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25 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

26 **IN AND FOR THE COUNTY OF MARICOPA**

27 KARI LAKE,

28 Contestant/Petitioner,

vs.

KATIE HOBBS, et al.,

Defendants.

No. CV2022-095403

**MARICOPA COUNTY DEFENDANTS'
REPLY IN SUPPORT OF THEIR
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, the Maricopa County Defendants hereby reply in
3 support of their Motion to Dismiss. This Reply is supported by the following Memorandum
4 of Points and Authorities.

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 Introduction

7 To succeed in an election contest, the contestant must demonstrate: (1) that enough
8 ballots to change the result should not have been counted; (2) that ballots that were cast but
9 not counted should have been counted, or (3) misconduct by election officials that was so
10 grave it was fraudulent. *See* A.R.S. § 16-672(A). Arizona law does not permit a court to
11 count ballots that were never cast, but that is precisely what Plaintiff-Contestant Kari Lake
12 (“Plaintiff” or “Lake”) asks this Court to do. In case that effort fails, she also asks this Court
13 to discard the votes of hundreds of thousands of Arizona voters who followed the rules and
14 properly submitted early ballots, as they have done in election after election for decades.

15 Plaintiff’s Complaint and its exhibits, “which are only impressive for their volume,”
16 *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 721 (D. Ariz. 2020), lack the factual allegations
17 necessary to establish any of the legitimate bases for an election contest. Instead, they offer
18 the statements of voters who successfully voted and the speculation of a few
19 “whistleblowers” who were not in a position to fully understand or observe the County’s
20 processes. Plaintiff also relies on purported experts who offer (1) opinions that are
21 contradicted by the public record and their own affiants and (2) unsupported, malicious
22 allegations of intentional misconduct by some unknown person, at an unknown time, in an
23 unknown manner. As a matter of law, Plaintiff’s speculative evidence is insufficient to state
24 a claim for relief in this election contest, and this action should be dismissed.

25 Argument

26 **I. Plaintiff’s Speculation and Hypothetical Facts Cannot Overcome the** 27 **Presumption that the Election Was Valid.**

28 In deciding the Maricopa County Defendants’ Motion to Dismiss, the Court “must

1 . . . assume the truth of the well-pled factual allegations and indulge all reasonable inferences
2 therefrom.” *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). But the Court
3 cannot “speculate about hypothetical facts that might entitle the plaintiff to relief.” *Id.* at
4 420, ¶ 14. The Court should also not “accept as true allegations consisting of conclusions
5 of law, inferences or deductions that are not necessarily implied by well pleaded facts,
6 unreasonable inferences or unsupported conclusions from such facts, or legal conclusions
7 alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

8 In an election contest, the Court must apply “all reasonable presumptions” in “favor
9 [of] the validity of [the] election.” *Moore v. City of Page*, 148 Ariz. 151, 155 (Ct. App.
10 1986). “[H]onest mistakes or mere omissions on the part of election officers, or irregularities
11 in directory matters, even though gross, if not fraudulent, will not void an election, unless
12 they affect the result, or at least render it uncertain.” *Findley v. Sorenson*, 35 Ariz. 265, 269
13 (1929). Plaintiff may not rely “upon public rumor or upon evidence about which a mere
14 theory, suspicion, or conjecture may be maintained.” *Hunt v. Campbell*, 19 Ariz. 254, 263-
15 64 (1917). Furthermore, Plaintiff must specifically allege fraud, which “ought never to be
16 inferred.” *Id.* at 264.

17 **II. Plaintiff’s Allegations Concerning Issues at Some Maricopa County Vote**
18 **Centers Do Not Establish Misconduct Affecting the Election Results.**

19 From early in the day on November 8, 2022, after 84% of the ballots were already
20 cast in Maricopa County’s 2022 general election, Maricopa County publicly acknowledged
21 that approximately 70 of its 223 vote centers were experiencing issues with equipment.
22 Plaintiff calls this “massive voter suppression,” but her own evidence does not reveal any
23 voter whom the County turned away from the polls. As Plaintiff’s voter affidavits show, the
24 County had a comprehensive plan with built-in contingencies that allowed all qualified
25 voters who arrived at a polling place before 7 p.m. to vote that day. Indeed, voters had
26 multiple voting options if the vote center tabulators would not read their ballot: spoil the
27 ballot and obtain a new ballot, place the ballot into the secure ballot box to be tabulated at
28 the central count facility (the way the majority of Arizona counties tabulate election day

1 ballots), or check out of the vote center and go to another vote center to vote at the new
2 location.

