

FEB 24 2025

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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

D. CHAMBERLAIN

STRONG COMMUNITIES FOUNDATION OF ARIZONA INCORPORATED, ERIC LOVELIS, WILLIAM JOSEPH APPLETON, and LAURA HARRISON;

Plaintiffs,

v.

YAVAPAI COUNTY; CRAIG L. BROWN, JAMES GREGORY, DONNA G. MICHAELS, MARY MALLORY, and HARR 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; MARICOPA COUNTY; BILL GATES, STEVE GALLARDO, THOMAS GALVIN, CLINT HICKMAN, and JACK SELLERS, in their respective official capacities as members of the Maricopa County Board of Supervisors; STEPHEN RICHER, in his official capacity as Maricopa County Recorder; COCONINO COUNTY; JERONIMO VASQUEZ, PATRICE HORSTMAN; ADAM HESS; JUDY BEGAY, and LENA FOWLER, in their respective capacities as members of the Coconino County Board of Supervisors; and PATTY HANSEN, in her official capacity as Coconino County Recorder,

Defendants.

Case No. S1300CV202400175

UNDER ADVISEMENT RULING/ORDER RE:
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT
AND
DEFENDANTS' AND INTERVENORS'
MOTIONS TO DISMISS

HONORABLE TINA R. AINLEY

BY: Dawn Paul, Judicial Assistant

DIVISION 3

DATE: February 24, 2025

The Court has read and considered *Plaintiffs' Motion for Partial Summary Judgment ("Plaintiffs' Motion")*, Defendant *Yavapai County's Motion for Judgment on the Pleadings* and

Intervenors' Motion to Dismiss (collectively "*Motions to Dismiss*"). The Court has reviewed the responses and replies and considered oral argument.

On February 23, 2024, Plaintiff's filed a *Complaint for Special Action Relief* ("*Complaint*") in the Superior Court. As set forth in the *Complaint*, Plaintiffs describe themselves as an "Arizona 501(c)3 nonprofit incorporated on September 16, 2018." Part of Plaintiff's mission is to "increase civic engagement" in Arizona elections and make sure elections are "free, fair, and lawfully administered." *Complaint* ¶¶ 12, 13. Plaintiff Laura Harrison is described as a "resident of Yavapai County, where she is registered to vote." *Complaint* ¶16. Plaintiffs accuse Yavapai County and the Yavapai County Recorder's Office (collectively "Yavapai County") of violating elections statutes and claim that Yavapai County will continue violating the same provisions unless the Court issues certain directives.

Standing

Intervenors argue that Plaintiffs lack standing to request declaratory relief *or* to bring this mandamus action because Plaintiffs lack the "distinct and palpable injury" sufficient for standing. *Sears v. Hull*, 192 Ariz. 65, 69 (1998). The Court agrees as to Plaintiffs' claims for declaratory relief. The Declaratory Judgment Act does not "create standing" where standing does not exist. *Dail v. City of Phoenix*, 128 Ariz. 199, 201 (App. 1980). As pointed out by Intervenors, A.R.S. §12-1832 provides that Plaintiffs are entitled to declaratory relief only if their "rights, status or other legal relations are affected by a statute." The organization alleges that it has one contributor in Yavapai County but does not assert that her rights were in any way affected by the actions of Yavapai County during the 2022 election. Plaintiffs have not alleged that they were or will be denied the right to vote or otherwise explain how their organization or its contributors will be affected by the challenged procedures. Plaintiffs assert that they have standing by virtue of being voters suing over "misconduct" by election officials. However, misconduct is sufficient to state a claim for voters only if it affected "the result" of the election. *See* A.R.S. §16-672; *Moore v. City of Page*, 148 Ariz. 151, 159 (App. 1986) (*quoting Findley v. Sorenson*, 35 Ariz. 265, 269 (1929)). Nowhere in the *Complaint* have Plaintiffs asserted that the errors made by Yavapai County affected the results of the 2022 election.

