

ARIZONA SUPREME COURT

KARI LAKE,

Plaintiff/Appellant,

v.

KATIE HOBBS, *et al.*,

Defendants/Appellees.

KARI LAKE,

Petitioner,

v.

THE HONORABLE PETER THOMPSON, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,

Respondent Judge,

KATIE HOBBS, personally as Contestee; ADRIAN FONTES, in his official capacity as Secretary of State; STEPHEN RICHER, in his official capacity as Maricopa County Reporter, *et al.*,

Real Parties in Interest.

Court of Appeals
Division One

No. 1 CA-CV 22-0779
No. 1 CA-SA 22-0237
(CONSOLIDATED)

Maricopa County
Superior Court
No. CV2022-095403

PETITION FOR TRANSFER

ARCAP 19(a)

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INTRODUCTION

Pursuant to Rule 19(a), Ariz.R.Civ.App.P., petitioner Kari Lake asks this Court to transfer her consolidated special action and appeal (Nos. 1 CA-SA 22-0237, 1 CA-CV 22-0779) from the Court of Appeals for several reasons.

- The extraordinary circumstances of (1) a targeted attack on Election-Day voters, (2) purely legal issues of statewide importance, and (3) the urgency of resolving uncertainty over the 2022 election;
- Only this Court can qualify its decisions regarding (1) a clear-and-convincing versus preponderance-of-evidence standard in election contests, (2) the effect of presumptions favoring elections versus Arizona’s “bursting-bubble” theory of presumptions, and (3) whether Arizona’s election-contest statute reaches unconstitutionality as “misconduct” under A.R.S. §16-672(A)(1).

In consolidating Lake’s special action and appeal, the Court of Appeals eliminated jurisdictional uncertainty: review is available under one or the other form of appellate review. In vacating the January 24 oral argument date on which this Court relied in part to deny Lake’s prior petition to transfer, however, the Court of Appeals opened the door to months of potential delay.¹

¹ Pursuant to Rule 29, Ariz.R.Civ.App.P., and Rule 7(d), Ariz.R.P.Spec.Act., Lake contemporaneously will move the Court of Appeals to accelerate the appeal.

BACKGROUND

A significant majority of voters no longer trust Arizona elections. Republics cannot survive that distrust. The evidence here, including the changing and conflicting testimony of Maricopa officials, and sworn testimony by whistleblowers employed by Maricopa, proved that Maricopa officials:

- Caused the chaos 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 Republicans; and blamed Republicans for voting on Election Day, arguing to the trial court: “*You reap what you sow.*” Ct.App.Appx:675 (Tr., 274:16).
- Violated A.R.S. §16-621(E)'s chain-of-custody requirements for nearly 300,000 Election Day drop box (“EDDB”) ballots, including the inexplicable injection of over 25,000 ballots between November 9 and November 10.
- Counted tens of thousands of ballots with voters' signatures that clearly did not match the record signature in the 2022 general election, without properly curing them, in violation of A.R.S. §16-550.

Both the number of illegally suppressed votes and the number of illegal votes cast in Arizona's general election on November 8, 2022, far exceed the 17,117-vote margin dividing the candidates

Further, just yesterday, the Arizona Senate Committee on Elections heard testimony that Maricopa’s tabulator system log files show that, on Election Day, vote center tabulators ejected over 7,000 ballots *every thirty minutes* beginning almost immediately upon opening of the vote centers at 6:00 am and continuing past 8:00 pm—totaling over 217,000 rejected ballot insertions *vis-à-vis* approximately 248,000 votes cast. Contrary to Maricopa’s claims, its own files show that the tabulator ballot rejections were massive, widespread, and *unresolved* all day.² Publicly available records on the Legislature’s website are judicially noticeable, Ariz.R.Evid. 201; *Pedersen v. Bennett*, 230 Ariz. 556, 559, ¶15 (2012), and petitioner Lake respectfully submits that this Court should weigh the information presented to the Senate that relates directly to the important issues in this case.

