Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-053465 03/28/2024

HONORABLE SUSANNA C. PINEDA

CLERK OF THE COURT
S. Motzer
Deputy

DAVID MAST, et al.

RYAN L HEATH

v.

KATIE HOBBS, et al.

MARICOPA COUNTY BOARD OF SUPERVISORS, THE
205 W JEFFERSON
PHOENIX AZ 85003
BRETT W JOHNSON
KARA MARIE KARLSON
CRAIG A MORGAN
JUDGE PINEDA

UNDER ADVISEMENT RULING

In November of 2022, Arizona held a general election for Governor, Attorney General, and various Propositions, including Propositions 308 and 309.

CV2023-053465

On September 6, 2023, Plaintiffs David Mast and Tom Crosby, filed their Complaint seeking mandamus relief. They amended their complaint on September 21, 2023. They listed as Defendants Attorney General Kris Mayes, Secretary of State Adrian Fontes, Maricopa County Recorder Scott Jarret, Maricopa County Director of Elections Rey Valenzuela, and the five members of the Maricopa County Board of Supervisors. In their complaint, they seek to invalidate all mail-in votes cast in Maricopa County's 2022 "contested elections" on the basis that the means used to verify the voter's signatures violated A.R.S. §§ 16-152 and 16-550(A), various provisions

of the Arizona Constitution and the Equal Protection Clause of the United States Constitution. They seek declaratory and mandamus relief, as well as attorneys' fees and costs. In seeking mandamus, Plaintiffs alleged that there is no plain, adequate of speedy remedy at law.

Plaintiffs allege that the method by which Maricopa County verified the mail-in ballot voter signatures violated A.R.S. §16-550(A) by failing to compare the signatures to voter registration signatures and instead, comparing the signatures to the most recent historical signature. Plaintiffs seek to invalidate the four "contested" races—gubernatorial, attorney general and two statewide propositions.

County Defendants filed their motion to dismiss on November 13, 2023. In their Motion, these defendants argue that the county signature verification policy was codified in the 2019 Elections Procedure Manual ("EPM"), and that the process was publicly announced in May of 2022, and thus, Defendant's action challenging the process used during the 2022 election is untimely. Defendants note that the procedure used followed the EPM and thus, contrary to Plaintiff's claim mandamus is not available because Plaintiffs could have challenged the procedure prior to the 2022 election.

To the extent Plaintiffs seek a recount, Defendants note that the time in which to contest the election results is statutorily set and that Plaintiffs' Complaints are untimely depriving the Court of jurisdiction over all claims, including Plaintiffs' requests for mandamus relief.

Defendants also allege that Plaintiffs Mast and Crosby lack standing to bring their action.

The Defendants also filed a Motion for Judicial Notice pursuant to Rule 201(c)(2) of the Arizona Rules of Evidence regarding the EPM and the county press release detailing the 2022 Elections Plan. Prior to oral argument, the parties stipulated that the Court could take judicial notice of these submissions.

The State Defendants also seek dismissal on the same grounds. Specifically, State Defendants argue that the Court lacks subject matter jurisdiction over the case under Rule 12(b)(1) as the suit is untimely because any attack on any elections process should have been filed prior to the election, and A.R.S §16-673(A) requires that elections challenges be filed "within five days after the completion of the canvass."

CV-2023-054988

On December 28, 2023, Plaintiff Abraham Hamadeh, filed his Verified Petition for Writ of Quo Warranto & Writ of Mandamus. He listed as Defendants Attorney General Kris Mayes,

Secretary of State Adrian Fontes, Governor Katie Hobbs[1], and the five members of the Maricopa County Board of Supervisors, and Maricopa County Recorder Stephen Richer. He asks that Attorney General Kris Mayes "cease functioning" as Arizona's Attorney General and that he be instated in that role. He also asks that the Court set aside the 2022 election results from Maricopa County, order that Maricopa County Officials "decertify" the 2022 Attorney General's race, order that Maricopa County redo the signature verification for all Maricopa County mail-in ballots submitted in the 2022 election using only "proper registration record signatures," order a new election for the Attorney General race to be held in Maricopa County, and that the Court order that Maricopa County purge the [voter] registration records of "any inappropriate signatures to be used for comparison in future elections." Plaintiff Hamadeh alleges that because of the signature verification issue, the result of the Attorney General Election was "uncertain" as he lost the election by a mere 280 votes. He asked that the Secretary of State "recanvass" the 2022 General Election "based only on the lawful votes from throughout Arizona."

