Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 12/19/2022

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
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

MINUTE ENTRY

Plaintiff Kari Lake filed a Motion to Expedite Discovery pursuant to Arizona Rules of Civil Procedure 26(f) and 34(b)(3)(A). Defendants Maricopa County and Katie Hobbs have filed responses opposing the motion, and Plaintiff has filed a reply. Defendants have filed motions to quash subpoenas issued to Secretary of State Katie Hobbs and Maricopa County Recorder Stephen Richer, Plaintiff filed a response. Defendant Hobbs in her personal capacity joined the Motion to Quash. The Court has read and considered the filings and rules as follows.

I. Plaintiff's Email Discovery Request

Plaintiff requests expedition of a request for production under Rule 34 of any emails Defendants sent to, and/or received from, a single email address in relation to Count I of their verified statement of election contest. At the outset, the Court notes that the only relevance such emails could have to the instant action is to Count I of the complaint. Because this Count was dismissed, the request is moot and could be denied on that basis alone. The Court continues its analysis to offer clarity concerning discovery in this action.

II. Application of the Civil Rules

Defendants argue that the Rules of Civil Procedure do not govern an election contest. This is not so.

Arizona Rule of Civil Procedure 1 provides that the Rules cover all "proceedings in the superior court of Arizona." Without question, a verified statement of election contest – which must be filed in superior court – is just such an action. A.R.S. § 16-672(B). Thus, absent a conflict with the governing statute, this court must apply the civil rules to election contests. This is why election contests are subject to motions to dismiss under Rule 12(b)(6). *See e.g. Griffin v. Buzard*, 86 Ariz. 166, 169-70 (1959) (applying Rule 12(b)(6)); *Hancock v. Bisnar*, 212 Ariz. 344, 348, ¶ 17 (2006) (applying Rule 8(a)); *see also Finchem v. Fontes*, CV2022053927, December 16, 2022 Under Advisement Ruling at *3-4.

III. Harmonizing the Rules and the Statutes

This broader point does not merit granting Lake's motion. In the case of an election contest, the timelines of which are compressed far beyond an ordinary civil contest, it is not merely difficult to comply with both the statute and civil rules – it is conceptually impossible to do so. An answer must be filed within five days a statement of contest is filed. A.R.S. § 16-675(A). The Court must hold a trial no later than ten days following the filing of the statement of contest, or fifteen days with a showing of good cause. A.R.S. § 16-676(A). A court must render judgment within five days of trial. *Id.* at (B). The Court agrees with Plaintiff that the statute is irreconcilable with the timelines permitted for discovery under Rules 26, and 34.

But, in a case where a constitutionally enacted substantive statute conflicts with a procedural rule, the statute prevails. *Albano v. Shea Homes Ltd. P'ship*, 227 Ariz. 121, 127, ¶ 26 (2011). Accordingly, the tight timelines and absence of opportunity for discovery – without which a dispute of this type could not conclude on-time – prevail over the ordinary civil rule of procedure.

Moreover, to arbitrarily reduce deadlines, modify or waive procedural safeguards in discovery and discovery disputes, and to do so for the duration for an entire action, would be an exercise in amending the civil rules. This is forbidden territory for a trial court, as only the Arizona Supreme Court may amend the Rules of Civil Procedure. *Cullen v. Auto Owners Ins. Co.*, 218 Ariz. 417, 420, ¶¶ 11-12 (2008).

To grant the requested discovery of emails would also go beyond the discovery that is expressly contemplated by the governing statutes, i.e. ballot inspection, and would drastically expand the scope of litigation. *See* A.R.S. § 16-677. Reading the provision for ballot inspection alongside the timelines imposed on the parties and court to hold a trial, the Court finds that the legislature did not intend for parties to have the right to discovery attendant with other civil actions. The Court is also mindful of the potential for transforming election contests of limited scope into a lighting-round of discovery disputes.

This Court reiterates that it must harmonize conflicting rules and statutes. *State v. Fell*, 249 Ariz. 1, 3, ¶ 10 (App. 2020) (citation omitted). And in this instance the substantive statute – with its strict timelines and limited room for discovery that define the parameters of an election challenge – must prevail over civil rules which simply do not fit in these cramped confines.

IV. Defendants' Motions to Quash

Plaintiff seeks testimony at the upcoming evidentiary hearing on the election contest from Secretary Hobbs and Recorder Richer.

All Defendants urge the Court to quash the depositions on apex doctrine grounds. Apex doctrine "provides some protection from depositions to high-level executives and government officials." *Tierra Blanca Ranch High Cntry. Youth Program v. Gonzales*, 329 F.R.D. 694, 696 (D.N.M. 2019). While adopted by a number of federal district courts as an interpretation of Federal Rule of Civil Procedure 26(b)(2)(C) and (b)(1), Arizona courts have never applied apex doctrine under the analogous Arizona Rule of Civil Procedure 26. While the Court is sensitive to the need to have discovery be proportional to the needs of the case, the Court is not inclined to apply a blanket rule that high-level government officials can never be called to testify.

Defendant Hobbs in her capacity as Secretary of State argues that the subpoena must be quashed or modified if it subjects a person to "undue burden or expense." Ariz. R. Civ. P. 45(e)(2)(A)(iv). The Court finds, given the nature of the case – where the questions of fact range from technical minutiae to broader issues of election manual interpretation – the Court cannot say that the burden on the Secretary would be undue, or that the testimony is "completely irrelevant or marginally relevant." *See Arkansas St. Conf. NAACP v. Arkansas Bd. of Apportionment*, 2022No. 4:21-CV-01239-LPR, 2022 WL 300917, at *8 (E.D. Ark. Jan. 31, 2022). This is the only form of discovery that can be done to conduct a two-day trial in a single week. The imposition on the Secretary's time as a public official, while regrettable – *see id.* ("Requiring a high-level government official to testify in any form takes that official away from doing the public's business.") – is minimal. It is also discovery concerning an activity wholly within her wheelhouse: the conduct of elections.

Similarly, while the Recorder is burdened by the inconvenience of travel, he nonetheless has relevant knowledge concerning the application of Maricopa County's Election Manual over the entire county, and the methodology for maintaining chain of custody. This is similarly within his expertise as a public official.

It is unclear whether Plaintiff seeks Katie Hobbs's testimony in her personal capacity as well. It is not clear what for, as it is only in her capacity as Secretary of State that she has any knowledge relevant to any claims, even prior to the partial dismissal this afternoon. Consequently, this denial of the motion to quash is limited to testimony in Defendant Hobbs's capacity as Secretary of State.

Therefore:

IT IS ORDERED that Plaintiff's motion to expedite discovery is DENIED.

IT IS FURTHER ORDERED that Defendants' motions to quash subpoenas issued to Secretary of State Katie Hobbs and Maricopa County Recorder Stephen Richer are DENIED.