  
Division4@mohavecourts.com  
415 E. Spring St.  
Kingman, AZ 86401

Timothy A La Sota, Esq.  
TIMOTHY A. LA SOTA, PLC  
2198 East Camelback Road, Suite 305  
Phoenix, Arizona 85016  
tim@timlasota.com

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

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

*Attorneys for Plaintiffs/Contestants*

D. Andrew GaonaCOPPERSMITH BROCKELMAN PLC  
agaona@cblawyers.com  
*Attorney for Defendant Katie Hobbs*

Daniel C. Barr, Esq.

LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION

1 Alexis E. Danneman, Esq.  
Austin Yost, Esq.  
2 Samantha J. Burke, Esq.  
Perkins Coie LLP  
3 2901 North Central Avenue  
4 Suite 2000  
Phoenix, AZ 85012  
5 dbarr@perkinscoie.com  
6 adanneman@perkinscoie.com  
7 ayost@perkinscoie.com  
8 sburke@perkinscoie.com  
*Attorneys for Kris Mayes*

9 *Sambo Dul*  
10 *STATES UNITED DEMOCRACY CENTER*  
11 *bo@statesuniteddemocracycenter.org*  
*Attorney for Defendant Katie Hobbs*

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

19  
20 Celeste Robertson  
Joseph Young  
21 Apache County Attorney's Office  
245 West 1st South  
22 St. Johns, AZ 85936  
23 crobertson@apachelaw.net  
jyoung@apachelaw.net  
24 *Attorneys for Defendant, Larry Noble, Apache County Recorder,*  
25 *and Apache County Board of Supervisors*

26 Christine J. Roberts



LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION

- 1 Paul Correa  
2 Cochise County Attorney's Office  
3 P.O. Drawer CA  
4 Bisbee, AZ 85603  
5 croberts@cochise.az.gov  
6 pcorrea@cochise.az.gov  
7 *Attorneys for Defendant, David W. Stevens, Cochise County Recorder,*  
8 *and Cochise County Board of Supervisors*
- 9 Bill Ring  
10 Mark D. Byrnes  
11 Coconino County Attorney's Office  
12 110 East Cherry Avenue  
13 Flagstaff, AZ 86001  
14 wring@coconino.az.gov  
15 mbyrnes@coconino.az.gov  
16 *Attorney for Defendant, Patty Hansen, Coconino County Recorder,*  
17 *and Coconino County Board of Supervisors*
- 18 Jeff Dalton  
19 Gila County Attorney's Office  
20 1400 East Ash Street  
21 Globe, AZ 85501  
22 jdalton@gilacountyaz.gov  
23 *Attorney for Defendant, Sadie Jo Bingham, Gila County Recorder,*  
24 *and Gila County Board of Supervisors*
- 25 Jean Roof  
26 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*
- 27 Scott Adams  
28 GREENLEE COUNTY ATTORNEY'S OFFICE  
29 sadams@greeleen.az.gov  
30 Attorney for Defendants Sharlie Milheiro, Greenlee County Recorder
- 31 Rob Gilliland

LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION

- 1 Greenlee County Attorney's Office  
P.O. Box 1717  
2 Clifton, AZ 85533  
rgilliland@greenlee.az.gov  
3 *Attorney for Defendant, Sharie Milheiro, Greenlee County Recorder,*  
4 *and Greenlee County Board of Supervisors*
- 5 Ryan N. Dooley  
6 La Paz County Attorney's Office  
1320 Kofa Avenue  
7 Parker, AZ 85344  
rdooley@lapazcountyaz.org  
8 *Attorney for Defendant, Richard Garcia, La Paz County Recorder,*  
9 *and La Paz County Board of Supervisors*
- 10 Ryan Esplin  
11 Mohave County Attorney's Office Civil Division  
P.O. Box 7000  
12 Kingman, AZ 86402-7000  
EspliR@mohave.gov  
13 *Attorney for Defendant, Kristi Blair, Mohave County Recorder,*  
14 *and Mohave County Board of Supervisors*
- 15 Jason Moore  
16 Navajo County Attorney's Office  
P.O. Box 668  
17 Holbrook, AZ 86025-0668  
jason.moore@navajocountyaz.gov  
18 *Attorney for Defendant, Michael Sample, Navajo County Recorder,*  
19 *and Navajo County Board of Supervisors*
- 20 Craig Cameron  
21 Scott Johnson  
22 Allen Quist  
Jim Mitchell  
23 Pinal County Attorney's Office  
30 North Florence Street  
24 Florence, AZ 85132  
craig.cameron@pinal.gov  
25 scott.m.johnson@pinal.gov  
26 allen.quist@pinal.gov

LAURA CONOVER  
PIMA COUNTY ATTORNEY  
CIVIL DIVISION

1 james.mitchell@pinal.gov  
2 *Attorneys for Defendant, Dana Lewis, Pinal County Recorder,*  
3 *and Pinal County Board of Supervisors*

4 Kimberly Hunley  
5 Laura Roubicek  
6 Santa Cruz County Attorney’s Office  
7 2150 North Congress Drive, Suite 201  
8 Nogales, AZ 85621-1090  
9 khunley@santacruzcountyaz.gov  
10 lroubicek@santacruzcountyaz.gov  
11 *Attorneys for Defendant, Suzanne Sainz, Santa Cruz County Recorder,*  
12 *and Santa Cruz County Board of Supervisors*

13 Colleen Connor  
14 Thomas Stoxen  
15 Yavapai County Attorney’s Office  
16 255 East Gurley Street, 3rd Floor  
17 Prescott, AZ 86301  
18 Colleen.Connor@yavapaiaz.gov  
19 Thomas.Stoxen@yavapaiaz.gov  
20 *Attorney for Defendant, Michelle M. Burchill, Yavapai County Recorder,*  
21 *and Yavapai County Board of Supervisors*

22 Bill Kerekes  
23 Yuma County Attorney’s Office  
24 198 South Main Street  
25 Yuma, AZ 85364  
26 bill.kerekes@yumacountyaz.gov  
*Attorney for Defendant, Richard Colwell, Yuma County Recorder,*  
*and Yuma County Board of Supervisors*