Given the similarity of the issues raised in the claims brought by Plaintiffs and Petitioner, the two causes of action have been consolidated.

Plaintiffs Mast and Crosby, and Petitioner Hamadeh, are represented by the same attorney. Defendants' Motions to Dismiss seek to dismiss these consolidated actions in their entirety and they seek sanctions against Plaintiffs, Petitioner and their counsel. Plaintiffs and Petitioner have filed their "consolidated" response. All Defendants have replied. Prior to oral argument, the parties stipulated that the Court could take judicial notice of various documents submitted to the Court.

LACK OF STANDING PRECLUDES PLAINTIFFS MAST AND CROSBY FROM PROCEEDING

(CV2023-053465)

Defendants argue that Plaintiff's Mast and Crosby lack standing to bring their action. Mast and Crosby are voters who voted in the 2022 General Election. Mast is a resident of Maricopa County; Crosby is a resident of Cochise County. Defendants seek dismissal of CV2023-053465 for lack of standing.

To gain standing to bring an action, a plaintiff must allege a distinct and palpable injury. *Warth v. Seldin*, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975). An allegation of generalized harm that is shared alike by all or a large class of citizens generally is not sufficient to confer standing. *Id.* at 499, 95 S.Ct. at 2205. Here, Plaintiffs Mast and Crosby fail to allege harm

[1] Plaintiff dismissed the Governor from this action in January of 2024.

of the nature required to achieve standing. To the extent they allege that the election procedures in question denied them equal protection due to their votes, as well as the votes of every other Arizona voter, being "diluted," their claim is general and insufficient to confer standing to bring suit.

To have standing to bring a constitutional challenge a plaintiff must allege injury resulting from the putatively illegal conduct. *State v. Herrera*, 121 Ariz. 12, 15, 588 P.2d 305, 308 (1978). Plaintiffs must show that they have been injured by the alleged equal protection or special laws violation. They fail to make this showing. They do not show, nor do they allege, that their vote was not counted. Their complaint states the opposite—each voted in the 2022 General Election. Mast utilized "in-person" early voting, and Crosby voted by mail in Cochise County. Plaintiffs do not assert that the statutes discriminate in favor of some person or persons or against them, thereby depriving them of the opportunity to vote. Thus, Plaintiffs Mast and Crosby have not alleged any injury that resulted from the alleged denial of equal protection of the laws. As such, they have not alleged a distinct and palpable injury.

IT IS ORDERED dismissing CV2023-053465 as it pertains to all claims raised by Plaintiffs Mast and Crosby as they lack standing to bring this action.

While the Mast/Crosby claims are dismissed, the case with which it was consolidated has similar issues requiring further discussion. The Court will address those issues below.

CV2023-054988 Writ of Quo Warranto & Writ of Mandamus

In December 2019, the Arizona Secretary of State issued the State's 2019 Elections Procedures Manual ("2019 EPM"). The 2019 EPM specifically addresses signature verification for mail-in ballots. *See* 2019 EPM VI.A.1. The 2019 EPM allows the County Recorder to "consult additional known signatures from *other election documents in the voter's registration record* . . . in determining whether the signature on the early ballot affidavit was made by the same person who registered to vote." If satisfied that the signature was made by the same person, it moves on for tabulation. If not satisfied, the county recorder is required to make a "reasonable and meaningful attempt to contact the voter…., notify the voter of the inconsistent signature, and allow the voter to correct or confirm the signature." *Id*. The 2019 EPM also contains deadlines for the voter to correct the deficiency. Prior to 2019, the A.R.S. §16-550 required comparison of early ballot signatures to be compared to the voter's "registration form." See A.R.S. § 16-550 (2014). The contents of the registration form are detailed in A.R.S. §16-152. However, A.R.S. §16-550 was changed expanding comparison to the voter's "registration record." The term "registration record" is not defined but the 2019 EPM gives some examples of signatures that can be used for comparison, including "*other election documents* contained in the voter's registration record." (emphasis added); *see generally* A.R.S. 16-452(A) (Secretary of State to "prescribe rules to

