

SUPREME COURT OF ARIZONA

DANIEL WOOD, BRIAN STEINER and)	Arizona Supreme Court
PAUL RICE,)	No. CV-22-0217-SA
)	
Petitioners,)	
)	
v.)	
)	
MARK BRNOVICH, in his official)	
Capacity as the Attorney General)	
for the State of Arizona; KATIE)	
HOBBS, in her official capacity)	
as the Arizona Secretary of)	
State; DOUG DUCEY, in his)	
official capacity as the)	
Governor of the State of)	
Arizona; ROBERT M. BRUTINEL in)	
His official capacity as the)	
Chief Justice for the Arizona)	
Supreme Court,)	
)	
Respondents.)	
)	
)	FILED 09/08/2022

O R D E R¹

Before us is the fourth matter filed directly in this Court by some combination of petitioners challenging the 2020 election results.

On May 7, 2021, Petitioner Brian Steiner and others filed an action styled, *We the People, ex rel., v. Ducey, et al.*, CV-21-0114-SA. The petitioners contended that twenty elected officials were "alleged usurpers" who were "in office illegally" and if not, the

¹ Chief Justice Brutinel did not participate in the consideration of this matter.

respondents should "prove otherwise." In that action, the petitioners alleged that voting systems were "contractually uncertified and illegal" because "[m]achines or devices used at any election for federal, state or county offices may only be certified for use ... if they comply with the help America vote act of 2002 and if those machines or devices have been tested and approved by a laboratory that is accredited pursuant to the help America vote act of 2022." For the relief requested, the petitioners asked that each of the twenty elected officials "be removed from the trusted office." This Court dismissed the petition because it could find no legal basis for the relief requested and because the action was untimely under A.R.S. § 12-673(A) and observing:

Although our courts have recognized that electors may have an implied private right of action to challenge voting machines' compliance with applicable statutory requirements in certain limited circumstances, see, e.g., *Chavez v. Brewer*, 222 Ariz. 309, 318 ¶ 28 (App. 2009), **nothing in the statutes Petitioners cite grants them a private right of action to remove office holders** and sit in their stead. In fact, in a quo warranto action, "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." *Tracy v. Dixon*, 119 Ariz. 165, 166 (1978). (Emphasis added.)

On October 21, 2021, Petitioners Rayana B. Eldan, Brian Steiner, and Daniel Wood, pro se, filed an "Affidavit of Complaint, Petition for Redress by Writs of Mandamus." Petitioners asked this Court for an order directing the Secretary of State to rescind the Certificates of Election of the Presidential Electors and alleging that the certificates were "invalid and void" and also directing the County

Boards of Supervisors and Clerks to rescind the Certificates of Election issued in the county elections. *Eldan et al. v. Katie Hobbs, Secretary of State, et al.* CV-21-0255-SA. The entire Court entered an order dismissing that proceeding on November 8, 2021, quoting the above language from the dismissal order in the CV-21-0114-SA case and stating:

The Court will not attempt to further instruct Petitioners on the need to plead factual allegations upon which relief can be granted in accordance with pertinent court rules. **However, irrespective of the Petitioners' claims of election irregularities, they have alleged no basis for relief under which they may obtain an order directing state officials to "rescind" prior elections** or to remove elected office holders from office (Emphasis added.)

In *Wood v. Secretary of State Katie Hobbs*, CV-21-0149-SA, Petitioner Daniel Clayton Wood filed a petition on June 4, 2021, and alleged that "Our voting equipment for use in elections did not have certification from any accredited laboratories," and demanded that the Secretary of State "respond to the questions above within 5 days, by affidavit, before this court, sworn under penalty of perjury. If you do not respond within 5 days, you agree by acquiescence, that you are knowingly interfering with the rights of the people" On June 8, 2021 the Court dismissed the petition because Petitioner had failed to comply with A.R.S. § 12-2043 and therefore could not bring a quo warranto proceeding.

In the instant petition, Petitioners Daniel Wood, Brian Steiner and Paul Rice, purporting to be acting with the assistance of Florida

counsel, have filed a "Consolidated Motion for Temporary Restraining Order and Memorandum of Law in Support Thereof." In the motion, Petitioners advise that federal law requires that records, documents, and evidence from the 2020 presidential election must be preserved for twenty-two months, which, they contend, expires September 3, 2022. Therefore, the Court should "issue a Temporary Restraining Order to prevent the Defendants, and anyone acting in concert with the Defendants, from destroying the records, documents and evidence pertaining to Arizona's 2020 presidential election. The Plaintiffs may need the records, documents and evidence pertaining to Arizona's 2020 presidential election in their presentation of their case in chief," and to pursue their "42 U.S.C. § 1983 violation of civil rights case."

