

SUPREME COURT OF ARIZONA

ACLU, et al.,

Petitioners,

v.

RICHER, et al.,

Respondents.

CV-24-0263-SA

**MARICOPA COUNTY
RECORDER'S RESPONSE IN
OPPOSITION TO
EMERGENCY PETITION FOR
SPECIAL ACTION**

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RESPONSE

Respondents the Maricopa County Recorder and Maricopa County **oppose** the Petition for Special Action (the “Petition”) and ask this Court to decline jurisdiction. In the alternative, if the Court accepts jurisdiction, it should **deny relief** because Petitioners have failed to state a claim upon which relief can be granted.

MEMORANDUM

Introduction

Petitioners have a fundamental misunderstanding about what “processing” an early ballot means. They appear to believe that it means *conducting signature verification*. It does not. But, rather than conducting a bit of research by picking up the telephone, calling the Maricopa County Recorder, and asking what “processing” means, Petitioners ran to court with false allegations. They raised the specter of voter disenfranchisement—a horrible injustice, *when it happens*—in order to get this Court’s attention. And they put this Court, and the respondents, through an unnecessary five-alarm fire drill on what should have been a three-day holiday for this Court and its staff as we remember our Nation’s veterans and the sacrifices that they have made for us.

It was all unnecessary, because Petitioners’ allegations are false. Voter disenfranchisement is not happening, at least not in Maricopa County. Early ballot “processing” does not mean signature verification. And the fact of the matter is, the

Maricopa County Recorder¹ *finished* signature verification of the last remaining early ballot affidavit signatures on the morning of Friday, November 8, 2024. He began notifying those last voters with inconsistent signatures of the opportunity to cure their signatures, *in most cases by a text to the telephone number the voters provided on their early ballot affidavit envelope*, at that same time, and also began making telephone calls to them. All voters needing to cure their signatures had been notified at least by text no later than Saturday, November 9, 2024, and the majority had been notified before that date. The Recorder continued to make telephone calls to voters until 8 p.m. yesterday, and will make calls to voters today until the 5 p.m. curing deadline. No voter is going to be disenfranchised in Maricopa County.

Spreading misinformation and destroying confidence in our elections are contrary to the public interest. So are irresponsible disparagements of public servants working extraordinarily long hours to serve the public.² [See Pet. for Sp. Act., at 13 (alleging that Respondents have “delay[ed]” performing their statutory duty to verify signatures); *id.* at 14-15 (alleging that “Maricopa and Pima alone have

¹ Throughout this Response, “the Recorder” includes the Recorder’s employees who work in the Maricopa County Recorder’s Office.

² It should be noted that signature verification and the notification of voters in time for the notification to provide them a meaningful opportunity to cure their signatures was only accomplished through the heroic efforts of the Recorder and his team, who worked in shifts *literally* around the clock (24 hours a day). Many of those government employees worked 14 to 16 hour days in order to accomplish this feat. They should be celebrated, not denigrated.

reportedly *failed* to process nearly 300,000 mail ballots”) (emphasis added); *id.* at 15 (alleging that the Respondents have made “administrative failures”). As the federal district court for the District of Arizona noted four years ago, “Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election.” *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 724 (D. Ariz. 2020). The same is true here. Because no disenfranchisement is occurring (at least, none is occurring in Maricopa County), Petitioners have failed to state a claim for which relief can be granted. Additionally, Petitioners have not presented a pure issue of law, but one in which the facts are very much in dispute because their “facts” are completely incorrect. This Court should therefore decline jurisdiction of this special action.

Standard of Review

This Court has original jurisdiction of what are today called “special actions.” Ariz. Const. art. VI, § 5. However, whether to accept jurisdiction is “highly discretionary.” *Brewer v. Burns*, 222 Ariz. 234, 237, ¶ 7 (2009). *See also* Rule 3, ARPSA, committee note (“The special action requests extraordinary relief, and acceptance of jurisdiction of a special action is highly discretionary with the court to which the application is made”). The Court has accepted special action jurisdiction over matters involving elections when immediate relief is needed

because of imminent election deadlines *and where key facts are not in dispute*. *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404-05, ¶ 20 (2020).