achieve and maintain the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for early voting…").

On May 1, 2022, Maricopa County officials issued a press release containing the county's 2022 Elections Plan for the August 2022 Primary and November 2022 General Elections. It advised:

> Maricopa County has multi-level signature verification process to review 100% of the signatures on mail-in ballots. Using a binary digital image, 100% of the signature records are compared to a reference signature with a disposition made by a human. The digital image of the signature on the current affidavit envelope is compared against historical reference signature that was previously verified and determined to be a good signature for the voter. These historical documents may include voter registration forms, in-person roster signatures and early voting affidavits from previous elections.

See 2022 Elections Plan p.45, section 6.3.8 - Signature Verification and Curing. In essence, Maricopa County what documents contained in the voter's "registration record" could be used to verify voter signatures during the 2022 elections. They provided public notice months before the 2022 Primary or General elections.

The General Election in question was held on November 8, 2022. The Maricopa County Board of Supervisors certified its canvass of the election results on November 28, 2022.

Over a year later, on December 28, 2023, Petitioner Hamadeh filed his Verified Petition for Writ of Quo Warranto & Writ of Mandamus. Underlying each of his claims is his claim that due to allegedly inappropriate mail-in vote signature verification process used by Maricopa County, he "received the highest number of legal votes in Arizona" for the office of Attorney General. He asks that the Court issue a Writ of Quo Warranto requiring that Kris Mayes cease functioning as Attorney General, that the Court issue a writ of mandamus requiring that Maricopa County purge from the county registration records "any inappropriate signatures" from vote-by-mail affidavit envelopes and void the Maricopa County Canvass of that election. He also asks that the County redo the signature verification or, alternatively, conduct a new election. (Petition at p. 2 ¶1 and p.3 ¶3.)

Petitioner argues that Maricopa County's signature verification process on early/mail-in ballots was flawed and did not comply with A.R.S. §16-550. However, challenges concerning alleged procedural violations of the election process must be brought *prior to the actual election*. *Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) (holding that "[p]rocedures leading up to an election cannot be questioned after the people have voted, but ... must be challenged before the election is held") (citing *Kerby v. Griffin*, 48 Ariz. 434, 444–46, 62 P.2d

1131, 1135–36 (1936)). Election procedures generally involve "the manner in which an election is held." *Tilson*, 153 Ariz. at 470, 737 P.2d at 1369. By filing his action after the completion of the election, Petitioner asks the Court to overturn the will of the people, as expressed in the 2022 election. *See Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶¶9-11, 45 P.3d 336, 339 (2002). Because Petitioner's complaint is strictly a question attacking the process used to carry out the election, his claim is untimely and mandates dismissal.

IT IS ORDERED dismissing Petitioner's claim that Maricopa County improperly verified the signatures of mail-in ballots as untimely.

The Court applies this finding to Plaintiff's mandamus request as his requests for mandamus is based on the same claim—the signature verification procedure was flawed. Whether under a claim for Quo Warranto or Mandamus, the claims are untimely and thus barred. See *Kerby v. Griffin*, 48 Ariz. 434, 444–46, 62 P.2d 1131, 1135–36 (1936) (allegedly unconstitutional proposition must be attacked prior to the election and doing so is the plain and speedy remedy to prevent an alleged constitutional infraction). A writ of mandamus is only available "when there is [no] plain, adequate and speedy remedy at law." A.R.S. §12-2021. Because there was a plain, adequate, and speedy remedy available at law, i.e., a timely suit challenging the process prior to the election, and Petitioner failed to utilize this remedy, he cannot now obtain mandamus relief.

