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8
9 **ARIZONA SUPERIOR COURT**
10 **MARICOPA COUNTY**

11 KELLI WARD,

12 Plaintiff,

13 v.

14 CONSTANCE JACKSON; FELICIA
15 ROTELLINI; FRED YAMASHITA; JAMES
MCLAUGHLIN; JONATHAN NEZ; LUIS
16 ALBERTO HEREDIA; NED NORRIS;
REGINA ROMERO; SANDRA D.
17 KENNEDY; STEPHEN ROE LEWIS; and
STEVE GALLARDO,

18 Defendants.

19
20 KATIE HOBBS, in her official capacity as
Arizona Secretary of State,

21 Intervenor.
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) No. CV2020-015285
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)
)

**[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

(Assigned to The Hon. Randall Warner)

(Hearing Dec. 3, 2020 at 10:30 am)

1 After considering the arguments of the parties, the facts, and all relevant provisions of
2 law, the Court makes the following findings of fact and conclusions of law.

3 FINDINGS OF FACT

4 1. Early voting for the 2020 General Election began in Arizona on October 7, 2020,
5 and Election Day was November 3, 2020.

6 2. On November 23, Maricopa County completed its canvass, certifying that the
7 Biden Electors received 1,040,774 votes and the Trump Electors received 995,665 votes in the
8 presidential race (a difference of 45,109 votes). Ariz. Sec'y of State, Maricopa County 2020
9 General Election Canvass, [https://azsos.gov/sites/default/files/2020.11.23-Maricopa-
11 General_Election_Canvass_Summary.pdf](https://azsos.gov/sites/default/files/2020.11.23-Maricopa-
10 General_Election_Canvass_Summary.pdf). Plaintiff does not challenge results in any of the
12 fourteen other counties or in any other race.

13 3. On November 30, the Secretary certified the statewide canvass for the General
14 Election in the presence of Governor Doug Ducey, Attorney General Mark Brnovich, and Chief
15 Justice Robert Brutinel. Ariz. Sec'y of State, 2020 General Election Canvass,
https://azsos.gov/sites/default/files/2020_General_State_Canvass.pdf.

16 4. That same day, the Secretary and Governor Ducey signed the certificate of
17 ascertainment for presidential electors, certifying that the Biden Electors received 1,672,143
18 votes in Arizona, and the Trump Electors received 1,661,686 votes (a difference of 10,457
19 votes). Three originals of the certificate were transmitted to the United States Archivist, and the
20 certificate is now publicly available in the National Archives. National Archives, 2020 Electoral
21 College Results, Arizona, [https://www.archives.gov/files/electoral-college/2020/ascertainment-
23 arizona.pdf](https://www.archives.gov/files/electoral-college/2020/ascertainment-
22 arizona.pdf). Certificates of election were also issued to the presidential electors.

24 5. When a voter returns an early ballot envelope to a county recorder's office, the
25 county recorder's election department reviews the ballot envelope to make sure the affidavit is
26 signed.

1 6. If the affidavit is signed, the elections department compares the signature on the
2 ballot affidavit to the voter’s signatures on file in the county’s voter registration records. A.R.S.
3 § 16-550(A); EPM Ch. 2 § VI.A.1. If the election officials are satisfied that the registered voter
4 signed the ballot affidavit, they send the ballot for further processing and tabulation. If not
5 satisfied, the election officials contact the voter to verify the voter’s identity.

6 7. Though not required by law, the Maricopa County Recorder allowed political party
7 observers to observe early ballot processing, including signature verification, for the 2020
8 General Election. In fact, the Republican Party had observers present to observe the early ballot
9 affidavit signature verification process.

10 8. Plaintiff now claims that these observers were not able to stand close enough to
11 the election workers’ screens, so they were unable to see the signatures being reviewed. Plaintiff
12 formally raised this complaint for the first time when she filed this action weeks after the
13 election, and only after Donald Trump lost the election.

14 9. When any ballot is damaged or defective and cannot be read by the vote tabulation
15 machines, it is sent to a Ballot Duplication Board (“Duplication Board”) for review and
16 duplication. A.R.S. § 16-621(A); EPM Ch. 10 § II.D.

17 10. The Duplication Board is made up of two registered voters from different political
18 parties. *Id.* The Duplication Board duplicates the voter’s choices onto a new ballot, and the
19 duplicated ballot is then run through the tabulation machine and counted.

20 11. In total, Maricopa County duplicated 27,869 ballots in the 2020 General Election.

