

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

HONORABLE LEE F. JANTZEN

DIVISION 4

DATE: DECEMBER 20, 2022

***DL**

COURT ORDER/NOTICE/RULING

JEANNE KENTCH, et al., et ux.,

Plaintiffs,

vs.

CV-2022-01468

KRIS MAYES, et al., et ux.,

Defendants.

This matter comes before the Court on Defendants Hobbs and Mayes' separate Motions to Dismiss Plaintiffs' request to overturn the 2022 November General Election results based on allegations of mistakes made by election officials. The other Defendants have joined in these motions.

This Court has jurisdiction over this matter because at least one of the Plaintiffs is from Mohave County. The main Plaintiff is Abraham Hamadeh, a candidate for the statewide office of Arizona Attorney General. Hamadeh lost the election by 511 votes and those results are so close, the mandatory recount provision of the election statutes has been triggered and the recount is currently taking place. This election contest was filed within five days of the election being canvassed and is therefore timely filed.

The Court has reviewed the pleadings filed in this case and considered the applicable rules, statutes and caselaw. The Court has also considered the arguments of the parties at the Oral Argument held on December 19, 2022. The Court has also considered supplemental authority provided by all sides; specifically, two recent rulings (including one this morning) on separate election contests filed in Maricopa County cases arising from the same November 2022 election at issue here.

This case is different from those cases because the Plaintiff is not alleging political motives or fraud or personal agendas being pushed. It is simply alleging misconduct by mistake, or omission by election officials, led to erroneous count of votes and which if true could have led to an uncertain result.

BACKGROUND

Plaintiffs initiated this election contest with the filing of a Statement of Election Contest (pursuant to A.R.S. § 16-672, *et seq.*). The Defendants are Kris Mayes (hereinafter “Mayes”) as the Democratic Party’s nominee for the Office of the Attorney General; Katie Hobbs, (hereinafter “Hobbs”) in her official capacity as the Secretary of State; and every Board of Supervisors and County Recorder from each county in Arizona.

The relevant portions of A.R.S. § 16-672(A) read as follows:

A. Any elector of the state may contest the election of any person declared elected to a state office, or declared nominated to a state office at a primary election, or the declared result of an initiated or referred measure, or a proposal to amend the Constitution of Arizona, or other question or proposal submitted to vote of the people, upon any of the following grounds:

1. For misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election.

...

4. On account of illegal votes.

5. That by reason of erroneous count of votes the person declared elected or the initiative or referred measure, or proposal to amend the constitution, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the measure, amendment, question or proposal.

Plaintiffs do not allege in this election contest that any candidate is ineligible or that any bribes or rewards were offered for procuring this election. In fact, Plaintiffs makes it very clear in every pleading in this case they are not alleging fraudulent behavior by the election officials. The issues then become whether misconduct by election boards or others working on the election took place and if there are any “illegal” votes that would result in a change in the outcome of the election.

There have been many election challenges in Arizona history. The courts have established basic principles. An election contest must be based on well-pleaded facts, rather than on legal conclusions. *Hancock v. Bisnar*, 212 Ariz. 344 (2006). A complaint that states only legal conclusions, without any supporting factual allegations, does not satisfy Arizona’s notice pleading standard under Rule 8. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417 (2008). Election contests are subject to legislative restriction because of a “strong public policy favoring stability and finality of elections

results.” *Ariz. City Sanitary Dist. V. Olson*, 224 Ariz. 330 (App. 2020) (emphasis added). The returns of the election are prima facie correct. *Hunt v. Campbell*, 19 Ariz. 254 (1917).

General statutes directing the mode of proceeding by election officers are deemed advisory, so that strict compliance with their provisions is not indispensable to the validity of the proceedings themselves, and that **honest mistakes or mere omissions on the part of the election officers**, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain. *Findley v. Sorenson* 35 Ariz. 265 (1929).

All reasonable presumptions are to be in favor (of) the validity of an election. *Moore v. City of Page*, 148 Ariz. 151 (App. 1986)

All of these principles are the law, and the Plaintiff has a high burden to meet in order to have an election overturned. The Court must make these determinations based on facts and not mere conclusions such as “on information and belief.” However, at this stage in the unique proceedings of an election contest, the Court finds Plaintiff has the right to present its case and even gather additional information. A.R.S. § 16-377 does contemplate additional discovery in these cases by way of ballot inspection.

