SUPREME COURT OF ARIZONA

MARICOPA COUNTY, BILL GATES; STEVE GALLARDO, THOMAS GALVIN, CLINT HICKMAN, JACK SELLERS, the Maricopa County Board of Supervisors, and STEPHEN RICHER, the Maricopa County Recorder

Petitioners,

v.

HON. TINA AINLEY, Judge of the Superior Court of the State of Arizona, in and for the County of Yavapai,

Respondent,

and

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED, ERIC LOVELIS, WILLIAM JOSEPH APPLETON, LAURA HARRISON, YAVAPAI COUNTY, CRAIG L. BROWN, JAMES GREGORY, DONNA G. MICHAELS. MARY MALLORY, HARRY B OBERG, MICHELLE M. BURCHILL, COCONINO COUNTY, JERONIMO VASQUEZ, PATRICE HORSTMAN, ADAM HESS, JUDY BEGAY, LENA FOWLER, PATTY HANSEN, ARIZONA ALLIANCE FOR RETIRED AMERICANS, and VOTO LATINO,

Real Parties in Interest.

No. _____

Court of Appeals
Division One
1 CA-SA 24-0086

Yavapai County Superior Court
No. S1300CV202400175

REAL PARTIES IN INTEREST-PLAINTIFFS' PETITION FOR REVIEW OF A SPECIAL ACTION DECISION OF THE COURT OF APPEALS

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Under Rule 8(b), Rule of Procedure of Special Action ("RPSA"), and A.R.C.A.P. 23, Strong Communities Foundation of Arizona, Eric Lovelis, William Joseph Appleton, and Laura Harrison respectfully submit this Petition for Review of a Special Action Decision of the Court of Appeals.

Introduction

On the merits, the underlying claims here present straightforward issues of statutory interpretation—that Maricopa, Coconino, and Yavapai Counties are engaging in a host of unlawful practices in administrating their elections. Since day one, the Petitioners[1] ("Maricopa County") have made every effort to avoid the merits and delay adjudication of this case on the merits. And now, in yet another attempt, Maricopa County filed a special action in the Court of Appeals urging a novel interpretation of RPSA 4(b) ("Rule 4(b)") that entirely disregards Arizona's other venue statutes. The Court of Appeals agreed, ignoring that those other statutes establish that more than one county, and public officers from different counties, can be sued in the same action. A.R.S. § 12-401(15) and (16).

[1] Maricopa County; Bill Gates; Steve Gallardo, Thomas Galvin, Clint Hickman, and Jack Sellers in the official capacities as members of the Maricopa County Board of Supervisors; and Stephen Richer in his official capacity as County Recorder

Longstanding precedent of this Court requires that rules of procedure be read in harmony with related statutes. Yet, the Court of Appeals cast aside the harmonization requirement and ignored Arizona's venue statute to hold that a Plaintiff asserting claims that raise "question[s] of law or fact common to" multiple plaintiffs must sue those plaintiffs separately in multiple actions scattered across the state. A.R.C.P. 20(a)(1)(B). This, of course, raises the serious risk of inconsistent decisions on the same issue. The Court of Appeals' interpretation of Rule 4(b) would lead to absurd results and piecemeal litigation. This Court should accept review and reverse.

Statement of the Case

On February 23, the Plaintiffs filed their special action complaint in Yavapai County Superior Court, naming Maricopa County and elected and public officials from Coconino[2] and Yavapai County.[3] PRAppx009-150.

[2] Coconino County; Jeronimo Vasquez, Patrice Horstman; Adam Hess, Judy Begay, and Lena Fowler, in their respective official capacities as members of the Coconino County Board of Supervisors; and Patty Hansen, in her official capacity as Coconino County Recorder.

[3] Yavapai County; Craig L. Brown, James Gregory, Donna G. Michaels, Mary Mallory, and Harry B. Oberg, in their respective official capacities as members of the Yavapai County Board of Supervisors; Michelle M. Burchill, in her official capacity as Yavapai County Recorder.

