

1 RACHEL H. MITCHELL
2 MARICOPA COUNTY ATTORNEY

3 By: THOMAS P. LIDDY (Bar No. 019384)
4 JOSEPH J. BRANCO (Bar No. 031474)
5 JOSEPH E. LA RUE (Bar No. 031348)
6 KAREN J. HARTMAN-TELLEZ (Bar No. 021121)
7 JACK L. O'CONNOR (Bar No. 030660)
8 SEAN M. MOORE (Bar No. 031621)
9 ROSA AGUILAR (Bar No. 037774)
10 Deputy County Attorneys
11 liddy@mcao.maricopa.gov
12 brancoj@mcao.maricopa.gov
13 laruej@mcao.maricopa.gov
14 hartmank@mcao.maricopa.gov
15 oconnorj@mcao.maricopa.gov
16 moores@mcao.maricopa.gov
17 aguilarr@mcao.maricopa.gov
18 Deputy County Attorneys
19 MCAO Firm No. 0003200

20 CIVIL SERVICES DIVISION
21 225 West Madison Street
22 Phoenix, Arizona 85003
23 Telephone (602) 506-8541
24 Facsimile (602) 506-4316
25 ca-civilmailbox@mcao.maricopa.gov

26 Emily Craiger (Bar No. 021728)
27 emily@theburgesslawgroup.com
28 THE BURGESS LAW GROUP
3131 East Camelback Road, Suite 224
Phoenix, Arizona 85016
Telephone: (602) 806-2100

Attorneys for Maricopa County Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KARI LAKE,

Contestant/Petitioner,

vs.

KATIE HOBBS, et al.,

Defendants.

No. CV2022-095403

**MARICOPA COUNTY DEFENDANTS'
MOTION TO DISMISS**

(Expedited Election Matter)

(Honorable Peter Thompson)

1 Pursuant to Rules 7.1 and 12(b)(6), Ariz. R. Civ. P., Rule 4, Ariz. R.P. for Special
2 Actions, and A.R.S. §§ 16-671 to -678, defendants Maricopa County Recorder Stephen
3 Richer, the Maricopa County Board of Supervisors and its members Bill Gates, Clint
4 Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo, and Maricopa County Director
5 of In-Person Voting and Tabulation Scott Jarrett (collectively, the “Maricopa County
6 Defendants”) move to dismiss Contestant Kari Lake’s Complaint in Special Action and
7 Verified Statement of Election Contest (the “Complaint”) because it fails to state a claim on
8 which relief can be granted. This Motion is supported by the following Memorandum of
9 Points and Authorities.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 Introduction

12 Arizona’s election contest statutes, A.R.S. §§ 16-671 *et seq.*, clearly set forth the
13 exclusive bases on which an elector may rely in these special proceedings, which include (1)
14 misconduct by county election boards, or those officers involved with the canvass for a state
15 election, (2) illegal votes, and (3) erroneous count of votes. A.R.S. § 16-672(A)(1), (4)-(5).
16 They also provide the exclusive remedies in election contests: (1) judgment confirming the
17 election, (2) judgment annulling and setting aside the election for the contested race, or (3)
18 a declaration that the certificate of election of the person whose office is contested is of no
19 further legal force or effect and that a different person secured the highest number of legal
20 votes and is elected. A.R.S. § 16-676(B), (C). This Court lacks jurisdiction to grant any other
21 form of relief in this action

22 Plaintiff’s 70-page Complaint and its 7,254 pages of exhibits serve only to obfuscate
23 the issues for the Court in the short time permitted by Arizona law to consider an election
24 contest and give the impression that Plaintiff has a mountain of evidence supporting her
25 extraordinary demands to overturn an election. But the factual allegations and exhibits are
26 largely irrelevant to issues properly before the court in an election contest, mostly based on
27 unwarranted speculation, and do not stand up to even the barest of scrutiny. For example,
28 among the more than 220 statements from purported voters who were allegedly harmed by

1 printer issues that arose on election day in Maricopa County, it appears that there are *only*
2 *three* from voters who did not actually cast a ballot on November 8, 2022. And none of
3 those voters were prevented from casting a ballot by the Defendants, but instead each chose
4 not to vote because the declarant decided that waiting in line or visiting a different polling
5 place was a greater inconvenience than the value they placed on voting that day. [See
6 Declaration of Mark Sonnenklar, Exhibits A-41, A-146 and A-206 (attached to Compl.)]