Additionally, mandamus will lie only where two conditions are present; first the act, performance of which is sought to be compelled, must be a ministerial act which law specially imposes as duty resulting from office or, if discretionary, it must clearly appear that officer had acted arbitrarily or unjustly and in abuse of discretion; and second, there must be no other plain, speedy and adequate remedy at law. *Rhodes v. Clark*, 92 Ariz. 31, 373 P.2d 348 (1962). Mandamus is not available when the claim is that a defendant erred in performing their statutory duty, including misapplying or misinterpreting the law. *Stagecoach Trails MHC, LLC. v City of Benson*, 231 Ariz. 366, 370, ¶ 21 (2013); *Fields v. Elected Officials' Retirement Plan*, 234 Ariz. 214, 222, ¶ 40 (2014). Here, Petitioner fails to state a claim subject to mandamus because his claim is that the elections officials in Maricopa County improperly included past verified signatures in the voter's registration record, i.e., they misapplied the law.

Additionally, the electorate and candidates were placed on notice of the verification procedure Maricopa County would use, including the possibility that a previously verified signature contained in the voter's registration record could be used for comparison to the affidavit signature found on the ballot envelope. Petitioner's failure to seek remedy the issue prior to the election precludes mandamus. See *Donaghey v. Attorney General*, 120 Ariz. 93, 584 P.2d 557 (1978) (strong public policy favors stability and finality of election results). Petitioner's "failure to avail [himself] of this remedy . . . precludes the issuance of mandamus on [his] behalf." Id.

Because Plaintiff had a plain, adequate, and speedy remedy available, his Petition for Writ of Mandamus must be dismissed.

IT IS ORDERED dismissing Petitioner's Petition for Writ of Mandamus.[2]

Petitioner's claim for Writ of Quo Warranto also fails. Defendants correctly note that this type of action is extraordinary. *State ex rel Woods v. Block*, 189 Ariz. 269, 272 (1997). A quo warranto action may be brought by a person claiming title to an office. However, the person claiming title to the office must show that he is entitled to the office. A.R.S. § 12-2044(A); *Tracy v. Dixon*, 119 Ariz. 165, 166 (1978). Here, Petitioner asks for a reverification of the 2022 Maricopa mail-in ballots after "purging" allegedly improper comparison signatures or alternatively a new election. He surmises, without proof, that he received the most "legal votes" for the office of Attorney General. This is insufficient to obtain the relief sought. *See Tracy*, 119 Ariz. 166) ("The rule of law is well established, however, that a claimant to an office may have judgment only on the strength of his own title and not upon any infirmity or weakness in the defendant's title.")

Additionally, Quo Warranto does not provide for the relief sought by Petitioner—de-certification of a canvass, recounting of votes, a new election, declarations concerning election procedures, or the purging of election records. See A.R.S. § 12-2044(A).

IT IS ORDERED dismissing Petitioner's Petition for Writ of Quo Warranto for failure to state a claim.

Lastly, Defendants argue that Res Judicata/Collateral Estopple requires dismissal of the action. Petitioner brought the same challenge to the verification process in Maricopa County Superior Court cause number CV2022-015455 (See Count V). That action was dismissed without prejudice as prematurely filed. In that case, the Court specifically noted that the canvass and declaration of results had not occurred.

Subsequently, Petitioner filed an action on December 9, 2022 in Mohave County Superior Court cause number CV-2022-01468 raising the exact same issue. (Statement of Election Contest, Count V.) The Mohave County court found that latches applied to this Count because the time to raise an issue regarding elections procedure is before the election, not after. That court dismissed Petitioner's claim. (CV-2022-01468 Minute Entry dated December 20, 2022.)

Because Petitioner raised the same "verification" issue in his prior two matters, and particularly, because the Mohave County Superior Court has ruled on the merits of the claim, res judicata applies here. Thus,

[2] The same analysis would have applied to Plaintiffs Mast and Crosby's mandamus claims.

