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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KARI LAKE,

Contestant/Petitioner,

vs.

KATIE HOBBS, personally as Contestee
and in her official capacity as Secretary
of State; STEPHEN RICHER, in his

No. CV2022-095403

**MARICOPA COUNTY'S RESPONSE TO
PETITIONER'S VERIFIED PETITION
TO INSPECT BALLOTS PURSUANT TO
A.R.S. § 16-677**

(Expedited Election Matter)

1 official capacity as Maricopa County
2 Recorder; BILL GATES; CLINT
3 HICKMAN; JACK SELLERS;
4 THOMAS GALVIN; and STEVE
5 GALLARDO, in their capacity as
6 members of the Maricopa County Board
7 of Supervisors; SCOTT JARRETT, in his
8 official capacity as Maricopa County
9 Director of Elections; and the
10 MARICOPA COUNTY BOARD OF
11 SUPERVISORS,

12 Defendants.

(Honorable Peter Thompson)

13 **Introduction and Background**

14 On December 9, 2022, Plaintiff Kari Lake filed her Complaint in Special Action and
15 Verified Statement of Election Contest Pursuant to A.R.S. § 16-672 (the “Complaint”). The
16 Complaint sets forth ten separate counts: Count I – Freedom of Speech; Count II – Illegal
17 Tabulator Configurations; Count III – Mail-In Ballots with Invalid Signatures; Count IV –
18 Invalid Chain of Custody; Count V – Equal Protection; Count VI – Due Process Violation,
19 Misconduct and Illegal Votes; Count VII – Non-Secret Mail-In Ballots; Count VIII –
20 Incorrect Certification; Count IX – Inadequate Remedy; Count X – Federal Constitutional
21 Rights (the “Counts”). On December 13, 2022, Plaintiff filed a separate Verified Petition to
22 Inspect Ballots Pursuant to A.R.S. § 16-677 (the “Petition”) requesting inspection of the
23 ballots tabulated by Maricopa County in the 2022 General Election. According to Plaintiff’s
24 Petition, she is unable to “properly prepare for trial without such inspection.” [Petition at 1.]
25 Based on a favorable reading of Plaintiff’s Complaint and Petition, inspection of the ballots
26 cannot prepare her for trial and she fails to satisfy the statutory requirements of A.R.S. § 16-
27 677. The Maricopa County Defendants ask this Court to deny the Petition.

28 **Argument**

“Election contests are purely statutory. They are unknown to the common law. They
are neither actions at law nor suits in equity. They are special proceedings.” *Grounds v.*
Lawe, 67 Ariz. 176, 186 (1948), quoting *McCall v. City of Tombstone*, 21 Ariz. 161, 185
(1919). Consequently, election contests are “dependent upon statutory provisions for their

1 conduct.” *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966); *Grounds* 67 Ariz. 184. In
2 developing an election contest’s rules of conduct, the Legislature provided that upon filing
3 a petition to inspect ballots, “either party may have the ballots inspected before preparing
4 for trial.” A.R.S. § 16-677 (A), (B). The petition must state that the elector “cannot properly
5 prepare for trial without an inspection of the ballots.” A.R.S. § 16-677 (B).

6 “A basic tenet of statutory construction requires that we determine and give effect to
7 legislative intent and when we are uncertain of legislative intent, we must read the statute as
8 a whole and give meaningful operation to each of its provisions. In determining legislative
9 intent, one of the factors to consider is the statute’s effects and consequences.” *Kaku v.*
10 *Arizona Bd. of Regents*, 172 Ariz. 296, 297 (Ct. App. 1992) (citations omitted).

11 Although A.R.S. § 16-677(B) requires that, to petition for inspection of ballots, the
12 petitioner must state that the petitioner “cannot properly prepare for trial without an
13 inspection of the ballots,” these words are not some magic talisman such that their mere
14 recitation requires a court to order inspection. Rather, the statute reflects the Legislature’s
15 intent that inspection of ballot is only necessary in preparation for trial, and should only be
16 allowed when such inspection *really is necessary* for that preparation. Indeed, the
17 Legislature did not authorize inspection of ballots during election contests for any other
18 reason. This interpretation is reasonable given two countervailing interests. First, Arizona
19 law prohibits the general inspection of ballots by the public. *See, e.g.*, A.R.S. § 16-1018(4)
20 (prohibiting anyone “[s]how[ing] another voter’s ballot to any person after it is prepared for
21 voting in such a manner as to reveal the contents”). But second, the election contest grounds
22 include challenges to the information contained within the four corners of a ballot. Prior
23 case law is illustrative of this second point. In *Hunt v. Campbell* 19 Ariz. 254 (1917) and
24 *Findley v. Sorenson* 35 Ariz. 265 (1929) ballots were inspected during the election contest
25 period to ascertain the intent of an identifiable number of electors’ votes and either attribute
26 or deduct them from the contestant’s overall vote total.

27 Here, Plaintiff alleges Maricopa County’s Ballot on Demand (“BOD”) printers and
28 “widespread tabulator rejections of ballots printed by BOD printers[.]. . . [a]nd the causes of
those events, are material issues in this case.” [Petition at 2.] Yet, even assuming the truth
of these allegations, Plaintiff does not identify how inspecting “50 [randomly selected] BOD

1 printed ballots cast on Election Day from six vote centers . . . and 50 early voting ballots
2 from six separate batches” assists their preparation for trial.

