

1 RACHEL H. MITCHELL
2 MARICOPA COUNTY ATTORNEY

SNELL & WILMER L.L.P.

3 Thomas P. Liddy (Bar No. 019384)
4 Joseph E. La Rue (Bar No. 031348)
5 Jack L. O'Connor III (Bar No. 030660)
6 Rosa Aguilar (Bar No. 037774)
7 Deputy County Attorneys
8 liddyt@mcao.maricopa.gov
9 laruej@mcao.maricopa.gov
10 oconnorj@mcao.maricopa.gov
11 aguilar@mcao.maricopa.gov

Brett W. Johnson (Bar No. 021527)
Eric H. Spencer (Bar No. 022707)
Colin P. Ahler (Bar No. 023879)
Ian Joyce (Bar No. 035806)
One East Washington Street, Suite 2700
Phoenix, Arizona 85004-2556
Telephone: 602.382.6000
bwjohnson@swlaw.com
espencher@swlaw.com
cahler@swlaw.com
ijoyce@swlaw.com

12 CIVIL SERVICES DIVISION
13 225 West Madison Street
14 Phoenix, Arizona 85003
15 Telephone (602) 506-8541
16 Facsimile (602) 506-4316
17 ca-civilmailbox@mcao.maricopa.gov
18 MCAO Firm No. 0003200

*Attorneys for Maricopa County
Defendants*

19 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
20 **IN AND FOR THE COUNTY OF MARICOPA**

21 **STRONG COMMUNITIES**
22 **FOUNDATION OF ARIZONA**
23 **INCORPORATED, et al.**

24 **Plaintiffs,**

25 **vs.**

26 **MARICOPA COUNTY, et al.,**

27 **Defendants.**

No. CV2024-002441

**THE MARICOPA COUNTY
DEFENDANT'S RESPONSE TO
PLAINTIFFS' NOTICE OF DISMISSAL**

ORAL ARGUMENT REQUESTED

(Honorable Jay Adelman)

1 **Introduction**

2 Ordinarily, when courts receive Rule 41 notices of dismissal, courts dismiss the
3 matter without prejudice. *See, Olewin v. Nobel Mfg., LLC*, 254 Ariz. 346, 353, ¶ 25 (App.
4 2023). However, courts have authority under the Arizona Rules of Civil Procedure to order
5 that cases are dismissed **with** prejudice, even when a Rule 41 notice is filed. Ariz. R. Civ.
6 P. 41(a)(1)(B) (providing that “[u]nless the notice **or** order states otherwise, the dismissal is
7 without prejudice” (emphasis added)). As explained below, Plaintiffs have prosecuted this
8 case in a manner that warrants an Order dismissing it with prejudice. Specifically, the
9 litigation strategy employed by Plaintiffs, from the day they filed their Complaint through
10 today, has been nothing but a thinly-veiled attempt to forum shop. This Court should not
11 turn a blind eye to what Plaintiff are attempting to do. The best way—the *only* way—to
12 prevent such egregious conduct here and discourage other litigants from engaging in it in the
13 future is by dismissing this action with prejudice. Accordingly, the Maricopa County
14 Defendants respectfully request that the Court enter such an Order, and also request oral
15 argument on this question.

16 **Argument**

17 **I. Plaintiffs’ Litigation Strategy Has Been Devoted to Forum Shopping.**

18 **A. The Complaint.**

19 Plaintiffs filed their special action Complaint on February 6, 2024, challenging only
20 election practices in Maricopa County. As Defendants, Plaintiffs named **only** Maricopa
21 County and the elected Maricopa County officers charged by law to administer elections.
22 [Compl. at ¶¶ 10-14 (naming parties); *id.* at Counts I – X (making Maricopa County-specific
23 allegations of election-related wrongdoing). Plaintiffs included within their Complaint what
24 can only be accurately described as a notice to the Court and Parties that they intended to
25 engage in forum shopping. Plaintiffs stated, “because one of the Defendants in this action
26 is Maricopa County, the Plaintiffs are ‘entitled to a change of venue to some other county’
27 as of right. A.R.S. § 12-408.” [*Id.* at ¶ 17.]

28 To be clear, Paragraph 17 was Plaintiffs’ way of alerting the Court and the Parties

1 that they wanted to challenge the Maricopa County Defendants’ administration of elections,
2 but they wanted to do so in the superior court in another county. They did not want to be in
3 *this* Court.

4 **B. The Change of Venue Motion.**

5 Two days later, on February 8, 2024—despite having filed a *special action*
6 Complaint, which implies the necessity of a speedy resolution—Plaintiffs filed their Motion
7 for Change of Venue. Engaging in motion practice inevitably slows litigation down.
8 Changing venue was obviously so important to Plaintiffs that they were willing to risk a
9 delay in order to get their case to their preferred court.

