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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15 IN AND FOR THE COUNTY OF MARICOPA

16 KARI LAKE FOR ARIZONA

17 Plaintiff,

18 v.
19

20 KATIE HOBBS, personally as Contestee
and in her official capacity as Secretary of
21 State, et al.

22 Defendants.
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CASE NO. CV2022-095403

**HELEN PURCELL'S AND TAMMY
PATRICK'S MOTION FOR LEAVE TO
FILE *AMICI CURIAE* BRIEF**

1 Helen Purcell and Tammy Patrick respectfully move for leave to file a brief as *amici*
2 *curiae* in response to the Complaint in Special Action and Verified Statement of Election
3 Contest filed in this Court on December 9, 2022.

4 **I. ARIZONA TRIAL COURTS HAVE THE AUTHORITY TO ACCEPT**
5 ***AMICUS CURIAE* BRIEFS.**

6 Courts have “inherent power to do all things reasonably necessary for administration
7 of justice.” *Schavey v. Royston*, 8 Ariz. App. 574, 575 (1968). Consistent with this
8 principle, Arizona trial courts have accepted *amicus curiae* briefs to assist the court even
9 in the absence of a specific trial court rule. *See Home Builders Ass’n of Cent. Ariz. v. City*
10 *of Apache Junction*, 198 Ariz. 493, 496 n.4 (App. 2000) (“Several *amici* have appeared,
11 both here and in the trial court, supporting the respective positions advanced by the
12 appellants, the City, and the District.”).

13 **II. INTEREST OF *AMICI***

14 As former election officials in Maricopa County, *amici* possess extensive
15 knowledge of and experience with Arizona’s voting procedures. They have an interest in
16 ensuring that the integrity of Arizona’s elections is not undermined by baseless claims and
17 inaccurate portrayals of Arizona’s election processes and procedures, and that the results
18 of Arizona’s elections reflect the will of Arizona’s voters, regardless of partisan outcomes

19 **A. Helen Purcell**

20 Helen Purcell, a lifelong member of the Republican Party and a member of the
21 National Federation of Republican Women for over forty years, served seven terms as the
22 elected County Recorder for Maricopa County from 1988 through 2016. In that capacity,
23 Ms. Purcell was responsible for maintaining voter files for the county’s more than 2 million
24 registered voters. During her 28 years as the County Recorder, she served as President of
25 the Arizona Association of Counties; Board Member of the National Association of
26 Counties, including as Chair of its Program and Services Committee for one year and as
27 Chair of its Information Technology Committee for four years; and Member of the Board
28 of Advisors of the U.S. Election Assistance Commission, including as a member of its

1 Technical Guidelines Development Committee for 12 years, which drafts national
2 standards for voting systems across the country.

3 **B. Tammy Patrick**

4 Tammy Patrick, a lifelong member of the Democratic Party, was the Federal
5 Compliance Officer for the Maricopa County Elections Department for eleven years.
6 During that time, she established herself as a collaborative partner for those seeking to
7 improve the American voting experience and testified in more than a dozen state
8 legislatures as well as in the United States House of Representatives and Senate. Ms.
9 Patrick subsequently served as a Commissioner on the Presidential Commission on
10 Election Administration and later as a Senior Fellow with the Bipartisan Policy Center.
11 Ms. Patrick’s current work remains focused on the fair administration of elections.¹

12 **III. ACCEPTING THIS BRIEF WILL ASSIST THE COURT.**

13 Under Arizona’s Rules of Civil Appellate Procedure, *amicus* briefs may be filed
14 where a court determines that *amici* “can provide information, perspective, or argument
15 that can help the appellate court beyond the help that the parties’ lawyers provide.” Ariz.
16 R. Civ. App. P. 16(b)(1)(C)(iii). The rule, though not binding on the Court, provides
17 guidance for determining when to accept *amicus curiae* briefs. *Amici*, based on their
18 extensive experience and knowledge, have a unique ability “to provide information,
19 perspective, or argument” beyond that of the parties.

20 **IV. CONCLUSION**

21 Helen Purcell and Tammy Patrick respectfully request that this Court grant their
22 motion for leave to file the accompanying *amicus brief*.

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¹ Defend Democracy Now, Inc. is sponsoring this brief in the interests of providing a non-
partisan, unbiased assessment of the merits of Kari Lake’s factual and legal claims.