3 It is obvious from Plaintiff’s Complaint that arguments related to Counts I (Freedom
4 of Speech), II (Illegal Tabulator Configurations), IV (Invalid Chain of Custody), V (Equal
5 Protection), VI (Due Process), VII (Non-Secret Mail-In Ballots), VIII (Incorrect
6 Certification), IX (Inadequate Remedy), and X (Federal Constitutional Rights) are either
7 purely legal arguments or relate to election equipment that prepares or tabulates a ballot.
8 Consequently, inspection of ballots will not assist Plaintiff in preparing for trial on these
9 Counts. Nor can the Counts relating to election equipment justify ballot inspection.
10 Maricopa County publicized the fact that some of its BOD printers experienced printing
11 difficulties on Election Day, so that issue is not in dispute. *See* Letter from Thomas Liddy,
12 Civ. Div. Chief, Maricopa Cnty. Att’y’s Off., to Jennifer Wright, Assistant Att’y Gen., Ariz.
13 Att’y Gen.’s Off. (Nov. 27, 2022), [https://elections.maricopa.gov/asset/jcr:474f2301-1ff1-
14 476d-a7fa-08945131f86c/LTR-2022.11.27-Liddy-to-Wright-FINAL.pdf](https://elections.maricopa.gov/asset/jcr:474f2301-1ff1-476d-a7fa-08945131f86c/LTR-2022.11.27-Liddy-to-Wright-FINAL.pdf). One might
15 imagine that Plaintiff might want to see, for curiosity’s sake, whether the tabulators could
16 read particular ballots. But again, Maricopa County admitted that some of the tabulators
17 could not read ballots printed by certain printers. Further, to conduct any such examination,
18 Plaintiff would require the ballot *and* an Election Day tabulator. But the election contest
19 statutes do not authorize Plaintiff to inspect the tabulators (or, for that matter, BOD printers),
20 nor can the Court read A.R.S. § 16-677 to authorize further discovery in an election contest.
21 More to the point, there is no need for this where, as here, Maricopa County has publicly
22 acknowledged that some of its printers experienced printing difficulties on Election Day and
23 so that fact is not in dispute.

24 More importantly, Count III’s (Mail-In Ballots with Invalid Signatures) request to
25 review early voting ballots and Plaintiff’s public statements¹ demonstrate Plaintiff does not

26 _____
27 ¹ “We want a judge to give us access to look at all those signatures and compare them. And
28 we’re happy to do the work. Because this is our only security feature to mail-in ballots & if
we blow that off then we truly don’t have secure elections.” @KariLake, Twitter
(December 12, 2022, 4:01 PM)
[https://twitter.com/KariLake/status/1602438481254359040?s=20&t=fearn_x7dDmUf_Ku
45hH-A](https://twitter.com/KariLake/status/1602438481254359040?s=20&t=fearn_x7dDmUf_Ku45hH-A)

1 grasp the substance of her allegations, what A.R.S. § 16-667 allows, what she will inspect,
2 and how this will not prepare her for trial. Plaintiff’s Count III broadly claims Maricopa
3 County accepted invalid signatures on early ballot affidavit envelopes and improperly
4 tabulated these ballots. [Compl. ¶¶ 151, 152.] According to Plaintiff’s tweet, she wants
5 access to “look at all those signatures and compare them,” ostensibly to prepare for a trial
6 on Count III. @KariLake, Twitter (December 12, 2022, 4:01 PM)
7 [https://twitter.com/KariLake/status/1602438481254359040?s=20&t=fcarn_x7dDmUf_Ku4](https://twitter.com/KariLake/status/1602438481254359040?s=20&t=fcarn_x7dDmUf_Ku45hH-A)
8 [5hH-A](#). However, ballots do not contain signatures. Voters are required by law to sign their
9 early ballot affidavit envelopes, into which they place their early ballots to return them to
10 the Maricopa County Recorder. Requiring electors to sign their ballot would violate
11 Arizona’s guarantee to a secret ballot under the Arizona Constitution. Ariz. Const. Art. 7 §
12 1. But A.R.S. § 16-667 does not allow inspection of early voting return ballot envelopes,
13 only ballots. Inspection of these ballots cannot assist Plaintiff in her preparation for trial for
14 Count III because the ballots contain no relevant information related to Count III.

15 Regardless of whether Plaintiff inspected the ballots requested in the Petition or all
16 1,562,758 tabulated ballots in Maricopa County’s possession, no favorable reading of
17 Petitioner’s Complaint or Petition can lead to the reasonable conclusion that ballot inspection
18 will be necessary to prepare for trial. It will, however, needlessly burden the Maricopa
19 County Elections Department, which is busy with its other statutorily required duties,
20 including completing the recount of two statewide races and one legislative race. Because
21 Plaintiff’s Petition fails to satisfy A.R.S. § 16-677’s requirements that inspection must be
22 necessary to Plaintiff’s preparation for trial, this Court should deny the Petition.

23 Conclusion

24 For the foregoing reasons this Court should deny the Plaintiff’s Petition.

25 RESPECTFULLY SUBMITTED this 14th day of December, 2022.

26 RACHEL H. MITCHELL
27 MARICOPA COUNTY ATTORNEY

28 BY: /s/Jack L. O’Connor III
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