On March 28, over a month later, Maricopa County filed a motion to change venue ("12-406 Motion"). PRAppx151-162. The Plaintiffs filed their opposition on April 2. PRAppx163-177. In its 12-406 Motion, Maricopa County claimed it was "confident in the ability of this [Yavapai County Superior] Court to render a just verdict." PRAppx157. Similarly, at oral argument, counsel for Maricopa County claimed "we have complete confidence in this [Yavapai County Superior] Court." PRAppx182. Counsel further stated, "Plaintiffs suggested in their response that perhaps we are afraid to litigate before this Court. Your Honor, if this Court ultimately decides that the venue is proper here, we will happily litigate here if that is what this Court decides. We are simply attempting to do what we believe the law allows to further justice and the convenience of witnesses." PRAppx183. Maricopa County's representations to the Yavapai County Superior Court contrast starkly with what it had to say about that same court in its petition for special action to the Court of Appeals, claiming that the Plaintiffs filed their case in Yavapai County "because there was a judge or judges in heavily Republican Yavapai County, *where judges must campaign for re-election*." PRAppx189 (emphasis in original).

On April 3, after hearing oral argument, the superior court denied the 12-406 Motion, ordering a briefing schedule and requiring the parties to confer on trial dates. Pl.Appx-205-206. On April 29, the parties stipulated to a four-day trial commencing on June 17. PRAppx207-211.

Amidst all this, Maricopa County filed its petition before the Court of Appeals on April 26, claiming the trial court erred by denying the 12-406 Motion because it violated Rule 4(b). PRAppx184-203. On April 29, Maricopa County filed a motion with the Court of Appeals asking it to stay the trial court proceedings, which was granted on May 1. PRAppx212-213.

On May 31, the Court of Appeals issued a memorandum decision accepting special action jurisdiction and granting relief. It held that because "Rule 4(b) does not irreconcilably conflict with A.R.S. § 12-401(15), (16)," there was no need to harmonize them. PRAppx007 ¶ 10. Rather, in the court's view, "the court must follow the venue mandated for the initial filing of an action, though that court may later transfer venue for cause." *Id.* ¶ 13. Therefore, the court held, "special actions brought against Maricopa County officials must be initiated in Maricopa County, just as special actions brought against Coconino County officials must be initiated in Coconino County." PRAppx008 ¶ 14.

Statement of the Issues

This petition presents two issues for review:

1. May a plaintiff file a special action in superior court that names as defendants officers from multiple counties?

2. In a special action filed in superior court suing officers from multiple counties at the same time, is venue proper if that action is filed in "one of the counties," A.R.S. § 12-401(15) and in a "county in which ... one of [the] several officers... holds office," A.R.S. § 12-401(16)?

Jurisdictional Statement

This Court weighs four factors when determining whether to accept a petition for review. Three are relevant here: 1) "that no Arizona decision controls the point of law in question"; 2) "that there are conflicting decisions by the Court of Appeals"; or 3) "that important issues of law have been incorrectly decided." RPSA 8(b), A.R.C.A.P. 23(d)(3).

First, no Arizona court has previously addressed whether a plaintiff may file a special action in superior court against officers from more than one county.

Second, the Court of Appeals' decision here conflicts with its prior decision in *Cochise County. v. Helm* ("*Helm*"), 130 Ariz. 262 (App. 1977),

which held that RPSA 4(b) should be harmonized with Arizona's venue statutes, whereas the Court of Appeals here held the opposite.

Third, important issues of law have been incorrectly decided. The drafters of RPSA 4 intended that plaintiffs in special actions be able to name defendants from more than one county. The State Bar Committee Note to the rule explains Rule 4(b) "is in general accordance with Arizona's venue statute" RPSA 4 State Bar Committee Note (b), and Arizona's venue statute expressly permits actions against public officers from more than one county at the same time. A.R.S. § 12-401(15) and (16).

Standard of Review

"Interpretation of rules and statutes is a legal matter, which [the Supreme Court] review[s] de novo." *Pima Cnty. v. Pima Cnty. L. Enf't Merit Sys. Council*, 211 Ariz. 224, 227 ¶ 13 (2005).

In a motion for change of venue, "[t]he burden of proof is on the moving party, who must show a balance of interests favoring transfer." *Dunn v. Carruth*, 162 Ariz. 478, 481 (1989) (citations and quotation marks omitted).

"[T]he action of the trial court" to deny a change of venue motion "can only be reversed when it clearly appears that it has abused its discretion." *Slovenic Nat. Ben. Soc. v. Dabcevich*, 30 Ariz. 294, 300 (1926); *see also*

Maricopa Cnty. v. Barkley ("*Barkley*"), 168 Ariz. 234, 237 (App. 1990) ("[A]ppellate courts will not interfere with a venue ruling in the absence of a clear abuse of the trial court's discretion." (citing *Floyd v. Superior Court, Cochise County*, 125 Ariz. 445 (1980)).

