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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

JEANNE KENTCH, *et al.*,

Plaintiffs/Contestants,

v.

KRIS MAYES,

No. S8015CV2022-01468

MARICOPA COUNTY DEFENDANTS' RESPONSE OPPOSING PETITION TO INSPECT BALLOTS

Defendant/Contestee and KATIE HOBBS, *et al*., Official Capacity Defendants.	(Expedited Challenge Matter) (Honorable Lee F. Jantzen)

INTRODUCTION

Pursuant to A.R.S. § 16-677 Plaintiffs have asked this Court to allow them to inspect (a) every duplicated and electronically adjudicated ballot and (b) every ballot that shows an undervote in the Arizona Attorney General contest. Plaintiffs' request far exceeds that allowed by statute in Arizona election contests. The factual allegations, or lack thereof, set forth in Plaintiffs' Complaint and Petition are insufficient to support this overly broad request for inspection of the ballots; there is no reasonable basis for their assertion that this inspection will prepare them for trial. Therefore, they have failed to satisfy the statutory requirements of A.R.S. § 16-677 and the Maricopa County Defendants ask this Court to deny the Petition.

Argument

"Election contests are purely statutory. They are unknown to the common law. They are neither actions at law nor suits in equity. They are special proceedings." *Grounds v. Lawe*, 67 Ariz. 176, 186 (1948), *quoting McCall v. City of Tombstone*, 21 Ariz. 161, 185 (1919). Consequently, election contests are "dependent upon statutory provisions for their conduct." *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966); *Grounds* 67 Ariz. 184. In developing an election contest's rules of conduct, the Legislature provided that upon filing a petition to inspect ballots, "either party may have the ballots inspected before preparing for trial". A.R.S. § 16-677 (A), (B). The petition must state that the elector "cannot properly prepare for trial without an inspection of the ballots". A.R.S. § 16-677 (B).

"A basic tenet of statutory construction requires that we determine and give effect to legislative intent and when we are uncertain of legislative intent, we must read the statute as a whole and give meaningful operation to each of its provisions. In determining legislative intent, one of the factors to consider is the statute's effects and consequences." *Kaku v.*

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Arizona Bd. of Regents, 172 Ariz. 296, 297 (Ct. App. 1992). (Citations omitted).

Although A.R.S. § 16-677(B) requires that, to petition for inspection of ballots, the petitioner must state that the petitioner "cannot properly prepare for trial without an inspection of the ballots," these words are not some magic talisman such that their mere recitation requires a court to order inspection. Rather, the statute reflects the Legislature's intent that inspection of ballots is only necessary in preparation for trial, and should only be allowed when such inspection *really is necessary* for that preparation. Indeed, the Legislature did not authorize inspection of ballots during election contest for any other reason.

As an initial matter, Plaintiff's request to personally inspect the ballots is improper. A.R.S. 16-677(B) provides that the Court must appoint a three person panel to conduct this inspection. The panel must consist of an individual chosen by each of the parties and one chosen by the Court. Plaintiffs' request to have multiple individuals inspecting ballots is improper and would be disruptive to the recount efforts that are currently occurring at the Maricopa County Tabulation and Election Center.

Further, for the reasons addressed in the Secretary of State's Motion to Dismiss, to which the County has joined, Plaintiffs fail to state sufficient facts to support their contest let alone any facts to support a request to personally inspect thousands of ballots. Plaintiffs' claims regarding duplicated and adjudicated ballots have no factual basis. Indeed, with respect to duplicated ballots, Plaintiffs allege a single fact, that a small number of ballot duplication errors occurred in the 2020 election. They have not alleged with anything remotely resembling concreteness that similar errors occurred in the 2022 election. Plaintiffs' allegation is thus not remotely probative to the 2022 election and is insufficient to justify an inspection of every duplicated ballot.

Plaintiffs' claim regarding adjudicated ballots is similarly without basis. Plaintiff cites to a single instance in which an adjudication board, allegedly, incorrectly adjudicated a vote for the Governor's race. Plaintiff does not point to any similarly alleged error in the Attorney General's race, which is the race at issue in this election contest. Moreover,

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adjudication is a subjective process conducted by a bi-partisan board. Finally, Plaintiff's vague allegation concerning an unidentified observer's belief that tabulation equipment is unable to capture ballot markings is, likewise, insufficient to support this broad request.

In short, Plaintiffs have clearly brought a contest claim with no evidentiary support. Instead, they have proposed, through this improper request to inspect ballots and their improper request to conduct other discovery in this matter, to overly burden the counties' election workers and staff so they can go on a fishing expedition to find evidence for their contest. Plaintiffs have had over a month, since election day, to find evidentiary support for their claims. They have none. They cannot use an unreasonable and overly broad request to personally review a massive number of ballots pursuant to A.R.S. § 16-677 to overcome this deficiency. This is improper and should be denied by the Court.

CONCLUSION

For the foregoing reasons this Court should deny the Plaintiffs' Petition to Inspect Ballots.

RESPECTFULLY SUBMITTED this 15th day of December, 2022.

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ORIGINAL of the foregoing E-FILED
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