

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/16/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT

V. Felix

Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

MINUTE ENTRY

Plaintiff Kari Lake's verified petition to inspect ballots pursuant to A.R.S. § 16-677(B) was conditionally granted in part by Order of this Court filed on December 15, 2022 ("Order"). Specifically, subject to the conditions described in that order, the Court granted Plaintiff the opportunity to inspect the following:

- 1) Fifty randomly selected "ballot-on-demand" (BOD) printed ballots cast on Election Day from six vote centers in Maricopa County chosen by her representative;
- 2) Fifty randomly selected early ballots cast in the 2022 general election from six separate Maricopa County batches chosen by her representative;
- 3) Fifty randomly selected BOD printed ballots that were marked spoiled on Election Day from six separate Maricopa County vote centers chosen by her representative.

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Plaintiff then filed a “motion to clarify” in which she further requested the following as to the ballot inspection granted in the Order (with (b) as clarified in her reply):

- a) That her representative be allowed to copy and photograph the inspected ballots and
- b) That, for Sample (1), Maricopa County make available for random selection tabulator-rejected BOD-printed ballots that were left by voters in Door 3 at the vote center to be counted later (“Door 3 ballots”).

The County Defendants filed a response to the motion, objecting to any copying or photographing of ballots and requesting advance notice of Plaintiff’s selected vote centers from which to draw the ballot samples. Nor is surprise a consideration or form of relief contemplated under A.R.S. § 16-677. Defendant Katie Hobbs in her capacities as Secretary of State and governor-elect joined in the portion of the County Defendants’ response objecting to the copying or photographing of ballots, and Plaintiff filed a reply. The Court has considered the motion to clarify, the response, and reply.

The Court first notes that the inspection items conditionally granted in its Order did not specify who would perform the random selection of fifty ballots for each sample. The Court clarifies that Plaintiff’s representative, as requested in the petition to inspect, will make that selection.

As to her request to allow the copying and photographing of ballots, Plaintiff seeks a modification of the Court’s Order rather than a clarification. Plaintiff made no request regarding the photographing or copying of ballots in her petition to inspect. Even if she had, the Court could not grant the request because the statute authorizing her ballot inspection provides only for an “inspection of ballots” “made in the presence of the legal custodian of the ballots.” A.R.S. § 16-677(C).

The County Defendants in their response did not object to Plaintiff’s sampling “only door 3 ballots.” Plaintiff clarified in her reply that she did not want the samples limited to such ballots but only that they be available for inclusion in the samples. Although the County Defendants specify in their response that they do not object to *all* sample ballots being drawn from tabulator-rejected Door 3 ballots, the clarification in Plaintiff’s reply is consistent with the terms of the original Order, and the County Defendants’ response does not indicate any objection to making available tabulator-rejected Door 3 ballots as at least part of the inspection samples.

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In their response, the Maricopa County Defendants notified the Court and other parties that they needed to know Plaintiff's representative's choice of vote centers from which to draw the inspection samples by 5:00 p.m. today, December 16, 2022, to ensure that inspection could begin at 8:00 a.m. on Tuesday, December 20, 2022, as ordered. Plaintiff objects to this request, arguing that "provid[ing] Maricopa County a list of vote centers in advance of this inspection[] would defeat the purpose of taking a random sample without advance notice to Defendant."

First, Plaintiff is not asking for "random samples." She is controlling the choice of voting locations from which to sample and *then* randomly selecting ballots from her designated preferred sample. Complying with the custodian's request does not appear to impair but would actually promote inspection of the ballots. Second, the petition to inspect and resulting Order mentioned nothing about preventing "advance notice to Defendant" about the choosing of voting centers from which to draw the ballot samples. In any case, notifying the County of the chosen ballot centers will not impair Plaintiff's representative's random selection of fifty ballots from among all originating from each chosen location. To be clear, Plaintiff's right to inspect the ballots is not contingent on advance notification of which or all ballots she wishes to inspect. The Court is not able to determine at this point whether the advance notice requested by the custodian is truly necessary to comply with this Court's Order for inspection of the ballots. However, if Plaintiff does not complete the inspection and/or argues at trial that the custodian of ballots prevented adequate discovery, the Court will consider any failure of Plaintiff to accommodate reasonable requests of the custodian in determining whether the custodian complied with the Order.

IT IS ORDERED that Plaintiff's motion to clarify is DENIED as to her request to copy and photograph ballots and GRANTED as to her request that the Maricopa County Defendants make available for inclusion in Sample (1), tabulator-rejected BOD-printed ballots left by voters at the vote center to be counted later.