"[S]ince it is [the] plaintiff's right to choose the forum, his choice should not be disturbed except upon adequate showing." *First Nat. Bank & Tr. Co. v. Pomona Mach. Co.*, 107 Ariz. 286, 290 (1971). "[S]ince it is for the plaintiff to choose the place of suit, his choice of a forum should not be disturbed except for weighty reasons...." Restatement (Second) Conflicts of Law § 84 comment c, p. 251 (1971).

Argument

I. When read in harmony with Arizona's venue statutes, Rule 4(b) allows for special actions against officers from multiple counties, which can be filed in any of the counties.

When multiple counties are sued in the same action, Arizona's venue statute explains that when "several counties are defendants," the action "may be brought in any one of the counties." A.R.S. § 12-401(15). And when public officers from multiple counties are sued, the venue statute explains that the action may be brought "in the county in which ... one of several officers[] holds office." A.R.S. § 12-401(16). Rule 4(b) states that "[a]n action brought in the Superior Court under this Rule shall be brought in the county

in which the body or officer has or should have determined the matter to be reviewed." The Court of Appeals reached its decision by reading Rule 4(b) in isolation. However, Rule 4(b) does not stand alone. It must be read in conjunction with Sections 12-401(15) and (16) and harmonized with them.

The Court of Appeals' decision would effect a revolution in how venue works in special actions, making it impossible ever to file a special action against more than one county at a time or against non-statewide public officers who are from different counties.

Because Yavapai County and officers of Yavapai County are Defendants in the underlying action, venue is proper in Yavapai County Superior Court. Rule 4(b) does not compel a different result because Arizona courts "seek to harmonize rules and statutes, reading them in tandem whenever possible," *Duff v. Lee*, 250 Ariz. 135, 138 ¶ 14 (2020). The Court of Appeals, however, did the exact opposite, deciding that A.R.S. § 12-401(15) and (16) should be ignored entirely. But Rule 4(b) was drafted with the *intent* that the two be read in harmony. The State Bar Committee Note explains that Rule 4(b) "is in general accordance with Arizona's venue statute." RPSA 4, State Bar Committee Note (b).

This Court should, therefore, interpret Rule 4(b) to harmonize with A.R.S. § 12-401(15) and (16). This is easy to do because the first half of A.R.S § 12-401(15) and (16) say essentially the same thing as Rule 4(b): "Actions against counties shall be brought in the county sued...." and "Actions against public officers shall be brought in the county...." Rule 4(b) is silent about how to handle a situation where a special action is brought against more than one county's officers at a time. The statutes fill in the gap, explaining that if "several counties are defendants," the action "may be brought in any one of the counties." A.R.S. 12-401(15). This Court should thus read the rule to harmonize with A.R.S. § 12-401(15) and (16) so that the statutes fill in the gap in Rule 4(b).

The Court of Appeals incorrectly interpreted Rule 4(b) as imposing an absolute "requirement that special actions against a county body or officer be filed in the county where that body or officer presides." PRAppx007 ¶ 11. However, it offered little justification for this approach. Indeed, not even the word "shall" in Rule 4(b) compels such an absolute rule. In *Dunn v. Carruth*, this Court held that "shall" is not mandatory when harmonizing differing venue requirements. In *Dunn*, at issue was A.R.S. § 12–822(B), which required that "[i]n an action against this state upon written demand of the

attorney general, ... the place of trial of any such action *shall be changed* to Maricopa County." 162 Ariz. 478, 479 (1989) (quoting A.R.S. § 12-822(B)) (ellipsis in original). Notwithstanding this mandatory language, this Court rejected the State's argument that, once the State had invoked Section 12-822(B), the plaintiffs were foreclosed from transferring venue out of Maricopa County under Section 12-406: "Even though the state has obtained a venue change ... under A.R.S. § 12–822(B), other parties may also move for a venue change from Maricopa County under A.R.S. § 12–406. A party will not be precluded from moving for a venue change for cause under A.R.S. § 12–406...." *Id.* at 480.

The same reasoning applies here. "Rarely, if ever, does a venue statute fix venue immutably." *Barkley*, 168 Ariz. at 238. This is because "[v]enue statutes either create limited venue choices for plaintiffs, or create presumptive venues. *E.g.*, A.R.S. § 12–401. In either case, venue may be changed upon the grounds specified by statute. *E.g.*, A.R.S. §§ 12–406, 408." *Id.* What *Barkley* said about Section 12-1116 applies equally to Rule 4(b): it "best fits the general pattern of venue legislation as a presumptive choice of venue, not as a final, unalterable venue selection." *Id.* Sections 12-401(15) and (16) should, therefore, apply to this action, just as Section 12-406

applied in *Dunn* and Section 12-1116 applied in *Barkley*. Because Sections 12-401(15) and (16) allow a plaintiff to choose venue from multiple options in the first instance, the "shall be brought" language of Rule 4(b), when harmonized with Section 12-401(15) and (16), means that an action "shall be brought" in any of the counties being sued.