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Dated: December 14, 2022

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1 ORIGINAL efiled and served via email
this 14th day of December, 2022, upon:

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3 Maricopa County Superior Court
c/o Sarah Umphress
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EXHIBIT A

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CASE NO. CV2022-095403

**BRIEF IN OPPOSITION TO
ELECTION CONTEST BY *AMICI*
CURIAE HELEN PURCELL AND
TAMMY PATRICK**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION..... 1
- II. INTEREST OF *AMICI*..... 1
 - A. Helen Purcell..... 1
 - B. Tammy Patrick 2
- III. BACKGROUND..... 2
 - A. Katie Hobbs won the race for Governor of Arizona..... 2
 - B. Arizona and Maricopa County had robust contingency plans in place. 3
 - C. Maricopa County correctly followed its own contingency procedures when electronic voting problems were first identified..... 4
 - D. The contingency procedures ensured that no voters were “disenfranchised” and, at most, 13 voters were materially impacted by the electronic voting problems in Maricopa County. 5
- IV. LEGAL STANDARD 5
- V. DISCUSSION 7
 - A. There is no evidence of fraud or illegal voting in the 2022 General Election. 7
 - 1. There is no evidence of sabotage of Ballot On Demand printers..... 8
 - 2. There is no evidence of illegal counting of ballots with unverified signatures. 9
 - 3. There is no evidence of any illegal voting at Runbeck..... 10
 - B. Lake’s procedural misconduct allegations are speculative, reckless, wrong, and legally insufficient. 13
- VI. CONCLUSION 16

1 **I. INTRODUCTION**

2 A functioning democracy requires that elections remain free and fair. This principle
3 has driven *amici* to dedicate decades of their professional careers to safeguarding elections.
4 As members of competing political parties, they have often held opposing views as to
5 which candidate deserves the electorate’s vote. But what draws them together is a respect
6 for the electoral process—the belief that the will of the voters, once ballots have been cast,
7 is sacrosanct.

8 That belief leads them to respectfully submit this brief in opposition to the election
9 contest filed by Kari Lake. *See* Complaint in Special Action and Verified Statement of
10 Election Contest, *Lake v. Hobbs et al.*, CV2022-095403 (December 9, 2022)
11 (“Complaint”). The results of the November 2022 election in Arizona cannot seriously be
12 questioned. As with any election, minor technological difficulties emerged on election day.
13 But those hiccups were addressed by trained, competent professionals according to
14 longstanding and well-established procedures that have not been contested by the plaintiff.

15 In filing this election contest, Lake attempts not to shed light on any widespread
16 voter fraud or disenfranchisement, but instead—at best—to foment conspiracy theories and
17 antidemocratic sentiment by frivolously calling into question the validity of the results. At
18 worst, this contest seeks to set aside the will of the people for personal gain. The law and
19 the facts demand that this case be dismissed.

20 **II. INTEREST OF *AMICI***

21 As former election officials in Maricopa County, *amici* possess extensive
22 knowledge of and experience with Arizona’s voting procedures. They have an interest in
23 ensuring that the integrity of Arizona’s elections is not undermined by baseless claims and
24 inaccurate portrayals of Arizona’s election processes and procedures, and that the results
25 of Arizona’s elections reflect the will of Arizona’s voters, regardless of partisan outcomes.

26 **A. Helen Purcell**

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28 National Federation of Republican Women for over forty years, served seven terms as the

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2 Ms. Purcell was responsible for maintaining voter files for the county’s more than 2 million
3 registered voters. During her 28 years as the County Recorder, she served as President of
4 the Arizona Association of Counties; Board Member of the National Association of
5 Counties, including as Chair of its Program and Services Committee for one year and as
6 Chair of its Information Technology Committee for four years; and Member of the Board
7 of Advisors of the U.S. Election Assistance Commission, including as a member of its
8 Technical Guidelines Development Committee for 12 years, which drafts national
9 standards for voting systems across the country.

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12 Compliance Officer for the Maricopa County Elections Department for eleven years.
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14 improve the American voting experience and testified in more than a dozen state
15 legislatures as well as in the United States House of Representatives and Senate. Ms.
16 Patrick subsequently served as a Commissioner on the Presidential Commission on
17 Election Administration and later as a Senior Fellow with the Bipartisan Policy Center.
18 Ms. Patrick’s current work remains focused on the fair administration of elections.¹

19 **III. BACKGROUND**

20 **A. Katie Hobbs won the race for Governor of Arizona.**

21 The general election for Governor of Arizona was held on November 8, 2022. The
22 Board of Supervisors in each of Arizona’s fifteen counties canvassed their votes between
23 November 18, 2022 and December 1, 2022. *See* 2022 General Election Canvass, Arizona
24 Secretary of State, [https://azsos.gov/elections/results-data/voter-registration-](https://azsos.gov/elections/results-data/voter-registration-statistics/2022-general-election-canvass)
25 [statistics/2022-general-election-canvass](https://azsos.gov/elections/results-data/voter-registration-statistics/2022-general-election-canvass). The results were canvassed at the state level on
26 December 5, 2022, and certified by Governor Doug Ducey, Attorney General Mark

27
28 ¹ Defend Democracy Now, Inc. is sponsoring this brief in the interests of providing a non-
partisan, unbiased assessment of the merits of Kari Lake’s factual and legal claims.