10 In their Motion, Plaintiffs asserted that, because they had named Maricopa County as
11 a defendant, this Court should change venue pursuant to A.R.S. § 12-408. [Mot. for Change
12 of Venue at 1.] But they did not just ask that this Court transfer venue to another county.
13 No: Plaintiffs identified the *particular county* to which they wanted venue changed. [*Id.* at
14 2 (misnumbered as “1” in Plaintiffs’ filed Motion).] In support for Yavapai County,
15 Plaintiffs falsely claimed that the “Yavapai County Superior Court is the *only* court that has
16 experience managing election-related litigation, is in a county that uses vote centers, and it
17 is, not only an adjoining county, but one that is both geographically and politically
18 independent of the Maricopa County.” [*Id.* (emphasis added).] But that was not true, as the
19 Maricopa County Defendants pointed out in their Response. The Yavapai County Superior
20 Court is not the *only* court that meets that criteria. [Maricopa Cnty. Defs.’ Resp. to Pls.’
21 Mot. for Change of Venue at 1 and *passim.*]

22 **C. The Status Conference Hearing.**

23 This Court set a Return Hearing “to address the Motion for Change of Venue” for
24 10:30 a.m. on February 15, 2024. [Order to Show Cause, February 13, 2024.] Accordingly,
25 the Maricopa County Defendants filed their Response to the Motion to Change Venue that
26 morning and were prepared to argue the motion at the hearing. In the Response, the
27 Maricopa County Defendants explained in detail why Pima County was the proper choice if
28 the Motion to Change Venue were to be granted. In short, its superior court has the most

1 experience of any county other than Maricopa with election-related litigation; it uses more
2 vote centers than any county other than Maricopa; its judges are merit-selected (just like
3 Maricopa's are), whereas Yavapai's are elected; the demographics of its population is similar
4 to Maricopa's, whereas Yavapai's is dissimilar; and, it is adjacent to Maricopa County, just
5 as Yavapai is.

6 At the hearing, Counsel for the Maricopa County Defendants notified the Court and
7 Plaintiffs that they had filed their Response. Plaintiffs then notified the Court that they
8 intended to file a First Amended Complaint, and the Maricopa County Defendants notified
9 the Court that they intended to file a motion to dismiss Maricopa County and, if that motion
10 was granted, the Motion for Change of Venue would be moot. Plaintiffs also stated that they
11 might file an Amended Motion for Change of Venue after filing their FAC. Accordingly,
12 the Court set a briefing schedule for the forthcoming Motion to Dismiss Maricopa County,
13 and the question of venue was put on hold for the moment.

14 **D. The FAC.**

15 On February 16, 2024, Plaintiffs timely filed their FAC. In it, they added as
16 defendants Coconino County and the elected officers in Coconino County who administer
17 that County's elections. [FAC at ¶¶ 17-19.] It should not escape the Court's notice that (1)
18 Coconino County sits adjacent to Yavapai County, and (2) the FAC was not filed until **after**
19 the Maricopa County Defendants noted that Pima County was more appropriate venue than
20 Yavapai. Perhaps Plaintiffs intended to challenge election practices in Coconino County all
21 along; but, if so, one wonders why Plaintiffs did not name the Coconino County Defendants
22 in their original Complaint. It seems more likely that Plaintiffs decided that, if they added
23 Coconino County Defendants, they would increase their chances of succeeding in forum
24 shopping. In other words, this appears to have been nothing but a litigation strategy to try
25 to increase the odds that their case was moved to their preferred venue in Yavapai County.

26 **E. The Voluntary Dismissal.**

27 The Maricopa County Defendants timely filed their Partial Motion to Dismiss as to
28 Maricopa County on February 21, 2024. In it, the Maricopa County Defendants pointed out

1 that the law related to special action litigation is such that a *county* is not a proper defendant
2 and does not need to be named. The Motion to Dismiss cited case law affirming that, when
3 plaintiffs bring a mandamus action, it is sufficient to sue the public officers against whom
4 mandamus is sought. It is not necessary to sue the county. [Partial Motion to Dismiss at 8-
5 11.] Thus, the Motion asserted, Maricopa County should be dismissed as a defendant. [*Id.*,
6 *passim.*] And, if Maricopa County were dismissed, Plaintiffs' Motion for a Change of Venue
7 would be moot.

8 The Court had scheduled a status conference for February 22, 2024, at 1:30 p.m. At
9 12:45 p.m.—*forty-five minutes before the status conference*—undersigned counsel received
10 a TurboCourt email notification that Plaintiffs had filed their Notice of Voluntary Dismissal,
11 requesting that their case be dismissed **without** prejudice.