It was clear from oral arguments that the parties are cooperating with each other and are attempting to get as many facts to the Plaintiffs to address the concerns they have raised in the pleadings. Some of those facts were shared with the Court. Those are facts this Court should be considering. This information does need to be part of the record which the Court. The election contest pleading as to Counts I through IV do provide sufficient notice to survive a Motion to Dismiss under Rule 12(b)(6) and Rule 8. The Court should hear and consider the evidence and the parties’ interpretations of the evidence.

IT IS ORDERED denying the Motions to Dismiss as they relate to Count’s I through IV. The Court will conduct a trial on the merits on these counts.

Count I of the Election Contest is alleged against Maricopa County only and alleges “Erroneous Count of Votes and Election Board Misconduct; Wrongful Disqualification of Provisional and Early Ballots. (Ariz. Const. art. II §§ 13, 21: A.R.S. §§ 12-2021, 16-672A(1) and (A)(5)).”

Count II is also alleged only against Maricopa County and alleges “Erroneous Count of Votes and Election Board Misconduct; Wrongful Exclusion of Provisional Voters.” (A.R.S. §§ 16-584, 12-2021, 16-672A(1) and (A)(5)).
Count III alleges Erroneous Count of Votes: Inaccurate Ballot Duplications. (A.R.S. §§ 16-672A(1) and (A)(5)).

Count IV alleges Illegal Votes and Erroneous Count of Votes: Improper Ballot Adjudications. (A.R.S. §§ 16-621, 16-672A(1) and (A)(5)).

IT IS ORDERED granting the Motions to Dismiss as they relate to Count V.

Count V alleged Illegal Votes: Unverified Early Ballots (A.R.S. §§ 16-550(A), 16-672(A)(4))

With regard to Count V, this allegation of illegal votes is based on the early voting provision and the procedures to verify ballots that are contained in the Elections Procedure Manual (hereinafter "EPM"). There is not an allegation of election workers improperly not complying with the EPM. The procedure in the EPM being challenged has been in place since 2019 and should not be the subject of a post-election challenge. The Court finds the doctrine of laches applies to Count V as the procedures in the EPM should have been challenged prior to election. This count must be dismissed.

On the issue of Inspection of Ballots, the Court finds a limited inspection of ballots is appropriate under A.R.S. § 16-377 to address the issues raised in the remaining count, but the statute must be followed. Plaintiff has already posted a bond in this matter, but there has not been a group created to actually conduct the inspection. The parties are to meet and confer and choose the parties to do the inspection and the extent of the inspection by noon on Wednesday, December 21, 2022. Plaintiff requested inspection of ballots in Maricopa County, Pima County and Navajo County. If the parties fail to reach an agreement the issues will be addressed in writing by Wednesday, December 21, 2022 at 4:00 p.m.

On the remaining counts,

IT IS ORDERED affirming the **Evidentiary Hearing on Friday, December 23, 2022 at 9:00 a.m.** The Court will reserve the rest of the day. The parties are directed to continue to cooperate with each other in exchanging of any information that will expedite the processing of this case. The Plaintiff has the burden of proving the allegations had an effect on the election. Any exhibits need to be downloaded to the digital evidence system by 4 p.m. on Thursday, December 22, 2022.

Mohave County Superior Court is utilizing a Digital Evidence Portal (CaseLines) for the storage and presentation of evidence. If any party wishes to have exhibits marked to be used as evidence in a hearing, they must contact the Clerk's Office by emailing MohaveDE@courts.az.gov to obtain the link to upload and review their exhibits.

Parties who are not familiar with CaseLines are encouraged to email the Clerk's office at MohaveDE@courts.az.gov for questions about submission and presentation of evidence.

Parties may appear at the Evidentiary Hearing by Zoom by following the instructions below.

To join the Zoom meeting by video (**preferred**), participants can go to Zoom.us and click on 'Join'; the Court's meeting ID # is 258656631. The password to join is 2141912.

To attend the Zoom meeting telephonically, the participants may call 1-669-900-6833 or toll free at 1-833-548-0282 with meeting ID # 258656631. The password to join is 2141912.

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