

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
V. Felix
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

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

MINUTE ENTRY

Pending before this Court are Maricopa County Defendants' Motion For Sanctions And Application For Attorney Fees, Arizona Secretary Of State Katie Hobbs' Application For Attorney Fees And Expenses, Governor-Elect Katie Hobbs' Partial Attorney Fee Application, Alexis Danneman's Declaration In Support Of Fee Application and Arizona Secretary Of State Katie Hobbs' Joinder In Maricopa County Defendants' Motion For Sanctions, Plaintiff Kari Lake's Response To Defendants' Motions For Sanctions And Applications For Attorney Fees and Plaintiff Kari Lake's Corrected Response To Defendants' Motions For Sanctions And Application For Attorney Fees. The Court has fully considered the arguments, affidavits and memoranda of law submitted by counsel.

Statutory Authority For Award Of Attorney Fees And Expenses

Defendants each seek an award of their attorney fees and expenses pursuant to Arizona Revised Statutes § 12-349(A)(1) which mandates this Court to make such an award if it finds that Plaintiff has brought this action "without substantial justification". Subpart F of the statute defines "without substantial justification" to mean that "the claim or defense is groundless and is not made in good faith".

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The Court agrees with Defendants' statements that election contests are purely statutory and provide for limited form of relief. *Grounds v Lawe*, 67 Ariz. 176, 186 (1948). Further, that an election contest (1) presumes the good faith of election officials as a matter of law, *Hunt v Campbell*, 19 Ariz. 254, 268 (1917), and (2) draws "all reasonable presumptions [to] favor the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). As stated in the Court's ruling, an election challenger must establish specific element of A.R.S. § 16-672 by clear and convincing evidence. *Cf McClung v Bennett*, 225 Ariz. 154, 156 (2010).

It is also true that Defendants asked each and every witness at Trial if they had either intentionally committed misconduct or knew anyone who had perpetrated intentional misconduct aimed to influence the outcome of the Election. No witness answered in the affirmative. Nevertheless, it is also true that Defendants alleged in their pleadings, attachments and exhibits and argued at the hearing that the evidence and testimony of the conduct of the Election itself together with statistical analysis would meet the requirements of A.R.S. § 16-672 by clear and convincing evidence. The Court does not doubt Plaintiff's belief in her perception of the evidence. However, the analysis of whether Plaintiff's claims were groundless or made in bad faith is not limited to subjective views.

Although eight of Plaintiff's claims were dismissed as a matter of law, two claims did survive and proceeded to Trial¹. Granting a hearing on those claims was a question of law applied to facts and not a benevolent act. As a result of the hearing required under the law, Plaintiff's allegations that survived dismissal were subject to factual and legal scrutiny and ultimately found by this Court as failing to meet the clear and convincing evidence standard under Arizona Revised Statutes § 16-672.

At the hearing, Plaintiff was not successful in eliciting from any Defendant admissions of intentional malfeasance aimed at altering the Election outcome. However, she did produce testimony of an expert, which ultimately was not accepted by the Court, but who did agree that intentional malfeasance was the root cause of tabulator malfunctions on Election Day. Plaintiff also presented statistical analysis based on 220 Affidavits of voters who did vote but reported frustrations with tabulator malfunctions and the lines on Election Day. Plaintiff also presented expert evidence which attempted to establish a relationship between exit polling results on Election Day and projected Republican voters who did not actually vote. That statistical analysis of polling results also argued a connection between a range of anticipated Republican votes which never materialized and which the witness testified could have influenced the outcome of the Election. That testimony was also not accepted because of faulty underpinnings in fact, unsupported assumptions and foundation.

¹ The arguments that Defendants Richer and Jarret are non-essential parties and should have not been joined under Arizona law were not part of the Motion To Dismiss.