A. The Court of Appeals directly contradicted its holding in *Helm*.

That venue against a county is proper outside of that county is further confirmed by A.R.S. § 12-408(A), which establishes that a party "opposite" a county "[i]n a civil action" "is *entitled* to a change of venue to some other county." (emphasis added).

The Court of Appeals' approach—of reading Rule 4(b) in isolation—was already by the Court of Appeals, and its decision here is therefore in direct contradiction with its prior decision. In *Cochise County. v. Helm* ("*Helm*"), 130 Ariz. 262, 263 (App. 1977), the petitioners appealed the Superior Court's order for a change of venue under A.R.S. § 12-408. They made the same argument that Maricopa County made here: that Rule 4(b) foreclosed the possibility of venue for a special action against a county (and its officers) ever being outside that county. The Court of Appeals rejected this argument, instead holding that Rule 4(b) "is in general accordance with

our venue statute, A.R.S. s 12-401.... The rule, which of course has the force of statute, contains no provision barring the application of A.R.S. s 12-408 *nor a plainly expressed mandate that a special action must be tried in the county in which the action is brought*." *Id.* (emphasis added).

Like Maricopa County here, the petitioners in *Helm* argued that a special action against a county and its officers could only be heard in that county. *Id.* The Court of Appeals rejected that interpretation and affirmed the Superior Court's transfer of venue to another county.

Therefore, the Court of Appeals has already held that Rule 4(b) is not an absolute requirement that a special action against a county officer must be heard in that county. The Court of Appeals attempted to distinguish *Helm* by claiming that it merely "establish[ed] the legal principle that the court must follow the venue mandated for the initial filing of an action, though that court may later transfer venue for cause. That is, the court must apply the initial venue provisions of the Arizona Rules of Procedure for Special Actions even if later changes in venue are permitted." PRAppx007 ¶ 13. However, *Helm* never actually said this. Rather, it held that Rule 4(b) must be harmonized with Arizona's venue statutes—something that the Court of Appeals improperly refused to do here.

The issue in *Helm* was whether Rule 4(b) allows for a special action to be transferred to a different county under Section 12-408. *Helm* held that it does because Rule 4(b) "contains no provision barring the application of A.R.S. s 12-408 nor a plainly expressed mandate that a special action must be tried in the county in which the action is brought." *Helm*, 130 Ariz. at 263. *Helm* never analyzed how Rule 4(b) should be harmonized with Section 12-401(15) and (16). However, because Rule 4(b) "contains no provision barring the application of" Section 12-401(15) and (16), and because it does not contain "a plainly expressed mandate that a special action" cannot be tried against officers from multiple counties at the same time, *Helm*, 130 Ariz. at 263, then applying its reasoning here means that the Plaintiffs' interpretation is the correct one and that the Court of Appeals' decision is in direct conflict with *Helm*.

B. Rule 4(b) was written for the convenience of plaintiffs, not defendants, and this Court should therefore interpret it accordingly.

The purpose of Rule 4(b) is to protect plaintiffs, not defendants. "Venue is a privilege which permits one in whose favor it runs to have a case tried at a convenient place...." *Sil-Flo Corp. v. Bowen*, 98 Ariz. 77, 83 (1965). "The purpose of the venue portion of the rule [4(b)] is to permit the *plaintiff* to have the action brought in a convenient place." *Belcher v. Raines*, 130 Ariz.

464, 465 (App. 1981) (emphasis added) (*citing Sil-Flo Corporation v. Bowen*, 98 Ariz. 77 (1965)). The Court of Appeals ignored this principle. Implicit in its decision is the incorrect premise that Rule 4(b) was drafted for the convenience of defendants. Its opinion was wrongly decided because it applied the wrong presumption.

C. Public policy and the absurdity doctrine favor the Plaintiffs' interpretation.

The ultimate result of the Court of Appeals' decision is that the Plaintiffs would be forced to split their case into three different actions separately filed in Coconino, Maricopa, and Yavapai Counties, each asserting similar and overlapping claims about the same or similar election practices and the same provisions of Arizona's election statutes. This result is contrary to the public policy of this State.