7 Plaintiff's Complaint and much of its supporting material is based on pure
8 speculation about what might have happened in the 2022 general election, but it wholly lacks
9 allegations about what actually happened with respect to the ballots cast by the 2,592,313
10 Arizonans who participated in the election. See *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386,
11 389, ¶ 4 (App. 2005) (“[The court does] not accept as true allegations consisting of
12 conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded
13 facts, unreasonable inferences or unsupported conclusions from such facts, or legal
14 conclusions alleged as fact.”). Not only do Plaintiff's allegations fail to support finding that
15 she is entitled to be awarded enough votes to change the outcome of the election, but also,
16 they do not show even a single illegal vote, any erroneous count of votes, or that the
17 Defendant election officials engaged in any misconduct in the administration of the election.
18 Indeed, Arizona courts apply “all reasonable presumptions” in “favor [of] the validity of an
19 election.” *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986). In short, the Complaint's
20 allegations are insufficient to overcome the strong presumption in favor of the regularity and
21 finality of elections. See *Ariz. City Sanitary Dist. v. Olson*, 224 Ariz. 330, 334 ¶ 12 (App.
22 2010).

23 As discussed more fully below, Plaintiff-Contestant Kari Lake (“Plaintiff” or
24 “Lake”) has failed to state a claim for relief on any of the ten counts of her Complaint and
25 therefore, this election contest should be dismissed.

26 Standard of Review

27 Under the Rule 12(b)(6) standard, “Courts must . . . assume the truth of the well-pled
28 factual allegations and indulge all reasonable inferences therefrom.” *Cullen v. Auto-Owners*

1 *Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). “[M]ere conclusory statements are insufficient to
2 state a claim upon which relief can be granted.” *Id.* “Dismissal can be based on the lack of a
3 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
4 theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

5 Argument

6 **I. The Bases for an Election Contest and the Relief Available Are Limited**
7 **to those in the Election Contest Statutes.**

8 As a preliminary matter, election contests are “purely statutory and dependent upon
9 statutory provisions for their conduct.” *Fish v. Redeker*, 2 Ariz. App. 602, 605 (1966); *see*
10 *also Griffin v. Buzard*, 86 Ariz. 166, 168 (1959) (“[E]lection contests are purely statutory,
11 unknown to the common law, and are neither actions at law nor suits in equity, but are special
12 proceedings.”). “The failure of a contestant to an election to strictly comply with the
13 statutory requirements is fatal to his right to have the election contested.” *Donaghey v. Att’y*
14 *Gen.*, 120 Ariz. 93, 95 (1978). Indeed, the law carefully circumscribes election contests
15 because of a “strong public policy favoring stability and finality of election results.” *Ariz.*
16 *City Sanitary Dist.*, 224 Ariz. at 334, ¶ 12 (cleaned up).

17 A.R.S. § 16-672(A) clearly sets forth the exclusive bases on which an elector may
18 rely in an election contest, which include (1) misconduct by county election boards or those
19 officers involved with the canvass for a state election, (2) illegal votes, and (3) erroneous
20 count of votes.¹ A.R.S. § 16-672(A)(1), (4)-(5). A.R.S. § 16-677 provides the exclusive
21 remedies in election contests: (1) judgment confirming the election, (2) judgment annulling
22 and setting aside the election for the contested race, or (3) a declaration that the certificate
23 of election of the person whose office is contested is of no further legal force or effect and
24 that a different person secured the highest number of legal votes and is elected. A.R.S. § 16-

25
26 _____
27 ¹ A.R.S. § 16-672(A)(2) and (3) also permit an election contestant to prove that the person
28 declared elected was not eligible to the office or that the person elected offered a bribe or
award for the purpose of procuring the person’s election. Lake alleges no facts that would
support a finding under these sections of the statute.

1 676(B), (C). These statutes bar this Court from granting any other form of relief in this
2 action.