1 Brnovich, and Secretary of State Katie Hobbs. State of Arizona Official Canvass at 14
2 (Dec. 5, 2022).² In the race for Governor, Katie Hobbs received 1,287,891 votes, whereas
3 Kari Lake received 1,270,774 votes—a margin of 17,117 in favor of Hobbs. *Id.* at 2.

4 **B. Arizona and Maricopa County had robust contingency plans in place.**

5 Consistent with Arizona’s 2019 Elections Procedures Manual (“EPM”),
6 promulgated pursuant to A.R.S. § 16-452, the Maricopa County Elections Department—
7 prior to the August primary elections—issued a contingency plan that “establishe[d] the
8 procedures that [would] be followed” in the event of “equipment failures, a power outage,
9 or other unforeseen disruption.” 2022 Elections Plan (“Elections Plan”), Maricopa County
10 Elections Department.³ The Elections Plan provides that, in the event of an “emergency,
11 the Elections Communications Officer will use social media, traditional media, and other
12 means where possible to advise voters of the emergency and the nearest Vote Center
13 location until the emergency is resolved.” *Id.* at 63.

14 The Maricopa County Elections Plan also references the county’s poll worker
15 training manual, which “covers the duties of each role . . . and equipment procedures,” *id.*
16 at 18, including the procedure to be followed in the event of a tabulator misread: “[G]ive
17 the voter the option to have the ballot spoiled and check in again for a new ballot or insert
18 the ballot into Door #3 Misreads.” 2022 Training Manual – Poll Workers (“Training
19 Manual”), Maricopa County Elections Department at 124.⁴ Placing a completed ballot into
20 a secure drop box for later counting is not a procedure limited to Maricopa County—many
21 counties in Arizona use this method for all in-person voting on election day. *See* Vote
22
23
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25 ² Available at [https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass](https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf)
26 [Web.pdf](https://azsos.gov/sites/default/files/2022Dec05_General_Election_Canvass_Web.pdf).

27 ³ Available at [https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections](https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections%20Plan.pdf)
28 [%20Plan.pdf](https://recorder.maricopa.gov/site/pdf/FINAL%20-%202022%20Elections%20Plan.pdf).

⁴ Available at https://elections.maricopa.gov/asset/jcr:2f02b340-4bc1-4782-8fa1-9813afb37a/FINAL%202022%20Primary%20General%20Manual_Redacted1.pdf.

1 Center. Resp. to Att’y Gen. Ltr, Maricopa Cnty. Elections Dep’t (“Maricopa Response”)
2 at 3 (Nov. 27, 2022).⁵

3 **C. Maricopa County correctly followed its own contingency procedures**
4 **when electronic voting problems were first identified.**

5 Early on election day, a few Vote Centers in Maricopa County began reporting
6 issues that tabulators were not reading ballots. Maricopa Response at 4. As the tabulators
7 were designed to do, they returned the unreadable ballots to the voters so that each voter
8 knew to use one of the alternative processes instead. As county officials investigated the
9 problem, Vote Center officials successfully enacted the contingency plans detailed in the
10 Training Manual and Election Plan, as they were instructed to do during their pre-election
11 training sessions.⁶

12 Pursuant to the proper contingency procedures, Vote Centers instructed affected
13 voters on the two alternative ways to ensure that their vote would be counted. First, they
14 told affected voters that they could have their untabulated vote securely stored in the Door
15 #3 ballot box to be counted later at the county’s central counting facility. Maricopa
16 Response at 3. More than 16,000 votes cast in this manner were secured and counted. *Id.*
17 at 4–5. Notably, every county in Arizona uses a central counting facility as either their
18 primary or back-up method of tabulating election day ballots. *Id.* at 3.

19 As a second option, voters were told that they could choose instead to visit other
20 voting locations within the county that were not experiencing any technical difficulties with
21 the printed ballots or tabulators. *Id.* at 3. That procedure was also specifically outlined in
22 the Election Plan to be followed in the event of “equipment failures” or “other unforeseen
23 disruption[s].” Election Plan at 63. According to the Maricopa County Elections
24
25

26 ⁵ Available at <https://www.maricopa.gov/DocumentCenter/View/80026/Maricopa-County-Response-11-27-2022>.

27 ⁶ County officials later determined that an issue with some printers caused them to print
28 ballots that were too faint for the tabulation machines to read. *See* Maricopa Response at
3.

1 Department, 206 voters initially checked into one location to vote but later ended up voting
2 at another Vote Center. Maricopa Response at 5.

3 **D. The contingency procedures ensured that no voters were**
4 **“disenfranchised” and, at most, 13 votes were materially impacted by**
5 **the electronic voting problems in Maricopa County.**

6 All voters affected by the electronic voting problems in Maricopa County still had
7 the *opportunity* to vote and to have their vote counted. Voters who chose to not vote did so
8 despite having two pre-established and effective contingency options available to them.