A more relaxed standard is applied for standing in a mandamus action, however. *Arizona Public Integrity Alliance v. Fontes*, 250 Ariz. 58, 62 (2020). A party seeking to compel a public official to perform an act imposed by law must simply demonstrate at "beneficial interest" in the action. *Id.* Whether a party is beneficially interested is liberally interpreted to "promote the ends of justice." *Id.* *See Barry v. Phx. Union High School*, 67 Ariz. 384, 387 (1948). Still, mandamus is an "extraordinary remedy issued by a court to compel a public officer to perform an act which the law specifically imposes as a duty." *Sears v. Hull*, 192 Ariz. 65, 68 (1998). If the action of a public officer is discretionary then mandamus relief cannot be used to require a public official to "exercise that discretion in a particular manner." *Blankenbaker v. Marks*, 231 Ariz. 575, 577 (App. 2013).

To determine whether the parties have standing by means of mandamus relief requires a review of the counts to determine whether Plaintiffs are seeking to “compel an act required by law.” Because the Court is required to review each Count, this Court will also address Yavapai County’s and Intervenors assertions that each the counts fail to set forth a legal claim. In reviewing each count, the Court must examine the “sufficiency of the complaint...” *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359 (App. 1999). A motion to dismiss should not be granted if the facts, taken as true, would entitle plaintiff to some kind of relief under any theory. *Dressler v. Morrison*, 212 Ariz. 279 (2006). A court must approach any motion for judgment on the pleadings by accepting the well-plead factual allegations in the complaint, along with all reasonable interpretations of those facts. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417 (2008), *Hustrulid v. Stakebake*, 253 Ariz. 569, 577 (App. 2022).

Counts

The claims against Yavapai County are contained in Counts III, VIII, X, XI, XII. Count III relates to printer malfunctions; Count VIII challenges signature verification; Count X asserts that the County is incorrectly cancelling voter registrations; Count XI relates to curing procedures; and Count XII asserts that drop boxes are not being monitored as required by law.

Count III – Printer Malfunctions

Accepting Plaintiffs’ allegations as true, Plaintiffs claim that “printer malfunctions” in Yavapai County “caused long lines.” A.R.S. §16-411(B)(4) states that the voting centers must “allow any voter in that county to receive the appropriate ballot for that voter on election day....” Plaintiffs have not alleged that Yavapai County failed to meet the statutory requirement. Instead, Plaintiffs allege that printer malfunctions led to long lines which resulted in voters leaving. The email attached to the *Complaint* shows that one voting center had a printer down for about 45 minutes. Such an allegation is not proper for mandamus relief. The Court cannot order officials to refrain from technical failures, like printer malfunctions. *See Blakenbaker, supra*. Additionally, the act of standing in line to vote is not a burden for the court to correct. *See Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021) (standing in line, like driving to polling place, is part of the “usual burdens of voting,” quoting *Crawford v. Marion County Election Bd*, 553 U.S. 181, 198 (2008)). Not only do Plaintiffs fail to make an appropriate request for mandamus relief, Count III is insufficient as a matter of law. Additionally, Plaintiffs request in in this count that Yavapai County should “revert to precinct voting countywide.” A.R.S. §16-411(B)(4) grants each county the discretion to choose whether to employ precinct voting or voting center model. The Court has no authority to overrule the Board of Supervisors in Yavapai County. *See Puente v. Ariz. State Leg.*, 254 Ariz. 265, 268 (2022).

Count VIII

Count VIII alleges that Yavapai County counted as “valid” any voter-assisted ballot

“regardless of the whether the signature matched the one on file.” *Complaint*, ¶¶ 108, 191-198. Plaintiffs refer to procedures identified in Maricopa County but have attached no affidavits, policy statement, prior testimony or communications from Yavapai County supporting their allegation. While Plaintiffs may have a “beneficial interest” in ensuring that voter-assisted ballots are correct (and thus have standing for this Court), Count VIII is unsupported by any facts and, therefore, fails to state a claim on which relief can be granted. *See Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008).