IT IS ORDERED dismissing Petitioner's claims on res judicata and collateral estoppel grounds.

SANCTIONS

All Defendants ask that Plaintiffs Mast, Crosby, and Petitioner Hamadeh, as well as their counsel be sanctioned for bringing the two causes of action addressed here. Specifically, County Defendants seek leave to seek sanctions against Plaintiffs Mast and Crosby, while the State Defendants seek and argue for sanctions against Petitioner Hamadeh and his counsel.

IT IS ORDERED granting the County Defendants leave to seek sanctions against Plaintiffs Mast and Crosby. Said Motion shall be filed no later than 20 days after the issuance of this minute entry ruling.

State Defendants argue that sanctions are mandated against Petitioner Hamadeh and his counsel under A.R.S. 12-349(A) because the current action was brought raising the same issues raised in two previously unsuccessful cases that contained identical claims. State Defendants argue that having previously lost the claims, Petitioner Hamadeh's petition was filed without substantial justification, i.e., the petition was groundless and not made in good faith.

In his "consolidated" Response, Petitioner Hamadeh contest the basis of State Defendants' requests for sanctions. He merely makes a blanket statement that sanctions are not warranted. Petitioner Hamadeh then argues that sanctions should instead be imposed on Attorney General Mayes and her attorneys for claiming that Maricopa County's Verification process is the same as the other counties in the state. Given that this statement was not relevant to this action, the Court will deny Petitioner's requests.

IT IS ORDERED denying Plaintiffs' and Petitioner's "consolidated" requests for sanctions against Defendant Mayes and her attorneys.

This Court has considered State Defendants' Motion for Sanctions, filed with their Motion to Dismiss seeking sanctions in the form of attorneys' fees and a damages penalty against Petitioner Hamadeh and his counsel pursuant to A.R.S. § 12-349 and Rule 11 of the Arizona Rules of Civil Procedure. Oral argument was held in conjunction with the oral argument on the Motions to Dismiss filed by all Defendants. No additional argument is necessary.

The Legislature enacted A.R.S. § 12-349 to discourage lawsuits for which there is no legitimate basis in fact or law. Yet in election matters, Arizona's courts have emphasized that sanctions should be awarded only in rare cases, so as not to discourage legitimate challenges. This

is such a case. Petitioner Hamadeh had previously filed two other causes of action. He was aware when he filed the instant matter that his claims were contesting the election signature verification procedures utilized by Maricopa County and he had lost the exact same issue before another superior court in the State of Arizona. Yet, he filed the instant action in December of 2023 asking that the Maricopa County votes be thrown out because of the alleged inappropriate use of prior ballot signatures in the voter's registration record. The Court finds that this lawsuit was groundless and not brought in good faith.

In Arizona, "in any civil action commenced … in a court of record in this state, the court shall assess reasonable attorney fees, expenses and, at the court's discretion, double damages of not to exceed five thousand dollars against an attorney or party … if the attorney or party . . . [b]rings or defends a claim without substantial justification," "[b]rings or defends a claim solely or primarily for delay or harassment," or "[u]nreasonably expands or delays the proceeding." A.R.S. § 12-349(A)(1)-(3). In creating this statutory remedy, "the legislature intended to further reduce frivolous litigation by increasing the threat of fee sanctions." *Phoenix Newspapers, Inc. v Dep't. of Corr*., 188 Ariz. 237, 244 (App. 1997). An award of fees under this statute may be allocated "among the offending attorneys and parties, jointly or severally, and may assess separate amounts against an offending attorney or party." Ariz. Rev. Stat. Ann. § 12-349(B).

The phrase "'without substantial justification' means that the claim … is groundless and is not made in good faith." A.R.S. § 12-349(F). In this regard, "[w]hile groundlessness is determined objectively, bad faith is a subjective determination." *Takieh v. O'Meara*, 252 Ariz. 51, 61, ¶ 37 (App. 2021), review denied (Apr. 7, 2022). Additionally, an award under section 12-349 is mandatory where factually supported. *See Phoenix Newspapers, Inc*., 188 Ariz. at 243.