3 Despite the strict limitations of the relief available in an election contest, Plaintiff
4 seeks astonishingly broad and unwarranted remedies. She alternatively seeks an order
5 “vacating Maricopa County’s canvass and Arizona’s certification of the results of the 2022
6 election,” or an order “setting aside the election in its entirety.” [Compl. ¶¶ 135, 148, 155,
7 162, 167, 172] And her final demand takes one gargantuan step further, by requesting the
8 Court set aside the election and “order[] a new election.” [Compl. ¶ 184] Lake’s requested
9 relief is extreme, groundless and, most importantly, lacks a statutory basis. A.R.S. § 16-
10 676(B) and (C) confine the court to defined remedies, and the extraordinary relief Plaintiff
11 demands is not within the court’s remedial power in an election contest. Consequently, the
12 Court cannot “vacate” Maricopa County’s canvass and the State’s certification of the
13 election because it does not possess the statutory authority to do so. Similarly, Plaintiff’s
14 Complaint is devoid of any legal authority empowering the Court to order Maricopa County
15 or the State to conduct a new election.

16 **II. Each of the Ten Counts of Plaintiff’s Complaint Fails to State a Claim**
17 **for Relief.**

18 **Count I – Freedom of Speech.** A violation of the First Amendment is not a proper
19 basis for relief in an election contest. Moreover, the allegations in the Complaint do not
20 establish that Recorder Richer or Secretary of State Hobbs did anything that violates the First
21 Amendment. Indeed, the only factual allegations about Recorder Richer in the entire 70-
22 page Complaint are that he participated in a meeting to present “a brief . . . on current election
23 processes and needs among elections officials and to discuss [the federal Cybersecurity and
24 Infrastructure Security Agency’s] role in the [Misinformation and Disinformation] space.”
25 [Compl. ¶ 96] Plaintiff’s assertion that an election official speaking at a meeting convened
26 by a task force of government and private sector professionals somehow violates the First
27 Amendment is ludicrous and her “Freedom of Speech” claim is not properly before this
28 Court.

1 Even if Plaintiff could prove that a presentation that the Maricopa County Recorder
2 gave in March 2022 violated the First Amendment, such conduct does not constitute illegal
3 votes, an erroneous count of votes, or misconduct by election boards. *See* A.R.S. § 16-
4 672(A)(1), (4)-(5). Moreover, the relief Plaintiff requests for the claimed violation of the
5 First Amendment – “vacating” the County canvass and state certification of the election
6 results – is not among the relief a court can enter in an election contest. A.R.S. § 16-676.
7 Consequently, Plaintiff’s “Freedom of Speech” claim fails as a matter of law and must be
8 dismissed.

9 **Count II – Tabulator Configuration.** Plaintiff’s second count is a hodge-podge of
10 allegations and unsupported accusations about the equipment at Maricopa County vote
11 centers on election day, including that the ballot on demand (“BOD”) printers were not
12 certified and are vulnerable to hacking, that the problems some of those printers experienced
13 “were the result of intentional action,” and that the printer issues constituted “interference”
14 that is “the type of ‘fraudulent combinations, coercion, and intimidation’ that requires
15 striking the entire vote.” [Compl. ¶¶ 141-42, 147] The claims in Count II fail on multiple
16 fronts.

17 First, Arizona law does not require certification of BOD printers. A.R.S. § 16-442
18 applies to the vote tabulation equipment, which is wholly independent from the printers that
19 print ballots. Indeed, that is clear from the statute’s title, which speaks of “vote *tabulating*
20 equipment.” A.R.S. § 16-442 (emphasis added). Likewise, the definition of “electronic
21 voting system” includes no reference to BOD printers. A.R.S. § 16-444(A)(4) (“‘Electronic
22 voting system’ means a system in which votes are recorded on a paper ballot by means of
23 marking, and such votes are subsequently counted and tabulated by vote tabulating
24 equipment at one or more counting centers.”).

25 Second, Plaintiff’s allegation that because the BOD printers are not certified, they are
26 vulnerable to hacking is wholly speculative. This is not the first time that Plaintiff and her
27 counsel have made such dangerous and unsupported allegations. Earlier this year, Plaintiff
28 filed a lawsuit in federal court alleging that Arizona’s electronic tabulation equipment is

1 “potentially susceptible to malicious manipulation,” “potentially unsecure,” or has
2 “vulnerabilities that ‘at the very least, call into question’ the results they produce.” *Lake v.*
3 *Hobbs*, No. CV-22-00677-PHX-JJT, --- F. Supp. 3d. ---, 2022 WL 17351715, at *12 (D.
4 Ariz. Dec. 1, 2022). In that case, as here, Plaintiff’s allegations were “speculative on [their]
5 face” and her claims were dismissed for failure to state a claim. *Id.* After dismissing
6 Plaintiff’s claims, the court ordered that her counsel, including one of the attorneys
7 representing her in this case, be sanctioned under Fed. R. Civ. P. 11 and 28 U.S.C. § 1927.
8 *Id.* at *16.