21 12. Plaintiff first filed a Rule 27 Petition on November 24, 2020. The Secretary of
22 State (“Secretary”) moved to intervene as a defendant and filed an opposition to the Petition.

23 13. The Court held a hearing on the Petition on November 30, 2020. At the hearing,
24 the Court granted the Secretary’s motion to intervene and granted Plaintiff’s request to inspect a
25 “sampling” of: (1) 100 ballot affidavits to compare them to the voter’s signatures in the voter’s
26

1 registration file; and (2) 100 duplicated ballots to compare them to the original damaged or
2 defective ballot.

3 14. At the inspection on December 1, of the 100 duplicated ballots that were reviewed,
4 the parties identified two duplicated ballots that had a duplication error. One ballot was originally
5 cast for Donald Trump, but the duplicated ballot was cast for Joe Biden, and the other ballot was
6 originally cast for Donald Trump, but the duplicated ballot was cast as an overvote. An overvote
7 is not counted for any candidate.

8 15. Plaintiff's inspection of duplicate ballots continued on December 2, and an
9 additional 1,526 ballots were reviewed. The parties identified seven duplicated ballots that had
10 duplication errors. Five ballots were originally cast for Donald Trump where the duplicated
11 ballot had no vote or an overvote for President, and two ballots originally cast for Joe Biden had
12 no vote or an overvote for President.

13 16. The net result of this inspection is that Donald Trump would have netted an
14 additional 6 votes, which constitutes an error rate in his favor of 0.37% within that sample.

15 17. During the inspection of ballot affidavit signatures on December 1, the Maricopa
16 County Director of Elections and Early Voting confirmed that Maricopa County was satisfied
17 that all 100 ballot affidavits were signed by the registered voter. Two parties' retained experts
18 were unable to conclusively determine that some of the signatures were a match, based on those
19 expert's standards in their scientific fields.

20 18. For these retained forensic experts, it is standard practice to not conclusively opine
21 on whether a signature is a match if there is only one comparator signature.

22 19. A first-time voter typically only has one signature in their voter registration file –
23 the signature on their voter registration form.

24 20. Plaintiff filed the Amended Complaint on November 30, 2020 contesting the
25 election results for the presidential race in Maricopa County only.

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1 bribe or reward for the purpose of procuring his election, or has committed any other offense
2 against the elective franchise”; (4) “On account of illegal votes”; and (5) “That by reason of
3 erroneous count of votes the person declared elected . . . did not in fact receive the highest
4 number of votes for the office.”

5 6. These are the only grounds on which an elector may contest election results.
6 Plaintiff bears the burden of proving that one of these five grounds applies.

7 7. Plaintiff also bears the burden of overcoming the presumption in “favor [of] the
8 validity of an election,” *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986), given Arizona’s
9 ““strong public policy favoring stability and finality of election results.”” *Ariz. City Sanitary*
10 *Dist. v. Olson*, 224 Ariz. 330, 334 ¶ 12 (App. 2010) (quotation omitted).

11 8. Thus, to obtain relief, Plaintiff must make “a showing of fraud or . . . a showing
12 that had proper procedures been used, the result would have been different.” *Moore*, 148 Ariz.
13 at 159.

14 9. Plaintiff failed to carry her burden.

15 10. First, Plaintiff contests the election on the grounds of “misconduct” under A.R.S.
16 § 16-672(A)(1). The “returns of the election officers are prima facie correct,” and courts apply a
17 presumption of “good faith and honesty of the members of the election board” that must control
18 unless there is “clear and satisfactory proof.” *Hunt v. Campbell*, 19 Ariz. 254, 268 (1917).

19 11. Plaintiff claims that election workers made errors in duplicating ballots and that
20 they failed to allow certain observers to observe close enough to see certain processes. That does
21 not amount to “misconduct” under the election contest statute. Election officials were not
22 required to provide Plaintiff her preferred method of observation, and “honest mistakes or mere
23 omissions on the part of the election officers” are not enough to establish “misconduct.” *Findley*
24 *v. Sorenson*, 35 Ariz. 265, 269 (1929).