3 Plaintiff asserts that “hundreds of declarations” support her claim of “voter
4 suppression,” but that is not true. [Resp. at 4] Plaintiff attached 220 declarations from poll
5 workers, observers, and voters to the Complaint. [See Declaration of M. Sonnenklar, Ex. A-
6 1 to A-220] Many of them came from people who stated that they voted, and even named
7 the candidates for whom they voted. [See, e.g., *id.*, Ex. A-3, A-10, A-37, A-48, A-58, A-99,
8 A-103, A-104, A-107] Among those 220 statements, not a single one asserts that the County
9 barred them from voting. Indeed, of the approximately 132 declarations from voters, only
10 two are from people who affirmatively state that they did not cast a ballot. [See *id.*, Ex. A-
11 146, A-206, ¶ 9] And those two explained that it was the declarant’s personal circumstances
12 that day that led them to not wait in line or visit a different vote center to cast their ballot.
13 [See *id.*, Ex. A-146, A-206, ¶¶ 7-8] What is left are voters who were suspicious that their
14 ballots might not be counted. [See, e.g., *id.*, Ex. A-71, A-73, A-76] But an election contest
15 claim based on “misconduct” cannot survive dismissal if predicated only upon “mere theory,
16 suspicion, or conjecture.” *Hunt*, 19 Ariz. at 263-64. As stated just last week by another
17 Division of this Court, “The law in Arizona does not permit an election challenge to proceed
18 based solely upon a vague sense of unease.” [Ex. 1, *Finchem v. Fontes*, No. CV2022-053927
19 (Maricopa Cty. Super. Ct. December 16, 2022 (Under Advisement Ruling (Granting Motion
20 to Dismiss)) at 7).]

21 Plaintiff’s proffered “expert” evidence of “voter suppression” comes from a pollster
22 who extrapolates from unreliable exit polls and other data derived from unsound
23 methodology. Using (and misusing) this data, he opines that somewhere between 15,603
24 and 29,257 more voters would have gone to a vote center on election day and cast a vote for
25 Lake if the election day equipment issues had not happened.¹ Six weeks after the election,

26 _____
27 ¹ Plaintiff asserts that “Defendants do not dispute the validity of the expert report to prove
28 voter suppression, nor could they.” [Resp. at 5, n.6; see also *id.* at 7, n.8 (regarding Clay
Parikh)] Plaintiff’s assertion is incorrect and, if necessary, the Maricopa County
Defendants may move to preclude Mr. Baris and Mr. Parikh from testifying under Ariz. R.

1 however, Plaintiff has found none of those people, calling into serious question the validity
2 of the analysis. But more importantly, in this election contest, the Court cannot order votes
3 that were never cast to be counted for any candidate, let alone presume to which candidate
4 those inchoate votes would have gone if cast.

5 **III. Plaintiff’s Attempt to Invalidate All Early Ballots Delivered on Election-Day in**
6 **Maricopa County Would Disenfranchise nearly 300,000 Voters.**

7 Unlike the illusory “voter suppression” on which Plaintiff bases her case, her effort
8 to throw out hundreds of thousands of early votes would completely disenfranchise
9 Maricopa County voters who followed the law, with no opportunity for those voters to rescue
10 their votes from being rejected after the fact. But Plaintiff’s speculation about the signature
11 verification process and chain of custody records does not make a single vote illegal and she
12 cannot meet her burden to ask this Court for the extraordinary and shocking remedy of
13 discarding lawfully-cast ballots.