9 Almost every single voter who followed the contingency process had their vote
10 counted. Of the contingency-process votes that were not counted, all were cast on
11 provisional ballots later deemed illegitimate.

12 Over 16,000 people cast their votes pursuant to the first contingency option (storing
13 the ballot in Door #3), and there is no evidence that any ballots utilizing that option went
14 uncounted. *See* Maricopa Response at 4–5.

15 The vast majority of those who followed the contingency plan’s second option—
16 voting at a different Vote Center—also had their ballot counted successfully. Of the 206
17 voters who checked into a Vote Center, experienced problems, and then switched Vote
18 Centers, 84 successfully checked out of the first Vote Center and were thus able to cast
19 their vote at the second Vote Center without incident. Maricopa Response at 5. The other
20 122 voters did not check out of the first Vote Center properly and therefore had to cast a
21 provisional ballot at the second Vote Center. *Id.* at 6. Of those provisional ballots, 109 were
22 deemed legitimate and counted, leaving just 13 votes uncounted because the provisional
23 ballots were deemed illegitimate. *Id.* The problems on election day in Maricopa County
24 therefore boil down to a mere 13 votes that possibly could have counted but for the printer
25 malfunctions and failure to establish the legitimacy of a provisional ballot. *See id.*

26 **IV. LEGAL STANDARD**

27 A challenger to an election has the burden to show fraud or that but for the illegal
28 activity or error alleged, the result of the election would have been different. *Ward v.*

1 *Jackson*, No. CV-20-0343-AP/EL, 2020 WL 8617817, at *2 (Ariz. Dec. 8, 2020)
2 (memorandum decision), *cert. denied*, 141 S. Ct. 1381 (2021)⁷; *Huggins v. Super. Ct. In &*
3 *For Cnty. of Navajo*, 163 Ariz. 348, 352 (1990); *Findley v. Sorenson*, 35 Ariz. 265, 269
4 (1929).

5 Simply demonstrating some minor oversights or operational errors in the
6 administration of an election is insufficient to sustain an election contest under A.R.S § 16-
7 672(A)(1). “Elections will not be held invalid for mere irregularities unless it can be shown
8 that the result has been affected by such irregularity.” *Ward*, 2020 WL 8617817, at *2
9 (citing *Territory v. Board of Sup’rs of Mohave County*, 2 Ariz. 248 (1887)). “The validity
10 of an election is not voided by honest mistakes or omissions unless they affect the result,
11 or at least render it uncertain.” *Id.* (citing *Findley*, 35 Ariz. at 269).

12 Similarly, alleging or proving the existence of *some* illegal votes is not sufficient to
13 sustain an election contest under A.R.S. § 16-672(A)(4). “Where an election is contested
14 on the ground of illegal voting, the contestant has the burden of showing that *sufficient*
15 illegal votes were cast to change the result.” *Ward*, 2020 WL 8617817, at *2 (emphasis
16 added).

17 Where a challenger’s allegations sound in fraud, the circumstances constituting
18 fraud must be pleaded with particularity. *See* Ariz. R. Civ. P. 9(b) (“In alleging fraud or
19 mistake, a party must state with particularity the circumstances constituting fraud or
20 mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged
21 generally.”); *see also Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 155 (Ct. App. 2009) (“An
22 allegation of fraud must be pled with particularity.”); *Bowyer v. Ducey*, 506 F. Supp. 3d
23 699, 720–23 (D. Ariz. 2020) (construing analogous Federal Rule to require allegations of
24 election fraud to be pleaded with particularity). For allegations of “actual fraud,” a party
25 must allege “(1) a representation, (2) its falsity, (3) its materiality, (4) the speaker’s
26 knowledge of its falsity or ignorance of its truth, (5) the speaker’s intent that the

27
28 ⁷ Available at https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2020/2020_12_08_03939735-0-0000-AscDecisionOrder.PDF.

1 information should be acted upon by the hearer and in a manner reasonably contemplated,
2 (6) the hearer's ignorance of the information's falsity, (7) the hearer's reliance on its truth,
3 (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.”
4 *Green*, 221 Ariz. at 156 (citations omitted).⁸

5 **V. DISCUSSION**

6 Lake's claims consist of a hodgepodge of unsupported and vague suggestions of
7 fraud and untimely procedural challenges that do not come close to demonstrating any
8 effect on the outcome of the election. There is no evidence of fraud and Lake does not offer
9 any. Although Lake insinuates that either fraudulent conduct aimed to disadvantage
10 Republican candidates or election day errors disproportionately affected Republican
11 candidates, numerous candidates from her party won in the same election conducted using
12 the same ballots and machines. The Complaint certainly lacks the requisite particularity to
13 allege fraud.