"[W]henever possible, all claims should be disposed of in one action...." *Staffco, Inc. v. Maricopa Trading Co.*, 122 Ariz. 353, 357 (1979). "Public policy is against deciding cases piecemeal." *Musa v. Adrian*, 130 Ariz. 311, 312 (1981). "It is against public policy to split a cause of action and to make two or more suits of it when one is sufficient." *Williams v. Williams*, 32 Ariz. 164, 168, (1927).

Not only is the Court of Appeals' interpretation of Rule 4(b) contrary to public policy, but it is absurd. Under the Absurdity Doctrine, this Court interprets statutes to avoid absurd results. *Perini Land & Dev. Co. v. Pima Cnty.*, 170 Ariz. 380, 383 (1992). "A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion." *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17 (2001) (cleaned up). A reading of Rule 4(b) that requires piecemeal litigation and the real threat of inconsistent results is absurd and should, therefore, be avoided.

Under the Court of Appeals' interpretation of Rule 4(b), no party could ever file a special action against more than one county at a time. But Section 12-401 and Rule 4(b) call for no such absurd result here.

Indeed, Arizona courts *do* hear special actions against multiple counties at the same time. *E.g.*, *Arizona Libertarian Party, Inc. v. Bd. of Supr's of Cochise Cnty.*, 205 Ariz. 345 (App. 2003) (special action filed in Cochise County by Arizona Libertarian Party against both Cochise and Coconino Counties). In *Arizona Libertarian Party*, two different counties had both refused to put the Libertarian party candidate on the ballot, and the party filed a special action against both counties at the same time.

Under the Court of Appeals' interpretation of Rule 4(b), the Libertarian Party would have been required to file two separate actions, raising the realistic threat of opposite results in each action. The Plaintiffs have been unable to find *any* case where an Arizona court has held that venue in a multi-county special action was improper under Rule 4(b).

The Court of Appeals' decision will have particularly pernicious effects in cases about election procedures because the same election issues often affect multiple counties. Counties frequently adopt election practices that are similar or identical (as with the practices at issue in this case). If two counties (or two cities or school districts located in different counties) have similar or identical practices or programs, it makes sense for the sake of judicial economy to allow plaintiffs to file a special action against both counties at the same time. The interests of justice demand it. Any other course sows chaos and confusion.

However, this is not the only absurdity inherent in the Court of Appeals' interpretation of Rule 4(b). The Court of Appeals "remand[ed] the matter to the superior court to dismiss the Maricopa Petitioners without prejudice to filing an action in Maricopa County." PRAppx008 ¶ 16. If this Court does not accept review, then the Plaintiffs will immediately refile

their action in Maricopa County. Under *Helm* and Section 12-408, however, the Plaintiffs have the right to have their case immediately transferred back out again, and the Plaintiffs would immediately exercise their right to transfer venue. The court of appeal's decision will lead to the absurd ping-ponging of cases around the state.

Request for Fees and Expedited Timing

Under A.R.C.A.P. 21(a), the Plaintiffs request an award of their costs and attorneys' fees under A.R.S. §§ 12-341, -348, and -2030.

Additionally, because of the time-sensitive nature of this election-related matter, the Plaintiffs request that, under Rule 3, this Court: 1) expedite its consideration of this petition and 2) suspend Rule 23's usual deadlines and require that Maricopa County file its response, if any, within 12 calendar days after this petition is filed.

Conclusion

Therefore, for the preceding reasons, this Court should accept the Petition, vacate the Court of Appeals' opinion, and return this case to the superior court for adjudication on the merits.

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RESPECTFULLY SUBMITTED this 12th day of June, 2024.

America First Legal Foundation

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SUPREME COURT OF ARIZONA

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CERTIFICATE OF COMPLIANCE: PETITION FOR REVIEW

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Pursuant to Arizona Rules of Civil Appellate Procedure Rule 23(g)(3), this certificate of compliance concerns a Petition for Review submitted under Rule 23(h). The undersigned counsel certifies that the attached Petition for Review uses a 14-point font, is double spaced and contains 3,500 words according to the word-count function of Microsoft Word. The Petition for Review does not exceed the word limit that is set by Rule 23.

RESPECTFULLY SUBMITTED this 12th day of June, 2024.

America First Legal Foundation

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SUPREME COURT OF ARIZONA

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The undersigned hereby certifies that on this 12th day of June, 2024, a copy of the accompanying Petition for Review was electronically filed via AZTurboCourt and e-served via email to:

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