25 12. Further, Plaintiff’s argument that election officials engaged in “misconduct” by
26 failing to comply with statutory observation requirements lacks merit. Unless an election statute

1 “expressly provides that a failure to observe certain requirements invalidates the vote,” courts
2 will not “throw out” votes merely “because the [election officials] failed to comply with the
3 statutory regulations.” *Findley*, 35 Ariz. at 269. That is because “general statutes directing the
4 mode of proceeding by election officers are deemed advisory, so that strict compliance with their
5 provisions is not indispensable to the validity of the proceedings themselves.” *Id.*; *Chenoweth v.*
6 *Earhart*, 14 Ariz. 278, 286 (1912) (if an election procedure does not “expressly declar[e] that a
7 failure . . . shall render the election void,” it is “directory only”). Neither the Elections Procedures
8 Manual nor any statutes require Arizona election officials to allow observers to observe the
9 signature verification process for early ballots. But even if Arizona law did require the level of
10 observation Plaintiff wanted, none of the statutes Plaintiff cites require that votes be thrown out
11 if election officials do not permit sufficient observation.

12 13. Second, Plaintiff contests the election on the grounds of “illegal votes” under
13 A.R.S. § 16-672(A)(4). To prevail in a contest on this ground, the contestant has the burden of
14 proving (1) that illegal votes were cast and (2) that those illegal votes “were sufficient to change
15 the outcome of the election.” *Moore v. City of Page*, 148 Ariz. 151, 156 (App. 1986); *see also*
16 *Huggins v. Superior Court In & For Cty. of Navajo*, 163 Ariz. 348, 353 (1990).

17 14. Plaintiff failed to establish that any illegal votes were cast in the election. At most,
18 Plaintiff showed that a handful of duplicated ballots had duplication errors. That does not mean
19 any votes were illegal, and in any event, these errors in ballot duplication would not have affected
20 the outcome of the presidential election. Of the 1,626 duplicated ballots that were reviewed, the
21 Trump Electors only netted an additional 6 votes, or an error rate of 0.369% in favor of the
22 Trump Electors. Even if the Court were to apply that error rate in favor of the Trump Electors
23 across the entire universe of duplicated ballots in Maricopa County (27,869), the Trump Electors
24 would only net 103 votes, which falls far short of the Biden Electors’ margin of victory (10,457).

25 15. Plaintiff presented no evidence, to say nothing of clear and convincing evidence,
26 that any election officials fraudulently changed a person’s vote when duplicating a ballot. Under

1 Arizona law, “[f]raud will not be presumed and must be proved by clear and convincing
2 evidence.” *Powers v. Guar. RV, Inc.*, 229 Ariz. 555, 562 ¶ 27 (App. 2012). And “[i]n no case is
3 it more imperative than in election contests that the maxim should be applied that the burden of
4 proving fraud is upon him who alleges it.” *Hunt*, 19 Ariz. at 264 (quotation omitted). The Court
5 will not infer fraud “from slight irregularities, unconnected with incriminating circumstances”;
6 nor will it make a finding of fraud based on Plaintiff’s “mere suspicions, often having no higher
7 origin than partisan bias and political prejudices.” *Id.*

8 16. Third, Plaintiff contests the election on the grounds that, based on an “erroneous
9 count of votes,” the Biden Electors “did not in fact receive the highest number of votes for the
10 office” under A.R.S. § 16-672(A)(5). At most, Plaintiff showed that one vote erroneously was
11 counted for the Biden Electors, six votes erroneously were not counted for the Trump Electors,
12 and two votes erroneously were not counted for the Biden Electors (a net gain of six votes for
13 the Trump Electors). Because the Biden Electors won in Arizona by a margin of 10,457 votes,
14 Plaintiff failed to carry her burden of proving that the Biden Electors did not in fact receive the
15 highest number of votes.

16 17. In all events, Plaintiff’s complaints about political party observers’ ability to see
17 the signature verification and ballot duplication process is barred by laches. Plaintiff
18 unreasonably delayed in raising this concern, and her delay “prejudices the opposing party or
19 the administration of justice.” *Lubin v. Thomas*, 213 Ariz. 496, 497 ¶ 10 (2006). The Court
20 declines to allow Plaintiff to “subvert the election process by intentionally delaying a request for
21 remedial action to see first whether [her preferred candidate] will be successful at the polls.”
22 *McComb v. Superior Court In & For Cty. of Maricopa*, 189 Ariz. 518, 526 (App. 1997).

23 18. The Court dismisses Plaintiff’s Complaint with prejudice.

24 19. The Secretary may submit an application for her attorneys’ fees and costs under
25 A.R.S. §§ 12-349, 341.

1 RESPECTFULLY SUBMITTED this 3rd day of December, 2020.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ Roopali H. Desai

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