9 Third, despite the entry of sanctions by the federal court, Plaintiff has been undeterred
10 and has taken her unsupported allegations even a step further. Indeed, Plaintiff alleges that
11 merely because the printer issues occurred on election day, when “it was known that the
12 electorate would be heavily weighted toward voters favoring Lake,” the printer issues were
13 “intentionally caused.” [Compl., ¶ 100] But Plaintiff fails to identify who the intentional
14 actor was, what action that actor undertook to affect the BOD printers, or when or where the
15 action occurred. It is nothing more than speculation about the root cause of acknowledged
16 technical issues that occurred on election day. This allegation of election fraud does not
17 meet the heightened pleading requirements of Ariz. R. Civ. P. 9(b) and this claim is subject
18 to dismissal.

19 Under Rule 9(b), “[i]n alleging fraud or mistake, a party must state with particularity
20 the circumstances constituting fraud or mistake.” While under Rule 12(b)(6), courts
21 “assume the truth of the well-pled factual allegations and indulge all reasonable inferences
22 therefrom,” “mere conclusory statements are insufficient to state a claim upon which relief
23 can be granted.” *Cullen*, 218 Ariz. 419, ¶ 7. “But Rule 9(b) clearly imposes an *additional*
24 obligation on plaintiffs: the statement of the claim must *also* aver with particularity the
25 circumstances constituting the fraud.” *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547
26 (9th Cir. 1994).² “Rule 9(b) requires particularized allegations of the circumstances

27 _____
28 ² Although federal interpretation of federal rules “is not binding” on interpretation of state
rules, Arizona courts “recognize its instructive and persuasive value.” *Flynn v. Campbell*,

1 *constituting fraud.” Id.* “To satisfy Rule 9(b), a pleading must identify the who, what,
2 when, where, and how of the misconduct charged[.]” *Cafasso v. Gen. Dynamics C4 Sys.,*
3 *Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011).

4 The allegations in Plaintiff’s Count II fall into two categories: (1) conclusory
5 statements and (2) allegations based on a declaration from one of Plaintiff’s purported
6 experts. [Compl. ¶¶ 100, 104, 141-42] All of these allegations fail to plead fraud with
7 particularity. Plaintiff has not pled “the who, what, when, where, and how” of the alleged
8 misconduct. In addition, Plaintiff’s allegations based on their expert’s declaration do not
9 plead with particularity the circumstances constituting the alleged fraud. [*Id.* ¶ 104] For
10 example, Mr. Parikh claims “[t]here were numerous procedural violations that can only be
11 categorized as intentional.” [*Id.*] Mr. Parikh surmises intentional acts but fails to identify
12 which county official participated in the misconduct and when and where the misconduct
13 occurred. These fantastic allegations fall woefully short of the heightened pleading standard
14 and cannot satisfy Rule 9(b).

15 Finally, the relief Plaintiff seeks for the alleged intentional acts that occurred at an
16 unknown time, in an unknown manner, and caused by an unidentified person is an “order
17 setting aside the election in its entirety.” [Compl. ¶ 148] This request for relief in an action
18 contesting only the gubernatorial election is not supported by A.R.S. § 16-676. As such,
19 Count II should be dismissed.

20 **Count III – Signature Verification.** Plaintiff alleges, “on information and belief,”
21 that “a material number of early ballots cast in the November 8, 2022 general election were
22 transmitted in envelopes containing an affidavit signature that . . . did not match the signature
23 in the putative voter’s ‘registration record.’” [Compl. ¶ 151] The number of allegedly illegal
24 early votes identified in the Complaint is not, in fact, material. Plaintiff received 17,117
25 fewer votes than Governor-Elect Hobbs. Reading the allegations in the Complaint as
26 favorably as possible to Plaintiff, she has alleged that 9,617 ballots cast in the 2022 general

27 _____
28 243 Ariz. 76, 80, ¶ 10 (2017).