The moving party bears the burden of demonstrating by a preponderance of the evidence that the claim was both groundless and asserted in bad faith; "absence of even one element render[s] the statute inapplicable." *Valles v. Pima Cnty.*, 642 F. Supp. 2d 936, 957 (D. Ariz. 2009). Additionally, the fact that a claim may be subject to dismissal through motion practice, "does not automatically equate to a determination that the complaint itself was frivolous, unjustified, or put forth for an improper purpose." *Compassionate Care Dispensary, Inc. v. Arizona Dep't of Health Servs*., 244 Ariz. 205, 216, 418 P.3d 978, 989 (Ct. App. 2018).

Sanctions should be imposed with caution. *See Matter of Est. of Craig*, 174 Ariz. 228, 239, 848 P.2d 313, 324 (Ct. App. 1992) ("Courts should not impose sanctions lightly."); *Molever v. Roush*, 152 Ariz. 367, 375, 732 P.2d 1105, 1113 (Ct. App. 1986) (Sanctions should be imposed "with great reservation."). In election matters, the Court must consider the potential chilling effect a sanctions award may have on legitimate challenges in the future. *Kromko v. Superior Ct. In & For Cnty. of Maricopa*, 168 Ariz. 51, 61, 811 P.2d 12, 22 (1991), holding modified by *Molera v.*

Hobbs, 250 Ariz. 13, 474 P.3d 667 (2020) (Denying sanctions in part, "to avoid placing a chill on future petition challenges by private citizens.").

Although the Court must proceed with caution, even election challenges may be subject to statutory sanctions under section 12-349 if brought without substantial justification. *Williams v. Fink*, No. 2 CA-CV 2018-0200, 2019 WL 3297254, at *5–6 (Ariz. Ct. App. July 22, 2019) (Imposing sanctions because "[e]ven assuming portions of Williams's arguments had merit, he never provided a plausible argument that any irregularities affected the outcome of the election."). Any concern about the chilling effect on future claims must be balanced again the need to deter meritless election challenges that "waste the time and energy of the opposing parties and the resources of this court." *Johnson v. Brimlow*, 164 Ariz. 218, 222 (Ct. App. 1990).

This is especially true in those instances where a Petitioner has been given an opportunity to litigate an issue, has lost, and again files a claim based soley on the claims previously rejected. Here, Petitioner Hamadeh filed his first action (Maricopa County cause number CV2022-015455) which was dismissed without prejudice as it was "premature." He then filed his Mohave County action raising the same issue against the same State Defendants challenging the outcome of the election based on alleged violations of the voter signature verification process. The Mohave County Superior Court dismissed this claim on the basis of latches—Hamadeh was too late to challenge the voter verification procedure. Subsequently he filed this petition using the same claim as the basis for his requests for Quo Warranto and Mandamus relief. As noted above, his claims fail because he should have challenged the process before the election. Waiting until December of 2023 to mount a second identical challenge to the Maricopa County process is unjustified and groundless.

In addition to a finding that the claim was groundless, the imposition of sanctions under section 12-349 also requires proof that the election contest was filed "in bad faith." Here a preponderance of the evidence demonstrates the existence of bad faith in the filing of this "election challenge." As Defendants' note, the fact that this "elections challenge" was cloaked in a shroud of quo warranto and mandamus, did not change the fact that it was an elections challenge that had already been lost.

Petitioner's counsel fairs no better. Once he accepted the assignment to represent Petitioner, he had an obligation to conduct a reasonable investigation to determine whether and to what extent viable challenges to the election could be asserted on his behalf. He either did not do so or he chose to ignore the history of litigation that followed the 2022 General Election, including the prior unsuccessful cases filed by his client.