In their "Petition for Writ of Mandamus" brought under A.R.S. § 12-2021, also filed in this action, Petitioner argue that the Attorney General, Governor, Secretary of State, and Chief Justice illegally certified the election. They contend that under A.R.S. § 16-442, machines or devices used in election for federal, state, or county offices may only be certified for use if they comply with the Help America Vote Act of 2002 and if they have been tested and approved by a laboratory. "If voting hardware and/or software were used in violation of Arizona law, then said election is void ab initio and said election cannot be lawfully certified by any Defendant." Petitioners contend that because the legal requirements

of A.R.S. § 16-442 were not met, the defendants had no authority to certify the results. They reason, "If none of the Defendants had the legal authority to certify Arizona's 2020 presidential election results, then this Court must issue a peremptory writ of mandamus . . . compelling the Defendants to decertify Arizona's 2020 presidential election and to rerun Arizona's 2020 presidential election in accordance with Arizona law." They ask that the Court "issue a peremptory Writ of Mandamus" compelling defendants to decertify the election; recall the Biden electors, "remove the Maricopa County votes from the 2020 election results as they were/are void ab initio, order Maricopa County to rerun the Arizona 2020 presidential election in accordance with the law, as soon as possible, by way of a special election, with paper ballots only, on a single election day, omitting Zuckerboxes and 'no excuse' absentee mail-in ballots, with the paper ballots being counted by hand with multiple members of all political parties present to observe, with unobstructed 24/7 public livestream cameras of all vote counting so that Arizona can restore voter confidence and Arizona's commitment to free and fair elections, with the Defendants then adding Maricopa County's presidential election votes to the remaining votes and ordering the Defendants to then certify a lawful 2020 presidential election," and such other relief as the Court deems appropriate.

First, the challenge to the election is untimely. The laws of Arizona set forth the process for contesting an election—a process

that requires the filing of a contest within five days after the canvass of the election. Election contests based on alleged improprieties are not new. See *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986) (pointing out that election contests have been brought based on a claim that unregistered voters have voted; that the election was held in a building other than that designated in the election notice; that ineligible electors were allowed to vote and that the ballot was not in the form required; and agreeing in that case that the failure to purge voters would support a contest "on account of illegal votes." (internal citations omitted)). Such contests must, however, be timely:

It is commonly stated that election contests are purely statutory and dependent upon statutory provisions for their conduct. *Brown v. Superior Court*, 81 Ariz. 236 (1956); *Fish v. Redeker*, 2 Ariz. App. 602 (1966). **The failure of a contestant to an election to strictly comply with the statutory requirements is fatal to his right to have the election contested.** *Dale v. Greater Anchorage Area Borough*, 439 P.2d 790 (Alaska, 1968). We have held particularly that the "requirements as to the time within which the contest must be brought are regarded as mandatory, and unless strictly complied with The court is without jurisdiction to proceed"; *Brown v. Superior Court*, *supra*, 81 Ariz. at 239. Citing 29 C.J.S. Elections § 259.

The rationale for requiring strict compliance with the time provisions for initiating a contest is the strong public policy favoring stability and finality of election results. (Emphasis added; citations cleaned up.)

Donaghey v. Att'y Gen., 120 Ariz. 93, 95 (1978) (emphasis added).

Second, as this Court previously observed, "irrespective of the Petitioners' claims of election irregularities, they have alleged no

basis for relief under which they may obtain an order directing state officials to 'rescind' prior elections or to remove elected office holders from office"

The Court, en banc, observes that Petitioners have cited no authority for the proposition that they or anyone else may overturn the Arizona statutes that govern both the conduct of elections and the challenges to the results of such elections. Likewise, they cannot dictate the terms of a proposed effort to "rerun the 2020 presidential election," which was certified almost two years ago. Therefore,

IT IS ORDERED dismissing the petition.

IT IS FURTHER ORDERED denying the request for temporary restraining order.

IT IS FURTHER ORDERED denying the motion for expedited consideration as moot.

IT IS FURTHER ORDERED denying Petitioners' "Motion for Counsel for Writ of Mandamus and TRO" as moot.

DATED this 8th day of September, 2022.

_____/s/_____
ANN A. SCOTT TIMMER
Duty Justice

TO:

Daniel Wood

Brian Steiner

Paul Rice

jd