1 election should not have been counted because of issues with signature verification. [*Id.* ¶
2 53] Even assuming that every one of those early ballots contained a vote for the successful
3 candidate, and if those votes were removed from Governor-Elect Hobbs’ vote total, Plaintiff
4 would not have “receive[d] the highest number of votes” and eliminating 9,617 votes from
5 the total counted would not have “altered the outcome” of the election. A.R.S. § 16-
6 672(A)(5); *Wenc v. Sierra Vista Unified Sch. Dist. No. 68*, 210 Ariz. 183, 186 ¶ 10 (App.
7 2005).

8 Drilling down further into Plaintiff’s allegations concerning illegal early votes, they
9 are purely speculative. Plaintiff extrapolates from her ad hoc analysis of early ballot
10 envelopes from the 2020 general election, *not* from analysis of the signature verification
11 conducted on the ballots cast in the election in which Plaintiff was a candidate. In particular,
12 Plaintiff purports to have identified signatures from 2020 that should not have been verified,
13 then asserts that 9,617 people with the same names (some of whom may not actually be the
14 same voters, because several people can have the same name) also voted in the 2022 general
15 election.³ [Compl. ¶ 53] But Plaintiff has not alleged facts that show that a single signature
16 on an early ballot affidavit from the 2022 general election was improperly verified.

17 Plaintiff provides declarations from Maricopa County temporary employees who
18 were involved in the signature verification process, but those declarations cannot establish
19 that even one ballot envelope was improperly verified. Instead, Plaintiff relies on hearsay
20 and speculation about the process. Hearsay statements that “workers complained” about the
21 process or that “people were rejecting 20-30%” of ballots are not evidence that a single ballot
22 was improperly verified. [*Id.* ¶¶ 56-57] And speculation that the process is “wide open to

23 _____
24 ³ Plaintiff’s conclusions from her analysis of 2020 ballot envelopes are at odds with
25 judicially-determined facts concerning Maricopa County’s signature verification for the
26 2020 general election. In *Ward v. Jackson*, following an evidentiary hearing that included
27 expert testimony of forensic document examiners, the court concluded that “[t]he evidence
28 does not show that these affidavits are fraudulent, or that someone other than the voter
signed them. There is no evidence that the manner in which signatures were reviewed was
designed to benefit one candidate or another, or that there was any misconduct, impropriety,
or violation of Arizona law with respect to the review of mail-in ballots.” No. CV2020-
015285, at 7 (Ariz. Super. Ct. Maricopa Cnty., Dec. 4, 2020), *affirmed* CV-20-0343-AP/EL,
2020 WL 8617817 (Ariz. Dec. 8, 2020).

1 abuse” and “nothing prevented” workers from engaging in abuse of the signature verification
2 process are poor substitutes for actual evidence that something illegal occurred. [*Id.* ¶ 61]
3 Indeed, courts apply a presumption of “good faith and honesty of the members of the election
4 board” that must control unless there is “clear and satisfactory proof” to the contrary. *Hunt*
5 *v. Campbell*, 19 Ariz. 254, 268 (1917). Plaintiff’s rank speculation falls far short of such
6 clear and satisfactory proof.

7 Fundamentally, this election contest is not the appropriate vehicle to challenge the
8 signature verification process, which has been in place for many years and approved by
9 another division of this Court. *See supra*. n.2. “Challenges concerning alleged procedural
10 violations of the election process must be brought prior to the actual election.” *Sherman v.*
11 *City of Tempe*, 202 Ariz. 339, 342 ¶ 9 (2002) (citation omitted). Here, instead of seeking
12 relief regarding the signature verification process before the election, Plaintiff waited until
13 after the election to sue. But “by filing [her] complaint after the completed election,”
14 Plaintiff “essentially ask[s the Court] to overturn the will of the people, as expressed in the
15 election.” *Id.* at 342 ¶ 11. The Court must reject Plaintiff’s attempt to “subvert the election
16 process by intentionally delaying a request for remedial action to see first whether [she
17 would] be successful at the polls.” *McComb v. Superior Court*, 189 Ariz. 518, 526 (App.
18 1997) (quotation omitted). For these reasons, Count III fails as a matter of law.

19 **Count IV – Chain of Custody.** Like Count III, Plaintiff’s Count IV alleging
20 violation of state law and the Secretary of State’s Elections Procedures Manual (the “EPM”)
21 regarding chain of custody is based on an incomplete understanding of election
22 administration and baseless speculation about what could happen at the County’s contractor,
23 Runbeck Election Services – not on any allegations of what actually happened.