14 Lake's procedural challenges are not only similarly meritless, but also are untimely.
15 “Challenges concerning alleged procedural violations of the election process must be
16 brought prior to the actual election.” *Sherman v. City of Tempe*, 202 Ariz. 339, 342 (2002)
17 (citing *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987) (holding that “[p]rocedures leading up
18 to an election cannot be questioned after the people have voted, but . . . *must* be challenged
19 before the election is held”)).

20 **A. There is no evidence of fraud or illegal voting in the 2022 General** 21 **Election.**

22 Through the course of the Complaint, Lake suggests three categories of fraud or
23 illegal voting: (1) sabotage of the Ballot On Demand printers in Maricopa County;
24 (2) illegal counting of ballots with unverified signatures; and (3) illegal off-site addition of
25

26 ⁸ Though Lake seems to claim the occurrence of intentional or actual fraud, a claim of
27 “constructive fraud” requires a party to allege a “breach of duty by the person in the
28 confidential or fiduciary relationship [‘without regard to moral guilt or intent of the person
charged’], and that the person in breach induce[d] justifiable reliance by the other to his
detriment.” *Green*, 221 Ariz. at 156 (citations omitted). That is not the case here.

1 ballots at third-party contractor Runbeck Election Services (“Runbeck”).⁹ None of the
2 allegations she makes in the Complaint substantively or legally supports those claims.

3 Lake instead primarily relies on declarations replete with wild speculation and
4 conclusory statements based on incomplete information. Based on *amici’s* decades of
5 experience in running and observing elections, they are confident that those allegations are
6 untrue and could not have possibly resulted in the outcomes Lake suggests. That Lake
7 relies exclusively on these generalized sources instead of making concrete factual
8 allegations reinforces the truth: no reliable evidence exists to support Lake’s claims.

9 **1. There is no evidence of sabotage of Ballot On Demand printers.**

10 According to Lake, there must have been “intentional misconduct” to sabotage the
11 printers because the problem occurred at a number of Vote Centers. Compl. ¶¶ 104, 142
12 (quoting the declaration of a so-called “qualified cyber expert”). This speculative
13 conclusion entirely overlooks any number of innocuous possibilities, including the reason
14 for the issue that the Maricopa County Elections Department itself identified as the source
15 of the problem: malfunctioning fusers. Maricopa Response at 3. It is an enormous leap for
16 Lake to suggest that routine mechanical failures must somehow be the result of sinister
17 intent. Sabotage seems particularly unlikely since these mechanical failures did not prevent
18 voters from selecting their preferred candidates and therefore would serve no saboteur’s
19 purpose. Further, Lake does not identify anyone who had knowledge of any particular
20 misconduct related to the printers. Ultimately, Lake’s “conclusory allegation[s], absent

21 _____
22 ⁹ Maricopa County contracts with Runbeck to, *inter alia*, scan sealed ballot affidavit
23 envelopes, create a “digital binary image of the voter signatures,” and “place[] those images
24 into an automated batch system for Elections Department staff to review.” Elections Plan
25 at 45. During the election process, dozens of cameras, Runbeck security guards, and a
26 Maricopa County security guard monitor the Runbeck facility 24 hours a day. *See* Amy
27 Cutler, *Inside look at the Phoenix facility helping Maricopa County with early voting*,
28 *Arizona’s Family* (Oct. 24, 2022), available at
[https://www.azfamily.com/2022/10/25/inside-look-phoenix-facility-helping-maricopa-
county-with-early-voting/](https://www.azfamily.com/2022/10/25/inside-look-phoenix-facility-helping-maricopa-county-with-early-voting/); Sasha Hupka, *How a ballot is made: Inside the Phoenix
company that serves voters in 23 states*, *azcentral* (Sept. 28, 2022), available at
[https://www.azcentral.com/story/news/politics/elections/2022/09/29/inside-phoenix-
company-prints-ballots-arizona-and-beyond/10435658002/](https://www.azcentral.com/story/news/politics/elections/2022/09/29/inside-phoenix-company-prints-ballots-arizona-and-beyond/10435658002/).

1 some type of detailed supporting allegations, would be insufficient to withstand general
2 pleading standards, much less the more stringent requirements of Rule 9(b).” *Steinberger*
3 *v. McVey ex rel. Cnty. Of Maricopa*, 234 Ariz. 125, 142 (Ct. App. 2014); *Spudnuts, Inc. v.*
4 *Lane*, 131 Ariz. 424, 426 (Ct. App. 1982) (“[B]are allegations that a thing is ‘fraudulent’
5 are insufficient to comply with the rule.”).

6 Moreover, Lake cannot establish that the technical difficulties associated with the
7 printers had any impact on the outcome of the election. *See supra* Section III.D.

