

ARIZONA SUPREME COURT

KARILAKE, *Petitioner-Plaintiff/*
Contestant,

v.

KATIE HOBBS, personally as
Contestee and in her official capacity
as the Secretary of State, Respondent-
Defendant/Contestee,

and

STEPHEN RICHER, in his official
capacity as Maricopa County Recorder,
et al., Respondents/Defendants.

Case No. _____

Court of Appeals Case No. 1 CA-CV
22-0779 & No. 1 CA-CV _____
(filed Dec. 30, 2022)

Maricopa County Superior Court No.
CV2022-095403

PETITION FOR TRANSFER

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INTRODUCTION

Pursuant to Rule 19(a), Ariz. R. Civ. App. P., petitioner Kari Lake asks this Court to transfer special-action appellate review of Maricopa County Superior Court case No. CV-2022-095403 from the Arizona Court of Appeals, Division One, for the following reasons.

- The extraordinary circumstances of (1) a targeted attack on Election-Day voters, (2) purely legal issues of statewide importance, and (3) the need for expedition under the fast-moving electoral calendar;
- The need to qualify this Court's decisions regarding (1) a clear-and-convincing versus preponderance-of-evidence standard in election contests, (2) the use of laches to ratify a vested right to violate election laws in future elections, and (3) clarification that the election contests' statutory nature does not preclude finding unconstitutional elections to qualify as "misconduct" under A.R.S. §16-672(A)(1).

BACKGROUND

A significant majority of voters no longer trust the outcomes of elections in Arizona. A functioning republic cannot exist for long in these circumstances. The evidence put forward in this case, including the changing and conflicting testimony of Maricopa officials, and sworn testimony by whistleblowers employed by Maricopa, proved that Maricopa officials:

- Caused the chaos arising at nearly two thirds of Maricopa’s 223 vote centers, admitted, after first denying, that illegally misconfigured ballots were injected into the election, causing tabulators to reject tens of thousands of ballots, disproportionately targeting Republican voters. At trial, counsel for Maricopa blamed Republicans for voting on Election Day: “*You reap what you sow.*” Ct. App. Appx:675 (Tr., 274:16).
- Violated A.R.S. §16-621(E)’s chain-of-custody requirements with respect nearly 300,000 Election Day drop box (“EDDB”) ballots, including the inexplicable injection of over 25,000 ballots between November 9 and November 10.
- Allowed tens of thousands of ballots with voters’ signatures which clearly did not match the record signature and were not properly cured to be counted in the 2022 general election in violation of A.R.S. §16-550.

The number of illegally suppressed votes and illegal votes cast in Arizona’s general election on November 8, 2022, far exceeds the 17,117 vote margin between Kari Lake Secretary of State Katie Hobbs. The evidence adduced at trial showed that Arizona’s election process is broken. This Court is the only body which has the power to restore trust in Arizona’s elections.

ARGUMENT

I. TRANSFER TO THIS COURT IS APPROPRIATE.

A. Extraordinary circumstances justify transfer.

Three extraordinary circumstances warrant transfer under Rule 19(a)(3): (1) Maricopa’s electoral chaos targeted Republican voters, depriving Arizona of a “free and equal” election; (2) respondent Katie Hobbs is due to be sworn in on January 2, 2023; and (3) purely legal issues of statewide importance justify reversal and, thus, a new election.

1. The Election-Day chaos targeted Republican voters.

The evidence put forward at trial and in Lake’s special-action petition shows Republican voters were targeted on Election Day to disrupt their votes. This is true both for Election-Day voters versus mail-in voters and for Republican Election-Day voters versus Democrat Election-Day voters. Without wading into statistics, this Court should reverse the dismissal of the constitutional counts because “the Equal Protection and Due Process Clauses protect against government action that is arbitrary, irrational, or not reasonably related to furthering a legitimate state purpose.” *Coleman v. City of Mesa*, 230 Ariz. 352, 362 (2012). Maricopa’s deviation from Arizona law was arbitrary, irrational, and furthered no legitimate purpose.

Moreover, even the statistical issues present purely legal question. First, dismissing Counts V and VI for failing to state a claim are purely legal. *Coleman v. City of Mesa*, 230 Ariz. 352, 355 ¶7 (2012). Second, in the bench trial on the

tabulator issue, the trial court rejected statistical evidence on whether Maricopa’s chaos disenfranchised enough voters to make the results uncertain based on incorrect standards of review by requiring *clear-and-convincing* evidence that election officials *intended their misconduct to alter the result and did, in fact, alter the result*. To the contrary, this Court requires only that nonquantifiable misconduct render the outcome “uncertain.” *Findley v. Sorenson*, 35 Ariz. 265 (1929); *Hunt v. Campbell*, 19 Ariz. 254, 265-66 (1917); *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). This Court can—indeed, *must*—reverse on purely legal issues, without addressing factual disputes.