24 A.R.S. § 16-621(E) provides that the “county recorder or other officer in charge of
25 elections shall maintain records that record the chain of custody for all election equipment
26 and ballots during early voting through the completion of provisional voting tabulation.”
27 The EPM provides further guidance regarding the chain of custody records to be kept. *See*
28 2019 EPM, at 61-62, available at [2019 ELECTIONS PROCEDURES MANUAL](#)

1 [APPROVED.pdf \(azsos.gov\)](#). Plaintiff alleges that there are no chain of custody documents
2 for the nearly 300,000 early ballots that were delivered on election day. [Compl. ¶ 112(a)]
3 This allegation is false, and will be easily disproven by the County if necessary. Plaintiff
4 reviewed the County’s Early Voting Ballot Transport Statements, but the chain of custody
5 documents for election day are different because the process for early ballot delivery is
6 different on election day. Even taking Plaintiff’s allegation as true for purposes of this
7 Motion to Dismiss, however, it does not follow that the Court should order Defendants to
8 discard approximately twenty percent of Maricopa County’s ballots.

9 Failure to maintain chain of custody documents (even if such failure occurred, which
10 it did not) does not make any ballot an “illegal vote.” A.R.S. § 16-672(A)(4). Rendering
11 null, the votes of hundreds of thousands of Arizona voters because of an alleged
12 administrative failure violates the rights of every voter who followed the law to submit a
13 ballot. The relief Plaintiff seeks is not available in this election contest.

14 **Count V – Equal Protection and Count VI – Due Process.** Plaintiff’s Equal
15 Protection and Due Process claims fails as a matter of law. Plaintiff alleges, without
16 particularity, that “[a]ssuming *arguendo* that a state actor caused the tabulator problems that
17 certain Maricopa County vote centers experienced on election day, the disproportionate
18 burden on a class of voters – Republicans – warrants a finding of intentional discrimination
19 and a shift of the burden of proof to defendants.” [Compl. ¶ 164] And she also alleges that
20 the same assumption “warrants a finding of a due process violation.” [*Id.* ¶ 169] As Plaintiff
21 and her counsel are well aware, speculative assumptions are no substitute for factual
22 allegations. *See Lake*, 2022 WL 17351715, at *12.

23 Further, Plaintiff misunderstands Equal Protection. To begin, the failure of printers
24 to print ballots capable of being read by tabulators affected election day voters of all parties.
25 All voters were provided with reasonable, lawful options for voting. Moreover, Maricopa
26 County had a contingency plan of instructing voters to place their ballots into a ballot box to
27 be tabulated later at the County’s central count facility, which is the method that is used by
28 eight of Arizona’s fifteen counties for all of their ballots – they have no precinct or vote enter

1 tabulation. While that may not have been the preferred method of voting for some voters,
2 every Maricopa County voter—regardless of party affiliation—had the ability to vote on
3 election day. *Cf. Weber v. Shelley*, 347 F.3d 1101, 1106-07 (9th Cir. 2003) (declining to
4 consider a means of voting that was not the voter’s preferred method a severe burden on her
5 right to vote). Republicans were not denied the right to vote as a result of the printer issues.

6 “[E]ven if a neutral law has a disproportionately adverse effect upon a [protected
7 class], it is unconstitutional under the Equal Protection Clause only if that impact can be
8 traced to a discriminatory purpose.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279
9 (1979). Proof of “discriminatory intent or purpose is required to show a violation of Equal
10 Protection Clause.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252,
11 265 (1977). Discriminatory purpose implies “the decision maker . . . selected or reaffirmed
12 a particular course of action at least in part ‘because of’ not merely ‘in spite of,’ its adverse
13 effects upon an identifiable group.” *Feeney*, 442 U.S. at 279.

14 Even assuming that Republicans were disproportionately burdened by not being able
15 to vote through their preferred method, Plaintiff’s claim still fails. The unexpected printer
16 problems on election day were not the result of any government law or policy, rather they
17 resulted from unexpected technical difficulties. Plaintiff alleges based on pure speculation
18 that “a state actor caused the tabulator problem” and asks the court to infer intentional
19 discrimination. [Compl. ¶ 164] This is merely another attempt to allege election fraud
20 without complying with the requirements of Ariz. R. Civ. P. 9(b) or supply the necessary
21 *factual* allegations for an Equal Protection claim. Simply stated, Plaintiff has not alleged an
22 Equal Protection or Due Process⁴ claim for which relief may be granted.