Count X

Plaintiffs claim that since 2020, Yavapai County cancels voter registrations “without consent or input” based on information from the Arizona Department of Transportation Service Arizona system. *Complaint* ¶¶ 116, 123-124, 209. However, county recorders are required to cancel voter registration “at the request of the person registered”, *or* upon receipt of “written information from the person registered that the person has a change of address outside the county....” A.R.S. §15-165(a)(1), (9). When a voter submits a driver’s license application, renewal or change of address for with indicating they have moved to another county, such an application, renewal or change constitutes a change of address for voter registration. 52 U.S.C. §250504(d); *see* A.R.S. §16-112 (Every person applying for a driver license or renewal “shall be allowed to register to vote,” implying a change in registration is also accomplished through the department of transportation.) There is also no requirement that Yavapai County notify the voters about the cancellation of their registrations, unless the notice is provided in a summary report from a jury commissioner or when the recorder “receives written information from the person registered that the person has a change of residence within the county....” A.R.S. §16-165(9)(b), §16-165(C). In the *Complaint*, Plaintiffs have failed to state how any of their supporters, let alone the contributor from Yavapai County, were harmed by the lack of prior notice. This is certainly not an appropriate mandamus claim since the actions requested are not mandated by law. *See Sears, supra*. This claim also fails to state a claim for which relief can be granted.

Count XI

The *Complaint* correctly states that if a signature on an early ballot appears inconsistent with the voter’s signature on file, the county recorder must “make reasonable efforts to contact the voter” and allow the voter to cure the error. A.R.S. §16-550(A); *Complaint* ¶125. If Yavapai County was making *no* efforts to contact the voter, then mandamus relief may be available, but mandamus cannot be used to force a public official to use their “discretion in a particular manner.” *See Blankenbaker, supra*. The *Complaint* fails to point to any law that requires more than what Yavapai County is doing to comply with the “reasonable efforts” set forth in the statute. Plaintiffs do not have a valid mandamus claim nor does the count set forth a claim for which relief can be granted.

Count XII

Plaintiffs cite A.R.S. §16-1005(E) for their assertions that drop boxes used for ballots must be staffed by elections officials. A.R.S. §16-1005(E) states, “A person or entity that knowingly solicits the collection of voted or unvoted ballots by misrepresenting itself as an election official or as an official ballot repository or is found to be serving as a ballot drop off site, other than those established and staffed by election officials is guilty of a class 5 felony.” Plaintiffs seek the Court to define a term in the way that they wish, which is not an appropriate request for mandamus relief. Additionally, A.R.S. §16-1005 is a criminal statute which does not convey a private cause of action to Plaintiffs. *Phoenix Baptist Hosp. & Medical Center, Inc. v. Aiken*, 179 Ariz. 289 (App. 1994) (general rule is that “no private cause of action should be inferred based on a criminal statute where there is no indication whatsoever that the legislature intended to protect any special group by creating a private cause of action by a member of that group.”). Additionally, A.R.S. §16-1005 when read as a whole is designed to prevent a “person” from committing ballot fraud. *See* A.R.S. §16-1005(A), (E), (F), (G). Plaintiffs have presented no authority to show that its language is designed to regulate election officials. *See Brnovich v. Democratic National Committee*, 594 U.S. 647 (2021). Plaintiffs count fails to state a claim for which the Court can grant mandamus relief. The count also contains insufficient facts for which relief can be granted.

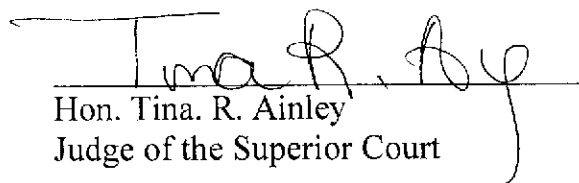
A complaint that fails to allege particularized harm sufficient to confer standing or fails to state a claim upon which relief can be granted must be dismissed. *See Arcadia Osborn Neighborhood v. Clear channel Outdoor, LLC*, 240 Ariz. 88 (App. 2023). In this case, Plaintiffs have failed to establish that they or their organizations have suffered harm from Yavapai County’s election processes. Plaintiffs’ requests for mandamus relief improperly seek for the court to direct Yavapai in the exercise of their discretion and so Plaintiffs are not entitled to the “beneficial interest” standard applied for standing in mandamus actions. In addition, the counts are unsupported by facts or rely on convoluted readings of the election statutes.

IT IS ORDERED granting the *Motions to Dismiss* with prejudice.

IT IS FURTHER ORDERED denying *Plaintiffs’ Motion*.

No further matters remain pending, and the judgment is entered pursuant to Ariz. R. Civ. Pro. Rule 54(c).

FEB 24 2025


Hon. Tina. R. Ainley
Judge of the Superior Court

cc:

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