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The case law regarding Election Challenges dates back to Territorial days when ballots were counted by hand. There are no cases which rule in or out a statistical analysis as a method for proving elements of an Election Challenge under A.R.S. § 16-672. But, the law makes clear that Plaintiff is required to show a specific number of votes affected which would impact the Election outcome. The Court was not persuaded that, among other failures of proof, statistical analysis with projected ranges of votes based on assumptions as to people who did not vote, met the burden of clear and convincing evidence of a specific number or votes to be subtracted or added to either Plaintiff or Defendant under A.R.S. § 16-672. This ruling is not an exhaustive recitation of the basis for the Court's ruling of December 24, 2022. The Court refers the parties to that ruling for a more detailed basis of the Court's findings of fact and conclusions of law.

There is no doubt that each side believes firmly in its position with great conviction. The fact that Plaintiff failed to meet the burden of clear and convincing evidence required for each element of A.R.S. § 16-672 does not equate to a finding that her claims were, or were not, groundless and presented in bad faith. Any legal decision must be based on the law and facts rather than subjective beliefs or partisan opinions, no matter how strongly held. The Court has heard all the evidence and arguments. The Court has carefully examined and thought through the facts and evidence before it in the motions and at the hearing.

THE COURT FINDS that Plaintiff's claims presented in this litigation were not groundless and brought in bad faith under Arizona Revised Statutes § 12-349(A)(1). Therefore,

IT IS ORDERED denying Defendants' Motions For Attorney Fees And Sanctions.

Assessment of Taxable Costs

A prevailing party in Superior Court is entitled to an award of taxable costs pursuant to Arizona Revised Statutes § 12-332. Those costs include the fees of witnesses. A.R.S. § 12-332(A)(1). Defendant, Secretary of State Katie Hobbs, has presented her request for \$5,900.00 in expert witness fees for Mr. Ryan Macias who was retained as an expert and testified at the hearing. A separate request for expert witness fees in the amount of \$22,451.00 was submitted by Defendant, Katie Hobbs sued in capacity as Governor-Elect. Defendants have not submitted any other itemized costs pursuant to A.R.S. § 12-332(A).

THE COURT FINDS the submitted expert witness fees are appropriate under A.R.S. § 12-332(A)(1).

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Defendant Katie Hobbs sued in her capacity as Governor-Elect has also submitted a signed declaration of attorney Abha Khanna in support of an award in the amount of \$4,689.50 for the cost of compensation of Maxwell Schechter, the person designated by them to be present at the inspection of the ballots. Mr. Schechter's compensation is represented by counsel in his signed pleading as \$565.00 per hour for the 8.3 hours involved in the inspection. Although he did not testify at Trial, the choice of Defendants to employ Mr. Schechter was based upon his qualifications and credentials to perform this duty much as Plaintiff's expert Mr. Clay Parikh served as her chosen representative for inspection of the ballots.

THE COURT FINDS the submitted compensation of Defendants' designee for inspection of the ballots pursuant to A.R.S. § 16-677(C) is appropriate. Therefore,

IT IS ORDERED awarding Defendant, Secretary of State Katie Hobbs, \$5,900.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

IT IS FURTHER ORDERED awarding Defendant, Governor-Elect Katie Hobbs, \$22,451.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

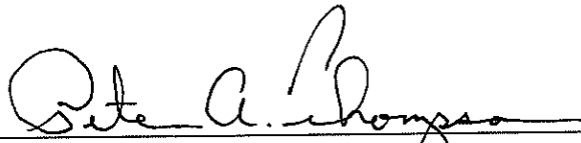
IT IS ALSO ORDERED awarding Defendant, Governor-Elect State Katie Hobbs, \$4,689.50 as compensation of her appointed representative for inspection of ballots pursuant to A.R.S. § 16-677(C).

IT IS ORDERED that the amounts entered with this judgment shall run with an annual interest rate of seven and one half percent (7.5%) per annum until paid in full.

The Court having entered its findings of fact, conclusions of law and orders on December 24, 2022 and all matters concerning this litigation before the Court having been resolved with nothing else pending,

IT IS HEREBY ORDERED confirming the election of Katie Hobbs as Arizona Governor-Elect pursuant to A.R.S. § 16-676(B) and entering final judgment in this matter pursuant to Rule 54(c), Arizona Rules of Civil Procedure.

DATED this 27th day of December 2022.



HONORABLE PETER A. THOMPSON
JUDICIAL OFFICER OF THE SUPERIOR COURT