8 **2. There is no evidence of illegal counting of ballots with unverified**
9 **signatures.**

10 Lake also alleges that some combination of election officials and employees at
11 STAR Center did *something*—exactly who and exactly what is not specified—that resulted
12 in the illegal counting of thousands of ballots with unverified signatures. Compl. ¶¶ 54–62.
13 *Cf. Steinberger*, 234 Ariz. at 142 (finding an allegation of fraud required “a more specific
14 identification of the actors involved and their alleged misconduct”). Lake’s “illegal
15 counting” conclusion stems from the unscientific estimations of three signature verification
16 workers and their “understanding” of the STAR Center’s role in the signature verification
17 process as put forth in the declarations of those workers. *See* Compl. ¶¶ 54, 62. Again, Lake
18 fails to consider the obvious innocuous answer: in this case, that these particular workers
19 simply were not in a position to observe the full procedures in place. Contrary to Lake’s
20 insinuations, the STAR Center is not some sinister place. In *amici*’s experience, it is instead
21 merely a call center that handles all incoming calls made to Maricopa County’s Treasurer,
22 Assessor, Recorder, or Elections Department. During the ballot curing process, STAR
23 Center staffers check identifying information that callers provide against the caller’s voter
24 record to confirm a ballot’s veracity (or lack thereof). As a result, many initially unverified
25 signatures get verified by dedicated STAR Center staffers based on verifiable information
26 provided directly by affected voters.

27 Needless to say, the credibility and experience of Lake’s witnesses has not yet been
28 assessed. Indeed, they appear to be generally unaware of the procedures in place beyond

1 those within their direct purview. Other than the outlandish suppositions of these three
2 workers, there is no evidence that such illegal vote counting occurred.

3 **3. There is no evidence of any illegal voting at Runbeck.**

4 Lake engages in convoluted sophistry to claim another source of tens of thousands
5 of illegal votes based on entirely illogical reasoning. First, Lake alleges that an employee
6 of Runbeck “observed Runbeck employees were permitted to add their own and family
7 members’ ballots into the batches of incoming ballots, without any documentation or
8 tracking the chain of custody of these ballots.” Compl. ¶ 114. It is unclear from this
9 phrasing whether the employee actually observed such activity, or how the employee came
10 to believe it was permitted. The allegation is impossible to make sense of, and therefore
11 difficult to refute; but it is worth noting that, even if what is alleged were possible, Lake is
12 describing a handful of employees who have access to mail-in ballots (in sealed envelopes)
13 prior to scanning purposefully breaking the law to add in a handful of votes for family
14 members. Even if that allegation were true, in order for the improperly-returned voted
15 ballot packets to have been counted, the ballots would have had to have been for people
16 who were properly registered to vote, had requested and been sent a ballot, had voted on
17 that assigned ballot, and had affixed the proper signature to the ballot’s affidavit envelope.
18 Only if the ensuing ballot review process had verified that all of those additional
19 requirements had been met could the alleged improperly-returned ballots have been
20 counted. It is preposterous to suggest that Runbeck employees—who have all passed a
21 security clearance and been extensively trained in election procedure—would risk
22 committing a serious crime by tampering with securely collected ballots in order to toss in
23 their families’ otherwise completely legal ballot envelopes at the last minute.

24 Of course, even if true, this handful of illegally added ballots, even if all for one
25 candidate, would not impact the outcome of the election. More importantly, the entire
26 process at Runbeck occurs under video surveillance and these employees, if the allegations
27 are true, would be subject to criminal investigation.

28

1 Next, Lake points to a November 9th statement from the Maricopa County Recorder
2 that “275,000+ ballots” had been sorted for scanning and verification. Compl. ¶ 119. Lake
3 then notes that Runbeck reported the next day that it had scanned 298,000 ballots. *Id.*
4 According to the Complaint, that amounts to “an unexplained increase of 25,000” votes.
5 *Id.* There is, however, no logical distinction or inconsistency between 275,000+ and
6 298,000; simple arithmetic confirms that 298,000 is indeed more than 275,000. Further,
7 based on *amici*’s extensive experience with Arizona elections, some variation in the
8 numbers is not unusual. The ballot count is always an approximation, estimated by a “tray
9 count,” until the ballot envelopes are scanned at Runbeck. Ballot envelopes waiting to be
10 scanned are stored in trays, and the number of ballot envelopes that fit into each tray can
11 vary slightly. The pre-scanning “count” is determined by multiplying the number of trays
12 by the approximate number of ballots that fit into each tray. Across thousands of trays, a
13 plus or minus of 25,000 votes is to be expected. The ballot trays are encased in enclosed
14 sleeves that are put on racks and securely transported on designated trucks driven by
15 Maricopa County employees to Runbeck. There is no opportunity to add 25,000 undetected
16 votes between the initial rough count and the final machine tally at Runbeck, as Lake’s
17 complaint suggests.

18 The Complaint also suggests that some kind of impropriety occurred at Runbeck in
19 its preparation of duplicate ballots. Compl. ¶ 115. According to Lake, those duplicates were
20 “of ballots that had been damaged in some way or could not be read by the tabulator.” *Id.*
21 Lake does not claim that the duplication itself was improper in any way, only that
22 documentation related to the duplication was insufficient. *Id.* To the extent this allegation
23 is accurate, it suggests an area where better controls could be put in place. However, there
24 is no evidence of impropriety or deception, nor any reason to think any occurred.