12 As just stated, if the Court were to grant the Motion to Dismiss as to Maricopa County,
13 the change of venue statute, A.R.S. § 12-408, would no longer apply, leaving Plaintiffs to
14 litigate their case *here*, before *this* Court. Plaintiffs had made abundantly clear that they did
15 not want to do that. So, rather than file a response to the Motion to Dismiss as to Maricopa
16 County, Plaintiffs voluntarily dismissed their case and requested that it be dismissed without
17 prejudice. That, of course, would leave Plaintiffs free to re-file this exact same case in
18 Yavapai County, their preferred venue. However, Plaintiffs would need to manufacture a
19 Yavapai County plaintiff and add the members of the Yavapai County Board of Supervisors
20 and the Yavapai County Recorder as Defendants, and **not** sue Yavapai County, following
21 the correct understanding of the law that the Maricopa County Defendants explained to them
22 in the Motion to Dismiss. By doing so, Plaintiffs would succeed in their forum shopping.

23 * * * * *

24 Thus, from first to last, Plaintiffs have been engaged in a game of forum shopping.
25 The Maricopa County Defendants do not know *why* Plaintiffs have been so eager to get their
26 case moved to Yavapai County. But, as explained next, the Maricopa County Defendants
27 know that forum shopping is frowned upon.

28

1 **II. Forum Shopping is Against Public Policy and This Court Should Not Allow it.**

2 “The American legal system tends to treat forum shopping as unethical and
3 inefficient; parties who forum shop are accused of abusing the adversary system and
4 squandering judicial resources.” *Forum Shopping Reconsidered*, 103 HARV. L. REV. 1677
5 (1990). Courts are nearly universal in their disregard for forum shopping. *See, e.g.,*
6 *Travelers Indem. Co. v. Madonna*, 914 F.2d 1364, 1371 (9th Cir. 1990) (referring to forum
7 shopping as “improper”). Forum shopping wastes judicial resources and taxes the judicial
8 system.

9 Ordering that the Plaintiffs’ FAC is dismissed *without* prejudice will reward
10 Plaintiffs’ gamesmanship, which they have engaged in from start to finish in this proceeding.
11 This Court should prevent forum shopping from occurring by dismissing Plaintiffs’ FAC
12 **with** prejudice. It is difficult to see how this could harm Plaintiffs: they had their opportunity
13 to litigate their claims in this Court, and they have chosen to dismiss them. Assuming that
14 their motives in doing so are pure, they will not be harmed by this Court ensuring that they
15 cannot bring the exact same claims against the same Maricopa County Defendants in a
16 different county’s court.

17 **Request for Fees and Costs**

18 If this Court dismisses this action without prejudice and Plaintiffs re-file in Yavapai
19 County, the Maricopa County Defendants reserve their right to request their fees and costs
20 associated with this matter pursuant to Rule 11 and A.R.S. § 12-349.

21 **Conclusion**

22 For the foregoing reasons, this Court should dismiss Plaintiffs’ claims in the FAC
23 **with** prejudice.

24 RESPECTFULLY SUBMITTED this 22nd day of February 2024.

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RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

BY: /s/ Thomas P. Liddy
THOMAS P. LIDDY
JOSEPH E. LA RUE
JACK L. O'CONNOR III
ROSA AGUILAR
225 West Madison Street
Phoenix, Arizona 85003

Attorneys for Maricopa County Defendants

SNELL & WILMER L.L.P.

BY: /s/Brett W. Johnson (with permission)
Brett W. Johnson
Eric H. Spencer
Colin P. Ahler
Ian Joyce
One East Washington Street, Suite 2700
Phoenix, Arizona 85004-2556

Attorneys for Maricopa County Defendants

ORIGINAL of the foregoing e-filed
this 22nd day of February 2024 via
AZTURBOCOURT and e-served/mailed to:

HONORABLE JAY ADELMAN
MARICOPA COUNTY SUPERIOR COURT
Michelle Stergulz, Judicial Assistant
Michelle.Stergulz@jbazmc.maricopa.gov

James K. Rogers
America First Legal Foundation
611 Pennsylvania Ave., SE #231
Washington, D.C. 20003
James.Rogers@aflegal.org

Jennifer J. Wright
Jennifer Wright Esq., PLC
4350 E. Indian School Rd
Suite #21-105
Phoenix, AZ 85018
jen@jenwesq.com
Attorneys for Plaintiffs

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27
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Rose Winkeler
Flagstaff Law Group
702 N. Beaver St.
Flagstaff, AZ 86001
rose@flaglawgroup.com
Attorneys for Coconino County Defendants

/s/ Joseph E. La Rue

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