14 Nearly a century ago, the Arizona Supreme Court explained the high bar an election
15 contestant must meet because “[t]he main object of the duties and restrictions imposed on
16 election officers is to afford to every citizen having a constitutional right to vote an
17 opportunity to exercise that right.” *Findley*, at 269-70. “[T]o throw out the vote of an entire
18 precinct, or a considerable portion thereof, because the inspectors failed to comply with the
19 statutory regulations, would be a sacrifice of substance to form.” *Id.* Contrary to Plaintiff’s
20 allegations, the Recorder followed the law. But even if, contrary to fact, they *had* failed to
21 follow the law with regard to signature verification or chain of custody, – the result Plaintiff
22 seeks, invalidation of all early ballots or at least of the early ballots received on election day,

23 _____
Evid 702.

24 The problem with the statistical analysis is the underlying assumption that the only variable
25 that is determinative of how voters cast their ballots is whether the voter is registered as a
26 Republican or a Democrat, *i.e.*, that all Republicans vote for every Republican on the ballot,
27 and that no Republican ever chooses to leave particular races unvoted or cross party lines.
28 The analysis fails to take into account that each voter employs an individual decision that
takes account of a myriad of variables related to the voter’s view of the candidates’ conduct,
statements, style, etc. None of these variables are accounted for in Plaintiff’s statistical
analysis. Humans vote, not bots. Merely looking at the voting patterns in the state
treasurer’s race reveals the fatal flaws of Plaintiff’s data and analysis.

1 is not allowed by the law.

2 **A. Laches Bars the Signature Verification Claim.**

3 Plaintiff argues that her claim regarding signature verification is not barred by laches
4 because it could not have been brought before the election because “as Defendants know,
5 mail-in ballots are not processed until Election Day.” [Resp. at 11] Plaintiff is incorrect
6 about how early ballots are processed in Arizona. A.R.S. § 16-550(A) (providing that
7 signature verification begins “on receipt” by the County Recorder of a completed early ballot
8 and affidavit envelope); *see also* A.R.S. § 16-552 (setting forth the exclusive procedure to
9 challenge early ballots). To the extent that her claim rests on signature verification
10 procedures, those procedures have been in place for many years. Settled law required
11 Plaintiff to challenge election procedures before the election, not wait until afterwards to try
12 to invalidate votes that favored the other candidate. *See Sherman v. City of Tempe*, 202 Ariz.
13 339, 342, ¶ 9-11 (2002) (requiring challenge to election procedures be filed before the
14 election so as not “to overturn the will of the people, as expressed in the election”); *McComb*
15 *v. Superior Ct.*, 189 Ariz. 518, 526 (App. 1997) (rejecting an attempt to “subvert the election
16 process by intentionally delaying a request for remedial action to see first whether they will
17 be successful at the polls”).

18 **B. If Not Barred by Laches, Plaintiffs’ Signature Verification Claim Fails**
19 **on the Merits.**

20 If Plaintiff’s claim regarding signature verification is that for the 2022 election, the
21 County changed or did not follow the procedures set forth in Arizona law to determine
22 whether an early ballot should be counted, it fails because the speculative perception of
23 signature verification employees cannot invalidate a single early ballot, let alone enough
24 votes to affect the outcome of the election. Nor can a *post hoc* analysis of 2020 early ballot
25 affidavit envelopes by untrained examiners be used to draw any conclusions about the voters
26 who submitted early ballots in 2022.

27 Plaintiff’s proffered evidence of failures in the signature verification process comes
28 from three “level one” early ballot processors, the least experienced of such workers. [*See*

1 Myers Decl., ¶ 6] Indeed, one of the declarants worked only 16.5 hours in signature
2 verification. [Nystrom Decl., ¶11] These declarants’ speculation about the signature
3 verification process, based mostly on hearsay about what other workers told them, is
4 insufficient as a matter of law to demonstrate that any early ballot sent for tabulation was an
5 illegal ballot. [See Compl. ¶¶ 57-61 (declarants “*would hear* that people were rejecting 20-
6 30%,” and speculated about the curing process being “wide open to abuse” without
7 providing any evidence of actual abuse) (emphasis added)] The court should not credit these
8 inexperienced, temporary employees’ speculation, and such speculation is not sufficient to
9 invalidate any early ballots. See *Jeter*, 211 Ariz. at 389, ¶ 4; *Hunt*, 19 Ariz. at 263-64.