25 Lake’s allegations regarding chain-of-custody—even if true—also miss the mark
26 because they ignore the complementary security provisions that independently would
27 prevent “illegal” ballots from being counted. Compl. ¶ 13 (alleging that, without a “chain
28 of custody, there is *no way to tell* whether over 300,000 ballots cast in Maricopa County

1 are legal ballots.” (emphasis added)). In *amici*’s experience, the verification process for
2 vote-by-mail and early voting ballots begins before the voter even receives their ballot.
3 Each ballot is printed according to the assigned “style” tied to the voter’s address and
4 reflected in their identification number, such that a voter can vote on only a particular
5 “style” of ballot. After the voters return their ballots, Runbeck scans the affidavit envelope
6 containing each ballot into Maricopa County’s digital system. Then, before each ballot gets
7 tabulated, *i.e.*, before the envelope is even opened, Maricopa County personnel verify that
8 (1) the specific ballot cast was requested by a registered voter; (2) the ballot was cast by
9 the same registered voter; and (3) the voter’s signature on the ballot’s affidavit envelope
10 matches the signature in that voter’s voter registration file.

11 In *amici*’s experience, the post-casting procedure is all done (1) under video
12 surveillance and (2) with an extensive digital audit trail showing the ballot envelope being
13 scanned, identification of envelopes unreadable by machine, individual signature
14 verification against the voter registration, hand review of those unreadable by machine, and
15 then signature verification. Any ballot not accepted in that process is then reviewed again
16 by managers, with any that cannot be verified at that point going to “curing.” In short, the
17 process over-identifies ballot envelopes with any sort of issue through machine sorting,
18 which are then repeatedly checked and verified by Maricopa staff at an individual level
19 until those that cannot be verified independently are verified directly with the voter. This
20 occurs before the ballot envelope is even opened and before anyone can know for whom
21 the vote was cast.

22 Contrary to Lake’s claim, there *is* a way to tell if any of the ballots cast in Maricopa
23 County were not legal ballots. Even if there was *no* chain of custody whatsoever (and there
24 was), “illegal” ballots would have been struck because they were (1) never requested by a
25 registered voter; (2) cast by someone other than the requesting voter; and/or (3) cast with
26 an invalid signature.¹⁰ If new ballots were somehow snuck into the system after those ballot

27 ¹⁰ Each stage of processing the ballot batches coincides with a review and audit of the batch
28 quantities and ballot dispositions (*e.g.*, sent to duplication, curing, tabulation), with the

1 packet reviews were conducted, the problem would still be caught because the final ballot
2 count would differ from the first official ballot count produced by Runbeck’s initial ballot
3 packet scans.

4 And once again, these generalized allegations fail to meet the necessary pleading
5 standards under Rule 9(b), as Lake does not sufficiently allege, *inter alia*, a false
6 representation, knowledge thereof by the speaker, or anyone’s ignorance of a falsity and
7 reliance on its truth.

8 **B. Lake’s procedural misconduct allegations are speculative, reckless,**
9 **wrong, and legally insufficient.**

10 Lake’s complaints about Maricopa county’s election procedures are untimely and
11 therefore should not be considered by this Court. “Challenges concerning alleged
12 procedural violations of the election process must be brought prior to the actual election.”
13 *Sherman v. City of Tempe*, 202 Ariz. 339, 342 (2002) (citing *Tilson v. Mofford*, 153 Ariz.
14 468, 470 (1987) (holding that “[p]rocedures leading up to an election cannot be questioned
15 after the people have voted, but . . . *must* be challenged before the election is held”).

16 All of the procedures followed by election officials were publicly available months
17 ago and used successfully in the August 2022 primary elections. The Maricopa County
18 Elections Plan and the Maricopa County Poll Worker Training Manual have both been
19 posted online since before the primary election on August 2, 2022, giving Lake ample
20 opportunity to challenge their procedures *before* the November election was conducted.
21 Settled law forecloses Lake’s belated and generalized challenges to long-standing and
22 long-public procedures.

23 Nonetheless, Lake attempts to make several procedural complaints.

24 For example, Lake alleges that “[t]he BOD printers involved in the tabulator
25 problems . . . are not certified and have vulnerabilities that render them susceptible to
26 hacking.” Compl. ¶ 141. Both printer “problems” that Lake now complains about, however,

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28 staff making those determinations being tracked via chain of custody forms, computer log-
in credentials, etc.

1 were included in the Elections Plan months ago. Elections Plan at 51. Moreover, as *amici*
2 know from their years of experience, printers are not required to be certified under Arizona
3 law. *Cf.* A.R.S. § 16-442(A) (indicating that “vote recording or tabulating machines or
4 devices” must be “certified for use in this state”—but notably not specifying printers).