Statement of Facts

The Maricopa County Recorder began signature verification shortly after the first early ballots were returned by voters to his office. [Ex. A, Decl. of Recorder Richer, ¶ @@.] When an affidavit signature is inconsistent with the signatures in the voter’s registration record, the law requires that the Recorder make “reasonable efforts” to notify the voter of the inconsistency and his or her opportunity to cure the signature. [*Id.*, ¶ @@.] Consistent with that law, the Recorder notified every voter whose affidavit signature was determined to be inconsistent with the record signatures. [*Id.*, ¶ @@.]

The green early ballot affidavit envelope, by which voters return their early ballot, asks voters to provide their telephone number. This request is prominently displayed, in the same block of the envelope where voters provide their affidavit signature. The envelope specifically indicates that the telephone number is being requested so that the Recorder can contact the voter if there are problems with her signature. [*Id.*, ¶ @@.]

Prior to the Monday before Election Day, each voter whose signature was inconsistent was notified by a letter mailed to their residential address on file in their

registration record. Voters who provided their telephone number on their green early ballot affidavit envelope also received a telephone call in addition to the letter. Some of these voters also received a text message alerting them that their signature was inconsistent and that they had opportunity to cure their signature. Thus, to be clear, prior to the Monday before Election Day, *every* voter whose signature had been identified as inconsistent received a letter and a telephone call advising them of the inconsistency and curing opportunity, and some of those voters also received a text message alerting them of the same. [*Id.*, ¶ @@.]

Beginning on Monday, November 4, 2024, when it became too late to provide notice by mail, the Recorder provided notice by text to the telephone number that the voters had provided. [*Id.*, ¶ @@.] That is, he texted each voter at the telephone number provided by the voter on their green early ballot affidavit envelope. And, if the voter did not provide a telephone number on the envelope, the Recorder texted the telephone number that was on file for that voter in his voter registration record. The Recorder also began making telephone calls to each of these voters. The Recorder notified these voters of their signatures' inconsistency by text and telephone because he wanted to provide adequate notice to them and ensure that they had a reasonable opportunity to cure their inconsistent signatures. [*Id.*, ¶ @@.]

Additionally, voters almost certainly received more notice of their opportunity to cure their ballot than just the Recorder's notice to them. Arizona law requires that

the county recorders submit daily lists of voters who need to cure their signatures to the two major political parties, beginning on the Monday preceding the election. A.R.S. § 16-550(A). This is so the political parties can help “chase” the voters who need to cure their signatures. [*Id.*, ¶ @@.] The Maricopa County Recorder provided the lists of voters needing to cure their ballots on a daily basis to the Republican Party and the Democratic Party, just as the law requires. [*Id.*, ¶ @@.] The list the Recorder provided included each voter’s name, voter ID, address, party affiliation, precinct, districts (Congress, legislative, etc.), and telephone number. [*Id.*, ¶ @@.] Thus, both major political parties could have “chased” voters that they believed were likely to have cast votes for their candidates, and presumably did so. [*Id.*, ¶ @@.]

The Recorder finished signature verification of the early ballot affidavit envelope signatures on the morning of Friday, November 8, 2024. [*Id.*, ¶ @@.] The Recorder began notifying those last voters with inconsistent signatures of their opportunity to cure their signature at that same time. He sent a text to the telephone number that they provided and also made a telephone call to it. [*Id.*, ¶ @@.] As of 4 p.m. on Saturday, November 9, 2024, *every* Maricopa County voter needing to cure his or her signature had received at least a text message to the number provided on their green early ballot affidavit envelope, or, if none provided, the number listed in their voter registration record. Many voters had also received a telephone call to that number. [*Id.*, ¶ @@.]

The Recorder continued to make telephone calls to voters up until 8 p.m. on Saturday, November 9, 2024. He is making calls to voters throughout the day today, November 10, 2024, up until the curing deadline of 5 p.m. The Recorder is providing voters every opportunity that he can to cure their inconsistent signatures. He is certainly making more than the “reasonable effort” that the law requires. [*Id.*, ¶ @@.]

There were no “processing delays” as alleged by Petitioners. [*Id.*, ¶ @@.] Rather, the Recorder’s team worked in shifts, twenty-four hours a day, to conduct signature verification. The Recorder, and many of his employees, regularly worked fourteen to sixteen hour days—or longer—to perform this task. [*Id.*]

Early ballot processing is not the same as signature verification. [*Id.*, ¶ @@.] Rather, “processing” refers to a series of events that happen *after* signature verification. This includes such things as the removing of the ballot from the affidavit envelope by a bi-partisan team, sending it to tabulation, and other administrative functions related to updating the voters’ registration records. [*Id.*, ¶ @@.]