23 **Count VII – Ballot Secrecy.** With no supporting factual allegations, Plaintiff
24 asserts that “[m]ail-in ballots . . . do not satisfy the ballot-secrecy requirements of Arizona’s
25

26 ⁴ Plaintiff’s procedural due process claim makes no sense and her reliance on jail
27 administration cases is befuddling. [Compl. ¶ 171.] Ordinarily, due process requires notice
28 and an opportunity to be heard before the deprivation of a right. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). But nothing in Plaintiff’s meandering 70-page Complaint explains what notice was lacking or what hearing should have been held.

1 Constitution.” [Compl. ¶ 174] This Court should reject this misguided attempt to invalidate
2 the votes of more than 80% of Arizona voters out of hand. Indeed, what Plaintiff neglects
3 to tell the Court is that the Arizona Republican Party and its Chair sought a preliminary
4 injunction barring Arizona election officials from following the law regarding early ballots
5 for the 2022 general election. The Mohave County Superior Court denied that preliminary
6 injunction motion on June 6, 2022. *Ariz. Republican Party v. Hobbs*, No. CV2022-00594,
7 Ruling (Ariz. Super. Ct. Mohave Cnty., June 6, 2022) (attached as Exhibit A). At oral
8 argument in the Court of Appeals last week, counsel for the appellants conceded that his
9 clients’ request for relief with respect to the 2022 elections was moot. *See Ariz. Republican*
10 *Party v. Hobbs*, No. 1 CA CV 22-0388 (Oral Argument, Dec. 7, 2022) (available at
11 <https://www.youtube.com/watch?v=xxLeMMXUtk0>, at 2:15-2:22). Regardless of the
12 eventual decisions of the appellate courts that may affect future elections, Arizona law at the
13 time of the 2022 general election required that voters be permitted to choose to vote by early
14 ballot. *See* A.R.S. § 16-541, *et seq.* As such, Count VII fails as a matter of law.

15 **Count VIII – Incorrect Certification.** Plaintiff requests that the Court overturn the
16 results of the 2022 gubernatorial election and declare her the winner. [Compl. ¶ 179] While
17 that is one of the statutory remedies in an election contest, it is unwarranted here. A.R.S. §
18 16-676(C). To grant this remedy, a court must find that the Plaintiff received the highest
19 number of legal votes. *Id.* However, Plaintiff has failed to meet her burden in demonstrating
20 there were enough illegal votes to change the results of the election. Thus, this remedy
21 cannot be applied in this case.

22 Plaintiff suggests that a pro rata reduction of illegally cast votes would alter the
23 outcome of the election. [Compl. ¶ 178] But, as explained above, Plaintiff has not identified
24 any actual illegal votes, nor has Plaintiff provided evidence to suggest that any actual illegal
25 votes were cast. A court may apply proportional deduction when the number of illegal votes
26 exceeds the margin of error in an election. *Grounds v. Lawe*, 67 Ariz. 176, 183 (1948). This
27 method has been used several times when the exact number of illegal votes was known. *Id.*
28 at 178, 184 (fifteen illegal votes); *Clay v. Town of Gilbert*, 160 Ariz. 335, 339 (App. 1989)

1 (twenty-seven illegal votes); *Huggins v. Superior Court*, 163 Ariz. 348, 353 (1990) (sixteen
2 illegal votes). In those cases, the courts were able to precisely reduce the vote totals in
3 precincts where illegal votes were cast. *Huggins*, 163 Ariz. at 353, n.5. In this case,
4 however, Plaintiff’s speculative allegations do not support a conclusion that there were any
5 illegal votes, nor can she provide an exact number of illegal votes. [Compl. ¶¶ 153-55, 158-
6 61, 176] Thus, pro rata reduction should not be applied here.

7 In the alternative, Plaintiff argues that the absolute removal of illegal votes would
8 render her, not Governor-Elect Hobbs, the winner and require the Court to reverse the
9 election. [Compl. ¶ 178] Again, Plaintiff’s failure to show any actual illegal votes, let alone
10 enough to alter the outcome of the election, prevents this. As addressed in prior sections,
11 Plaintiff only engages in mere conjecture on possible illegal votes. This is insufficient for a
12 court to reduce the vote totals in the official certification and alter the outcome of the
13 election.