Counsel ignored the Arizona case law establishing that an election contest requires not only alleged acts of misconduct, but also evidence that the misconduct or irregularities complained of

rendered the outcome of the election uncertain. He also ignored the long list of cases regarding the timing of challenges to election procedures and ignored that public policy requires that these challenges be made prior to the election to allow for the alleged error to be corrected prior to the election. Instead, his pleading acknowledges that should his argument prevail, over a million Maricopa County voters would be disenfranchised. *See Donaghey v. Attorney General*, 120 Ariz. 93, 584 P.2d 557 (1978) (strong public policy favors stability and finality of election results).

In addition to the above findings, this Court must set forth specific reasons for its orders and is guided by the following statutory factors set forth in A.R.S. § 12-350.

1. The extent of any effort made to determine the validity of a claim before the claim was asserted.

2. The extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses found not to be valid.

Despite receiving communications from opposing counsel regarding the flaws in the claims asserted, neither Petitioner nor his counsel agreed to withdraw the action. In response to the requests for sanctions, they merely point fingers at a statement contained in Defendant Maye's Motion that was not dispositive of any issue in this case.

3. The availability of facts to assist a party in determining the validity of a claim or defense.

The facts asserted as a basis for Hamadeh's claims were known well in advance, which is why the claims were barred by laches. Although election challenges must be filed on an expedited basis, in this instance Petitioner and his counsel (who represents Plaintiffs) had the necessary facts and controlling case law available to them but nevertheless elected to pursue a meritless challenge.

4. The relative financial positions of the parties involved.

Neither party generally referred to their limited financial means in the body of their memoranda. And neither party presented the Court with any evidence regarding their "financial positions," such that the Court can meaningfully consider this factor. Because it is State Defendants burden in moving for sanctions, the Court presumes this factor would weigh against sanctions in the absence of evidence to persuade it otherwise.

5. Whether the action was prosecuted or defended, in whole or in part, in bad faith.

The Court has explained above why it finds that this action was prosecuted in bad faith.

6. Whether issues of fact determinative of the validity of a party's claim or defense were reasonably in conflict.

There were no disputed fact questions that were "reasonably in conflict." Rather, this Court, for purposes of entering dismissal, was not required to find that the verification procedure was correctly or incorrectly applied. The only relevant information necessary to determine the issues was the existence of a procedure and when the procedure was made public. The parties do not contest those issues which allowed the Court to determine that there was a known procedure and that it was not timely challenges. Thus, the alleged conflict in position did not affect the Court's ruling.

7. The extent to which the party prevailed with respect to the amount and number of claims in controversy.

Neither Plaintiffs nor Petitioner prevailed on any claim they asserted.

8. The amount and conditions of any offer of judgment or settlement as related to the amount and conditions of the ultimate relief granted by the court.

Because this case does not involve a traditional suit for money damages, this final factor is inapplicable.

Based on its findings above, the Court finds that Petitioner Hamadeh and his counsel filed this case "without substantial justification." Under A.R.S. § 12-349, sanctions are appropriate.

As set forth below, as a sanction, this Court will award reasonable attorneys' fees incurred by all State Defendants in defending against Petitioner Hamadeh's Petition and it will allocate those fees, as appropriate, between Petitioner Hamadeh and his counsel. The Court declines, however, to award any additional penalty or damages authorized by the statute beyond the fees actually and reasonably incurred.

IT IS FURTHER ORDERED granting State Defendants Motion for Sanctions, joined by Defendant Mayes.

IT IS FURTHER ORDERED that not later than 20 calendar days after the entry of this order, Defendants may submit an application for an award of attorney's fees and statement of costs. If an application or statement is submitted that Petitioner wishes to oppose the amount sought, a response must be filed not later than 20 calendar days after service. No replies shall be permitted unless specifically requested by the Court.

IT IS FURTHER ORDERED that not later than 20 calendar days after the entry of this order, Defendants must also submit a proposed form of judgment, leaving blank spaces for attorney's fees and taxable costs. That form of judgment may incorporate by reference what is said here but otherwise should be confined to the amounts being awarded along with Rule 54(c) language.