As of Saturday, November 9, 2024, the Recorder had helped approximately 70% of Maricopa County’s voters, who needed to cure their signatures, do so. The Recorder anticipates that additional voters will avail themselves of their opportunity to cure their early ballot affidavit signatures today, November 10, 2024. [*Id.*, ¶ @@.]

Argument

I. This Court Should Decline Jurisdiction Because Key Facts are in Dispute.

This Court exercises special action jurisdiction when cases “involve[] primarily a legal issue of constitutional, statewide importance[,]” and “most of the key facts . . . are not in dispute.” *Ariz. for Second Chances*, 249 Ariz. at 404, ¶ 20. Here, that is not the case. The gravamen of the Petition is that there are many early ballot affidavit signatures that have not been verified, and so many voters who have not yet been provided notice that they need to cure their signatures. The Petition stands or falls based on the truth or falsity of those allegations. And those allegations, and the key facts underlying them, are very much in dispute.

Petitioners filed their Petition on November 9, 2024, and alleged, incorrectly, that over 250,000 early ballots remained to be signature verified, the majority of which—some 235,000—were in Maricopa County. [Pet. for Sp. Act. at 2.] But the Maricopa County Recorder testified via his Declaration that his office finished signature verification in the morning of November 8, 2024. *See supra* at 6 (citing Ex A, Decl. of Stephen Richer, ¶ @@).

Petitioners also allege that, as of the time they filed their Petition, “election workers” including in Maricopa County “have not yet determined whether any of these ballots have perceived signature mismatches that require curing.” [Pet. for Sp. Act. at 3. *See also id.*, at 4 (alleging that “Respondents reportedly have not even

begun this signature-verification and curing process for thousands of remaining ballots”).] But that fact is also in dispute (to say nothing of incorrect). Because signature verification is complete in Maricopa County, the Recorder and his staff have determined which voters need to cure their signatures. [Ex. A, ¶ @@.]

Petitioners further allege (again, incorrectly) that “because of Respondents’ delays, potentially thousands of Arizona voters will not receive reasonable notice of a perceived signature mismatch in time to cure the problem by Sunday at 5 p.m.” [Pet. for Sp. Act. at 4-5.] That key fact is in dispute as well. The Maricopa County Recorder testified in his Declaration that *every* Maricopa County voter needing to cure his or her signature who had provided a telephone number has already received at least a text message to the number they provided, either on their green early ballot affidavit envelope or the number listed in their voter registration record. Many voters had also received a telephone call. *No* voter has been left without notice or opportunity to cure their signature. *See supra* at 6-7 (citing Ex A, ¶¶ @@-@@).]

This is not a matter that presents purely legal issues. Rather, it turns on facts that are very much in dispute. This Court should, therefore, deny special action jurisdiction. *Dobson v. State ex rel., Comm’n on App. Ct. Appointments*, 233 Ariz. 119, 121, ¶ 7 (2013) (instructing that special action is appropriate where “[r]esolving [the] case . . . does not involve disputed facts” but rather “presents purely legal questions of statewide importance”). *See also Brewer v. Burns*, 222 Ariz. 234, 237,

¶ 9 (2009) (accepting special action jurisdiction because “[t]he relevant facts are undisputed” and the “case turn[s] on the meaning of a constitutional provision”).

II. Petitioners Failed to State a Claim Upon Which Relief Can be Granted.

If this Court were to grant jurisdiction, it would have to deny Petitioners their requested relief because they have failed to state a claim upon which relief can be granted. To obtain their requested relief—an overriding of the deadline for curing inconsistent early ballot affidavit signatures provided by our legislature in A.R.S. § 16-550(A)—they must demonstrate, among other things, that voters will not be provided a meaningful opportunity to cure their inconsistent signatures and so will be disenfranchised. But as demonstrated above, the Maricopa County Recorder has provided voters with notice and a meaningful opportunity to cure their inconsistent signatures. *See supra*, at 4-8. Petitioners have, therefore, failed to state a claim upon which relief can be granted.

Because this Court would have to deny Petitioners’ requested relief, it should decline to exercise special action jurisdiction. Alternatively, the Court could accept jurisdiction and then deny the requested relief.

Conclusion

For the foregoing reasons, this Court should decline to exercise special action jurisdiction. Alternatively, if it exercises jurisdiction, it should deny the requested relief.

RESPECTFULLY SUBMITTED this 10th day of November, 2024.

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