ARGUMENT

I. 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 Hobbs took office as Governor under a cloud of illegitimacy; and (3) purely legal issues of statewide importance justify reversal and a new election.

² See <https://www.azleg.gov/videoplayer/?eventID=2023011091> at 2:00:30, 2:13:20-2:14:37 (last visited Jan. 24, 2023).

A. The Election-Day chaos targeted Republican voters.

The evidence here shows Republican voters were *targeted* on Election Day. 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, ¶43 (2012). Maricopa’s deviation from Arizona law was arbitrary and furthered no legitimate purpose. *R.A.V. v. St. Paul*, 505 U.S. 377, 384 n.4 (1992) (constitutional violation renders a “government interest ... not a ‘legitimate one’”).

Even the statistical issues present purely legal question. First, dismissing Counts V and VI for failing to state a claim is purely legal. *Coleman*, 230 Ariz. at 355, ¶7. 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.

B. 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.

C. This matter presents novel legal issues of statewide importance.

This Court transfers cases involving matters of general importance. *Hall v. Elected Officials’ Ret. Plan*, 241 Ariz. 33, 38, ¶13 (2016); accord *Winter v. Coor*, 144 Ariz. 56, 57 (1985) (challenge to common municipal code provision for removing magistrates had statewide effects). If removing municipal magistrates qualifies, installing a Governor *a fortiori* does.

There is scarcely a matter of greater statewide importance than protecting the electoral process: “the political franchise of voting [is] a fundamental political right, because preservative of all rights.” *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); Ariz.

Const. art. II, §21 (“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.”).

Petitioner asks this Court expeditiously to resolve these critical issues.

II. THE NEED TO QUALIFY THIS COURT’S ELECTION-CONTEST DECISIONS JUSTIFIES TRANSFER.

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 cited *Oakes* and *McClung* for a clear-and-convincing standard applicable to all election contests. *Oakes* is a common-law decision predating the election-contest statute, and the *McClung dicta* relies on *Jenkins v. Hale*, 218 Ariz. 561, 566 (2008), which relied on an express statutory standard. A.R.S. §16-121.01(B). This Court should resolve the conflict between the preponderance-of-evidence standard’s applying in civil litigation, *Aileen H. Char Life Interest v. Maricopa Cty.*, 208 Ariz. 286, 291 (2004), and the election decisions requiring clear-and-convincing evidence for fraud, *Buzard v. Griffin*, 89 Ariz. 42, 50 (1960), or when express statutes set different standards. *Cf. Parker v. City of Tucson*, 233 Ariz. 422, 436 n.14 (App. 2013) (reserving burden-of-proof standard for election cases).
- **Qualify this Court’s decisions on presumptions supporting elections.** This Court should resolve the conflict between nonstatutory presumptions supporting elections, *see, e.g., Hunt*, 19 Ariz. at 268, and the “bursting-

bubble” theory for displacing presumptions, *Silva v. Traver*, 63 Ariz. 364, 368 (1945), under the preponderance-of-evidence standard, unless the Legislature enacts statutory standards for presumptions. *See, e.g.*, A.R.S. §§25-814(C), 23-364(B).

- **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, which would require contestants to bring separate actions under 42 U.S.C. §1983 on constitutional grounds. This Court should clarify whether unconstitutional conduct constitutes “misconduct” under §16-672(A)(1) or—instead—that §16-672 is inadequate to protect constitutional rights. Given the “strong public policy favoring stability and finality of election results,” *Donaghey v. Attorney General*, 120 Ariz. 93, 120 (1978), the Legislature cannot have intended separate §1983 litigation, and the Supremacy Clause would forbid state efforts to insulate elections from federal challenges.

CONCLUSION

WHEREFORE, this Court should transfer these consolidated cases.

Dated: January 24, 2023

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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 1,400 words according to the word-count function of Microsoft Word.

Dated: January 24, 2023

Respectfully submitted,

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