2. The need for a duly elected governor warrants expediting this matter.

The need for a timely determination justifies transfer, including in electoral matters. *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404-05 (2020). This Court transferred *Fleischman v. Protect Our City*, 214 Ariz. 406, 409 ¶14 (2007), to “obtain a timely determination whether [a] proposed initiative [would] be on the ballot for the next city election.” Like *Fleischman*, this case requires timely resolution of whether Maricopa’s 2022 general election should be vacated and a new one held.

3. **This matter presents novel legal issues of statewide importance.**

This Court accepts transfers concerning matters of general or widespread importance. *Hall v. Elected Officials' Ret. Plan*, 241 Ariz. 33, 38 ¶13 (2016). Similarly, the constitutionality of municipal code provisions for removing magistrates warranted transfer because many other municipal codes included similar provisions, providing statewide effects. *Winter v. Coor*, 144 Ariz. 56, 57 (1985). If removing municipal magistrates qualifies, installing a Governor *a fortiori* does.

Special action is appropriate because the issues are purely legal. *Sierra Tucson, Inc. v. Lee ex rel. County of Pima*, 230 Ariz. 255, 257 ¶¶6-7 (App. 2012) (motion to dismiss); *Mendez v. Robertson*, 202 Ariz. 128, 129, ¶¶1-3 (App. 2002) (standard of review); *Nordstrom v. Cruikshank*, 213 Ariz. 434, 438 (App. 2006) (interpreting statutes); *Dobson v. State ex rel., Comm'n on App. Ct. Appointments*, 233 Ariz. 119, 121 ¶7 (2013) (interpreting constitution).

There is scarcely a matter of greater statewide importance than protecting the integrity of the electoral process, *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (“the political franchise of voting [is] a fundamental political right, because preservative of all rights”), which our Constitution mandates: “All elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Ariz. Const. art. II, §21. Petitioner asks this Court expeditiously to resolve these critical issues.

B. This Court must qualify its election-contest decisions.

Transfer is appropriate under Rule 19(a)(1) for three reasons:

- **Qualify *Oakes v. Finlay*, 5 Ariz. 390, 398 (1898) and *McClung v. Bennett*, 225 Ariz. 154, 156, ¶7 (2010).** The trial court relied on *Oakes* and *McClung* for a clear-and-convincing standard applicable to all election contests. *Oakes* is a common-law decision that predates the election-contest statute, and the *McClung* language is *dicta*. Contestants bear the burden of proof and must battle presumptions of election officials' compliance with the law, but burdens can shift if contestants rebut those presumptions, *Averyt v. Williams*, 8 Ariz. 355, 359 (1904), and the preponderance-of-evidence standard applies, *Aileen H. Char Life Interest v. Maricopa Cty.*, 208 Ariz. 286, 291 (2004), barring allegations of fraud, *Buzard v. Griffin*, 89 Ariz. 42, 50 (1960), or statutory revisions to the burden of proof. *See, e.g.*, A.R.S. §16-121.01.
- **Qualify *Harris v. Purcell*, 193 Ariz. 409, 412 (1998), and progeny on laches.** The trial court dismissed signature-verification claims for 2022 based on Maricopa County's having failed adequately to verify signatures on mail-in ballots *in 2020*. "No vested right to violate an ordinance may be acquired by continued violations." *Acker v. Baldwin*, 18 Cal. 2d 341, 346 (1941); *Rivera v. City of Phx.*, 186 Ariz. 600, 602 (App. 1996) (improper building permits cannot establish vested right to violate ordinances). This Court should

narrow its laches precedents to make clear that prior violations do not insulate new violations.

- **Qualify *Griffin v. Buzard*, 86 Ariz. 166, 168 (1959).** The trial court found claims that Maricopa’s 2022 election violated the federal and Arizona Equal Protection and Due Process Clauses fall outside §16-672(A)(1)’s limited bounds. This Court should clarify that unconstitutional elections can be “misconduct” under A.R.S. §16-672(A)(1). Otherwise, contestants must bring separate actions under 42 U.S.C. §1983 to raise constitutional grounds. The Legislature could not have intended “misconduct” to be so narrow, and the Supremacy Clause would forbid state efforts to insulate elections from federal challenges.

II. JUDICIAL ECONOMY FAVORS TRANSFER.

A new Governor is scheduled to be seated under a cloud of electoral uncertainty and impropriety. This action requires this Court’s speedy, final resolution, without resort to an intermediate decision by the Court of Appeals.

CONCLUSION

WHEREFORE, this Court should transfer and expeditiously hear the special action pending in the Court of Appeals.

Dated: December 31, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rules of Civil Appellate Procedure Rule 4, the undersigned counsel certifies that the Petition for Transfer is double spaced and uses a proportionately spaced typeface (*i.e.*, 14-point Times New Roman) and contains 1,399 words according to the word-count function of Microsoft Word.

Dated: December 31, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

Pursuant to Rule 4, Rules of Civil Appellate Practice, the undersigned certifies that the foregoing Petition for Transfer was e-filed via AZTURBO COURT on this 31st day of December, 2022 and served as follows:

E-FILED: AZTurboCourt:

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[Get Supreme Court address; serve/add Court of Appeals as courtesy?

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