14 **Count IX – Inadequate Remedy and Count X – Federal Constitutional Rights.**

15 Plaintiff’s final two counts are not legal claims for relief. Instead, they assert that the Court
16 can award relief in this action that is not contemplated by the election contest statutes. That
17 is not the case. When “the gravamen of [Plaintiff’s] complaint is that [an] Election was
18 improperly conducted,” it must follow the election contest statutes. *Donaghey*, 120 Ariz.
19 93, 95 (1978). Those statutes provide strictly limited forms of relief, which do not include
20 a declaratory judgment that the court can dispense with the limitations in A.R.S. § 16-672
21 or concurrent jurisdiction over an action under 42 U.S.C. § 1983. [See ¶¶ 181, 183]

22 Conclusion

23 For the foregoing reasons, the court should dismiss Plaintiff’s Complaint in Special
24 Action and Verified Statement of Election Contest. In addition, the Maricopa County
25 Defendants reserve the right to seek an award of fees against Plaintiff and
26 her counsel under Ariz. R. Civ. P. 11 and A.R.S. § 12-349.

27
28

1 RESPECTFULLY SUBMITTED this 15th day of December, 2022.

2 RACHEL H. MITCHELL
3 MARICOPA COUNTY ATTORNEY

4 BY: /s/Karen J. Hartman-Tellez
5 Thomas P. Liddy
6 Joseph J. Branco
7 Joseph E. La Rue
8 Karen J. Hartman-Tellez
9 Jack L. O'Connor
10 Sean M. Moore
11 Rosa Aguilar
12 Deputy County Attorneys
13 *Attorneys for Maricopa County Defendants*

14 ORIGINAL of the foregoing E-FILED
15 this 15th day of December 2022 with
16 AZTURBOCOURT, and copies e-served / emailed to:

17 HONORABLE PETER THOMPSON
18 MARICOPA COUNTY SUPERIOR COURT
19 Sarah Umphress, Judicial Assistant
20 Sarah.Umphress@JBAZMC.Maricopa.Gov

21 Bryan J. Blehm
22 BLEHM LAW PLLC
23 10869 North Scottsdale Road Suite 103-256
24 Scottsdale Arizona 85254
25 bryan@blehmlegal.com

26 Kurt Olsen
27 OLSEN LAW, P.C.
28 1250 Connecticut Ave., NW, Suite 700
Washington, DC 20036
ko@olsenlawpc.com
Attorney for Contestant/Plaintiff

Daniel C. Barr
Alexis E. Danneman
Austin C. Yost
Samantha J. Burke

1 PERKINS COIE LLP
2 2901 North Central Avenue, Suite 2000
3 Phoenix, Arizona 85012-2788
4 dbarr@perkinscoie.com
5 adanneman@perkinscoie.com
6 ayost@perkinscoie.com
7 sburke@perkinscoie.com
8 *Attorney for Contestee Katie Hobbs*

9 D. Andrew Gaona
10 COPPERSMITH BROCKELMAN PLC
11 2800 North Central Avenue, Suite 1900
12 Phoenix, Arizona 85004
13 agoana@cblawyers.com
14 *Attorney for Defendant Secretary of State Katie Hobbs*

15 Sambo Dul
16 STATES UNITED DEMOCRACY CENTER
17 8205 South Priest Drive, #10312
18 Tempe, Arizona 85284
19 bo@statesuniteddemocracycenter.org
20 *Attorney for Defendant Secretary of State Katie Hobbs*

21 James E. Barton II
22 BARTON MENDEZ SOTO PLLC
23 401 West Baseline Road Suite 205
24 Tempe, Arizona 85283
25 James@bartonmendezsoto.com

26 E. Danya Perry (pro hac vice forthcoming)
27 Rachel Fleder (pro hac vice forthcoming)
28 Joshua Stanton (pro hac vice forthcoming)
29 Lilian Timmermann (pro hac vice forthcoming)
30 PERRY GUHA LLP
31 1740 Broadway, 15th Floor
32 New York, NY 10019
33 dperry@perryguha.com
34 *Attorneys for Amici Curiae*
35 *Helen Purcell and Tammy Patrick*

36 /s/ D. Shinabarger

37 S:\CIVIL\CIV\Matters\EC\2022\Lake v. Hobbs 2022-\Pleadings\Word\Mc's MTD FINAL.docx