5 Lake’s failure to challenge the use of these printers is of particular note because she
6 filed a broad-ranging lawsuit earlier this year challenging other Arizona voting processes,
7 namely the use of electronic voting. Am. Compl., *Lake v. Hobbs*, No. 2:22-cv-00677-JJT,
8 ECF No. 3 (May 4, 2022). Although her Amended Complaint in that case covers a litany
9 of alleged problems with Arizona electronic voting systems,¹¹ it does not mention the
10 printers at issue here. *See id.*

11 Additionally, Lake complains that unspecified “illegal processes in Maricopa
12 County make it impossible to know with any reasonable degree of confidence whether an
13 outcome determinative number of votes for Lake were not counted, miscounted, or illegally
14 deterred.” Compl. ¶ 126; *see also id.* ¶ 18 (“The Election Day debacle, together with other
15 illegal and improper procedures through which the election was administered, preclude the
16 Defendants in this action from certifying Hobbs as the winner of the election.”). It is
17 important to note that the processes in Maricopa County were not “illegal.” All registered
18 voters in Maricopa County had the opportunity to vote at any Voting Center, including
19 those experiencing printing issues. Those voters were given the option to cast a ballot that
20 would be stored in Door #3, and more than 16,000 voters took advantage of this option.
21 Maricopa Response at 4-5. Using an auxiliary door solution like Door #3 has been part of
22 voting in Arizona for decades and has been used by at least some voters in most if not all
23 elections since then. Again, *amici* know this from their years of experience and deep
24 knowledge of Arizona’s voting system. It is neither a fault of procedure nor an irregularity
25 if some voters opted to not vote at all out of frustration, as Lake’s declarants allege

26
27 ¹¹ That case was later dismissed (2022 WL 3700756 (D. Ariz. Aug. 26, 2022)) and Lake’s
28 lawyers were sanctioned for making “false, misleading, and unsupported factual
assertions.” 2022 WL 17351715, at *16 (D. Ariz. Dec. 1, 2022).

1 occurred. This is the first time that *amici* recall the utilization of Door #3, the auxiliary
2 ballot bin, to be a widespread source of concern by any candidate, party, or voter despite
3 its widespread use in prior elections.

4 This Court should also not credit the allegations in the Complaint that the wait times
5 in Maricopa County somehow resulted in the loss of tens of thousands of votes for Lake.
6 *See* Compl. ¶ 90. It is entirely possible, if not likely, that many voters left long lines to go
7 to nearby Vote Centers with little to no delays. That would be entirely consistent with the
8 instructions given publicly by the Maricopa County Board of Supervisors. *See*,
9 @billgatesaz, TWITTER (Nov. 8, 2022, 8:01 AM) (suggesting as an option that voters
10 affected by delays “go to a nearby vote center”).¹² In any event, as courts in other
11 jurisdictions have held, a delay in voting on its own is insufficient to overturn an election.
12 *E.g., In re Election Contest as to Watertown Special Referendum Election of Oct. 26, 1999*,
13 628 N.W.2d 336, 339 (S.D. 2001) (“Mere inconvenience or delay in voting is not enough
14 to overturn an election.”); *D’Amico v. Mullen*, 351 A.2d 101, 103 (R.I. 1976) (finding
15 voters “discouraged by the long lines at the polling places” not denied “the right to exercise
16 their franchise had they awaited their turn”).

17 Moreover, despite over 540,000 voters casting their ballots in person on election
18 day—more in-person election day voters than Maricopa County has had for a general
19 election since 2008—the county-wide average wait time throughout the day was just six
20 minutes. Maricopa Response at 1. Even with the printer issues and heightened turnout, the
21 maximum wait time exceeded an hour at just 16 (7%) of the vote centers. *Id.* Although
22 election officials strive to improve procedures each year, unforeseen problems inevitably
23 arise on election day. The election procedures’ contingencies and redundancies exist in
24 anticipation of those unforeseen problems. *Amici* have helped administer over two dozen
25 Arizona elections and are confident that—as the publicly available evidence shows—none
26 of the printer or other issues experienced this year come remotely close to overwhelming
27 the procedural safeguards in place.

28 _____
¹² Available at <https://twitter.com/billgatesaz/status/1589996563329609729>.

1 In any case, all of these challenges are untimely. To the extent that Lake believes
2 any of the procedures in the EPM, the Elections Plan, or the procedures outlined in the poll
3 worker training manual to be legally insufficient, challenges to any of those procedures
4 must have been brought before the election. *Sherman*, 202 Ariz. at 342.

5 **VI. CONCLUSION**

6 For the foregoing reasons, *amici* respectfully request the Court deny Kari Lake's
7 election contest under A.R.S. § 16-672.

8
9 Dated: December 14, 2022

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