10 Plaintiff tries to bolster the speculative testimony of temporary election workers with
11 data from the 2020 election, which she alleges is evidence of failure of the signature
12 verification process in 2022. [See Compl. ¶ 51-53] It is not. Rather, Plaintiff’s “evidence”
13 is nothing more than additional speculation and conjecture, and as such has no probative
14 value.

15 The Complaint seeks to tie analysis of 2020 ballot envelope signatures, performed
16 by a group loyal to Plaintiff, to those who voted in 2022 to invalidate their ballots now. But
17 that analysis has two fatal flaws: (1) Plaintiff’s subjective conclusions about the validity of
18 signatures from 2020 are directly contradicted by facts found in the 2020 election contest
19 regarding the race for President, and (2) even conclusive proof that a signature from 2020
20 was not verified tells the Court nothing about that voter’s signature in 2022. See *Ward v.*
21 *Jackson*, No. CV2020-015285, at 7 (Ariz. Super. Ct. Maricopa Cnty., Dec. 4, 2020), *affirmed*
22 CV-20-0343-AP/EL, 2020 WL 8617817 (Ariz. Dec. 8, 2020) (finding that “[t]he evidence
23 does not show that these [ballot] affidavits are fraudulent, or that someone other than the
24 voter signed them. There is no evidence that the manner in which signatures were reviewed
25 was designed to benefit one candidate or another, or that there was any misconduct,
26 impropriety, or violation of Arizona law with respect to the review of mail-in ballots”).

27 As just noted, Judge Warner carefully considered the Recorder’s signature
28 verification process used in the 2020 general election and found no evidence of signature

1 fraud on the part of voters or misconduct on the part of the Recorder’s personnel. This Court
2 should take judicial notice of that fact. Simply put, Plaintiff’s signature verification claim
3 is subject to dismissal as a matter of law.

4 **C. Plaintiff’s Failure to Understand Chain of Custody Records Does Not**
5 **Warrant Finding any Ballot Illegal.**

6 Plaintiff asks this Court to invalidate every early ballot dropped off or received by
7 mail in Maricopa County on election day because she asserts that there are no chain of
8 custody documents for these ballots. [Compl. ¶ 112] Plaintiff alleges that in response to a
9 public records request, the Maricopa County Defendants produced “not a single document
10 from Election Day drop box retrievals.” [Id. ¶ 112(b)] Plaintiff is wrong. The chain of
11 custody documents are in the possession of Maricopa County at the Maricopa County
12 Tabulation and Election Center (“MCTEC”). It appears that Plaintiff does not understand
13 the documents the County provided to them. Before Election Day, when early ballots are
14 retrieved from drop boxes, that retrieval is documented in the “Early Ballot Transport
15 Statements” which were provided to Plaintiff’s representatives beginning on December 4,
16 2022. On Election Day, however, by law, the County may not retrieve ballots from drop
17 boxes during voting hours. Accordingly, no “Early Ballot Transport Statements” were
18 completed that day. Instead, after the close of voting, early ballots dropped off on election
19 day are retrieved from vote centers and that retrieval is documented on the “Maricopa
20 County Inbound Receipt of Delivery Forms.” Those records were also made available to
21 Plaintiff’s representatives beginning on December 4, 2022. There are no missing “chain of
22 custody” documents as Plaintiff alleges.²

23 Even if chain of custody documents were missing, however, that would not be a basis
24 to invalidate early ballots that were lawfully completed and delivered to the County by
25 voters. A.R.S. § 16-672(A)(4) permits a court to exclude from election results “illegal
26 ballots.” But an illegal ballot is only one that is cast in violation of a statute providing that

27 ² See December 4, 2022 Letter from Thomas P. Liddy to Timothy LaSota, at 6 (attached
28 hereto as Exhibit 2).

1 noncompliance invalidates the vote or a ballot cast by one who is not eligible to vote. *See*
2 *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994) (where a statute
3 provides that noncompliance invalidates a vote, that vote is invalid); *Moore*, 148 Ariz. at
4 156-7 (inclusion of ineligible names on voter list was insufficient to demonstrate illegal votes
5 where it was not established, ineligible persons actually voted). Arizona law does not
6 declare that ballots lacking chain of custody documentation are illegal. Plaintiff cannot carry
7 her burden to exclude any ballots dropped off on election day and later signature verified
8 and counted from the total of votes cast for governor in the 2022 general election.

9 **IV. Plaintiff’s Allegations of Misconduct Cannot Sustain this Contest.**

10 **A. Plaintiff Has Failed to Properly Plead Intentional Conduct.**

11 Plaintiff contends she has not alleged fraud; thus, her Complaint is not required to
12 be plead with particularity. [Resp. 6-7] Yet, the Complaint alleges that the Maricopa
13 County Defendants’ “interference” in the election qualifies as fraud. [Compl. ¶ 147]
14 Consequently, the claims of misconduct under A.R.S. § 16-672(A)(1) must meet the
15 heightened pleading requirements for fraud claims. Plaintiff has failed to do so – she has
16 not identified the “who, what, when, where, and how” the alleged fraud occurred. *Cafasso*
17 *v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011). Instead, Plaintiff
18 makes broad, imprecise statements that gratuitously and maliciously attack the Maricopa
19 County Defendants to sow distrust in Maricopa County elections.

20 Deflecting, Plaintiff states her Complaint withstands the particularity test because
21 she is alleging intentional conduct. [Resp. at 7] But misconduct allegations are unable to
22 survive a motion to dismiss if the basis for those allegations is “a mere theory, suspicion,
23 or conjecture.” *Hunt*, 19 Ariz. at 263-64. Plaintiff relies on the declaration of a cyber
24 security professional as support for the claims of intentional misconduct, but Mr. Parikh’s
25 Declaration is not based on an investigation using his cyber security training and
26 knowledge, but on his review of “statements made from poll workers, poll observers and
27 voters,” as well as “numerous news articles, online Maricopa meetings and . . . Maricopa
28 County Twitter statements.” [Parikh Decl. ¶ 6] Mr. Parikh conducted no investigation and

1 provided no finding of intentional misconduct, but rather merely stated that he cannot think
2 of anything else besides intentional misconduct to explain the printer failures Maricopa
3 County experienced. That is by definition speculation, and therefore, legally insufficient.
4 This pure conjecture falls far below the required pleading standard for claims of election
5 misconduct in an election contest. Plaintiff’s allegations are “not well-pled facts; they are
6 legal conclusions masquerading as alleged facts. As such, this court is not obligated to
7 assume their truth.” *Id* at 9. *citing Jeter*, 211 Ariz. at 389, ¶ 4.

8 **B. Plaintiff’s First Amendment Claim Does Not Establish Misconduct.**

9 Plaintiff’s “Freedom of Speech” claim is not properly before the court in this election
10 contest. Even if it is, Plaintiff has not alleged a violation of her First Amendment rights. In
11 the Response, Plaintiff makes a nonsensical argument that “A.R.S. § 16-672(A)(1) does not
12 require that Plaintiff have a First Amendment claim against Defendants, much less that she
13 has a First Amendment claim against a private actor like Twitter.” [Resp. at 19] In doing
14 so, Plaintiff appears to recognize that there is no First Amendment claim against Defendants
15 for the actions of a private company such as Twitter. *See O’Handley v. Padilla*, 579 F. Supp.
16 3d 1163, 1183 (N.D. Cal. 2022) (noting that Twitter’s decision to suspend account did not
17 constitute “state action” by state government officials who relayed concerns about accuracy
18 of information reported). Nonetheless, if Plaintiff is alleging that the Maricopa County
19 Recorder violated her First Amendment rights, she must provide well-pled facts to support
20 that allegation. Plaintiff has failed to do so.

21 The only allegation against any of the Maricopa County Defendants that Plaintiff
22 provided to support her First Amendment Claim is that the Maricopa County Recorder
23 attended a meeting to discuss a federal government agency’s role in the misinformation and
24 disinformation space in March 2022. [Compl. ¶ 96] Based on this single fact, Plaintiff asks
25 the court to infer misconduct, and further, that this alleged misconduct “could have resulted
26 in a shift of a dispositive number of votes in the 2022 general election.” [Resp. at 20] But
27 the Court will not “speculate about hypothetical facts that might entitle the plaintiff to relief.”
28 *Cullen*, 218 Ariz. at 420, ¶ 14. Nor will the Court “accept as true allegations consisting of

1 conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded
2 facts, unreasonable inferences or unsupported conclusions from such facts, or legal
3 conclusions alleged as facts.” *Jeter*, 211 Ariz. at 389, ¶ 4. More importantly, Plaintiff’s
4 First Amendment claim, even if assumed true, does not constitute misconduct, illegal votes,
5 or an erroneous count of votes as required by § 16-672(A)(1), (4)-(5).

6 **C. Plaintiff’s Due Process and Equal Protection Claims Fail.**

7 Plaintiff argues that her Due Process and Equal Protection Claims are properly pled
8 because the 2022 election “deviated from required procedures and plans. [Resp. at 26] In
9 fact, on November 8, 2022, the Maricopa County Defendants turned to established
10 contingency plans in order to accept and preserve voters’ ballots in order to ensure that
11 every registered voter who submitted a lawful ballot had that vote tabulated. The Maricopa
12 County Defendants succeeded in this purpose and their actions on Election Day were
13 anything but arbitrary and irrational.

14 Dismissal of these claims is required because Plaintiff’s 14th Amendment claims fail
15 as a matter of law. Equal Protection claims require intentional conduct and actual intent to
16 discriminate. *See Ballous v. McElvain*, 29 F.4th 413, 422 (9th Cir. 2022). Due process
17 requires an “intentional act on the part of the government or its officials.” *Shannon v.*
18 *Jacobowitz*, 394 F. 3d 90, 96 (2nd Cir. 2005). Speculative assumptions cannot be
19 substituted for factual allegations. *Lake v. Hobbs*, No. CV-22-00677-PHX-JTT, --- F. Supp.
20 3d. ---, 2022 WL 17351715, at 12* (D. Ariz. Dec. 1, 2022). In her Response, Plaintiff’s
21 Equal Protection and Due Process arguments merely repeat the baseless, speculative,
22 malicious, and sanctionable statements littered throughout the Complaint. By referring to
23 the alleged bad actors as “some or all Defendants” throughout her pleadings, Plaintiff
24 demonstrates that she is unable to identify with certainty who allegedly acted with
25 discriminatory intent. Moreover, the impact that all voters – Democrats, Non-Party
26 Affiliated, and Republicans alike – across Maricopa County experienced on Election Day
27 is not a prima facie showing of a Due Process or Equal Protection violation. *Vill. of*
28 *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977) (impact alone is

1 not determinative). Plaintiff has not alleged an Equal Protection or Due Process claim for
2 which relief may be granted.

3 **D. Plaintiff’s Constitutional Claims Do Not Belong in an Election Contest.**

4 Plaintiff’s arguments pertaining to her inclusion of Counts I, IX, and X in this
5 election contest are unclear at best; regardless, they fail. Plaintiff has not met her burden
6 of “showing that [Counts I, IX and X] fall within the terms of the statute providing for
7 election contests” and they must be dismissed. *Henderson v. Carter*, 34 Ariz. 528, 534
8 (1928).

9 The Legislature definitively dictated the Court’s jurisdiction in A.R.S. § 16-
10 672(A)(1)-(5). Violation of First or Fourteenth Amendment Rights, a claim for relief under
11 the Declaratory Judgment Act, or a § 1983 claim are not incorporated into A.R.S. § 16-
12 672(A)(1)-(5) and are not grounds for an election contest. Moreover, the relief Plaintiff
13 seeks related to her constitutional claims is not permitted in election contests. For example,
14 the Court is prohibited from granting Count X’s proposed relief of “setting aside the election
15 and ordering a new election” in favor of Plaintiff. [Compl. ¶ 184] Perhaps that is why
16 Plaintiff seeks a Declaratory Judgment expanding the Court’s jurisdiction in this matter.
17 But the Arizona Supreme Court is clear, when the gravamen of a complaint is an election
18 contest, the election contest statutes control and the Court cannot expand the proceeding to
19 other matters. *Donaghey v. Attorney Gen’l*, 120 Ariz. 93, 95 (1978).

20 Conclusion

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

1 RESPECTFULLY SUBMITTED this 18th day of December, 2022.

2 RACHEL H. MITCHELL
3 MARICOPA COUNTY ATTORNEY

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