

Arizona Supreme Court

Civil Transfer Appeal

CV-24-0251-T/AP

FONTES v DANA LEWIS et al

Appellate Case Information

Case Filed: 23-Oct-2024

Case Closed:

Dept/Composition

Side 1. ADRIAN FONTES, in his official capacity as the Secretary of State, Appellant

(Litigant Group) ADRIAN FONTES, in his official capacity as the Secretary of State

- Adrian P Fontes, Arizona Secretary of State

Attorneys for: Appellant

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Side 2. DANA LEWIS, in her official capacity as Pinal County Recorder; JEFF SERDY, in his official capacity as Pinal County Supervisor; JEFFREY MCCLURE, in his official capacity as Pinal County Supervisor; KEVIN CAVANAUGH, in his official capacity as Pinal County Supervisor; MIKE GOODMAN, in his official capacity as Pinal County Supervisor; STEPHEN MILLER, in his official capacity as Pinal County Supervisor, Appellee

(Litigant Group) DANA LEWIS, in her official capacity as Pinal County Recorder; JEFF SERDY, in his official capacity as Pinal County Supervisor; JEFFREY MCCLURE, in his official capacity as Pinal County Supervisor; KEVIN CAVANAUGH, in his official capacity as Pinal County Supervisor; MIKE GOODMAN, in his official capacity as Pinal County Supervisor; STEPHEN MILLER, in his official capacity as Pinal County Supervisor

- Dana Lewis, Pinal County Recorder's Office
- Jeff Serdy, Pinal County Board of Supervisors
- Jeffrey McClure, Pinal County Board of Supervisors
- Kevin Cavanaugh, Pinal County Board of Supervisors
- Mike Goodman, Pinal County Board of Supervisors
- Stephen Q Miller, Pinal County Board of Supervisors

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Side 3. GILA RIVER INDIAN COMMUNITY, Amicus Curiae

(Litigant Group) GILA RIVER INDIAN COMMUNITY

- Gila River Indian Community

Attorneys for: Amicus Curiae

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Side 4. REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF ARIZONA, LLC, Amicus Curiae

(Litigant Group) REPUBLICAN NATIONAL COMMITTEE AND REPUBLICAN PARTY OF ARIZONA, LLC

- Republican National Committee
- Republican Party of Arizona LLC

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Side 5. RURAL ARIZONA ENGAGEMENT; SAVE OUR SCHOOLS ARIZONA NETWORK; ONE ARIZONA, Amicus Curiae

(Litigant Group) RURAL ARIZONA ENGAGEMENT; SAVE OUR SCHOOLS ARIZONA NETWORK; ONE ARIZONA

- Rural Arizona Engagement
- Save Our Schools Arizona
- One Arizona

Attorneys for: Amicus Curiae

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CASE STATUS

Oct 25, 2024.....Decision Rendered

Oct 23, 2024.....Pending

Arizona Supreme Court

Civil Transfer Appeal

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FONTES v DANA LEWIS et al

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
2 CA 2 CA-CV 24-0309					
↪ PIN	S1100CV202402541		Delia Reeves Neal, Judge on PC Comments: (none)		

CASE DECISION

25-Oct-2024 DECISION ORDER

* Appellant Adrian Fontes, in his official capacity as Arizona Secretary of State (the "Secretary"), filed an emergency complaint for special action relief with the superior court on September 27, 2024, in which he sought a writ of mandamus requiring Appe

Filed: **25-Oct-2024**

Mandate:

Decision Disposition

Affirmed

Ann Timmer

12 PROCEEDING ENTRIES

- 23-Oct-2024 FILED: Arizona Secretary of State's Opening Brief; Certificate of Service; Certificate of Compliance (Appellant Fontes)
- 23-Oct-2024 FILED: Appendix; Certificate of Service (Appellant Fontes)
- 23-Oct-2024 FILED: Transcript of October 3, 2024 Hearing; Certificate of Service (Appellant Fontes)
- 23-Oct-2024 FILED: Record From CofA: Link to Electronic Record
- 24-Oct-2024 FILED: Pinal County Defendants-Appellees' Answering Brief; Certificate of Service; Certificate of Compliance (Appellees Lewis, et al.)
- 24-Oct-2024 FILED: The Gila River Indian Community's Amicus Curiae Brief in Support of Appellant Arizona Secretary of State; Certificate of Service; Certificate of Compliance (Amicus Gila River Indian Community)
- 24-Oct-2024 FILED: Consent of All Parties (Amicus Gila River Indian Community)
- 24-Oct-2024 FILED: Memorandum Brief of Amici Curiae Republican National Committee and Republican Party of Arizona, LLC; Certificate of Service; Certificate of Compliance (Amici Republican National Committee, et al.)
- 24-Oct-2024 FILED: Consent of all Parties (Amici Republican National Committee, et al.)
- 24-Oct-2024 FILED: Brief of Amici Curiae Rural Arizona Engagement, Save Our Schools Arizona Network, and One Arizona in Support of Appellant; Certificate of Service; Certificate of Compliance (Amici Rural Arizona, et al.)
- 24-Oct-2024 FILED: Consent of all Parties (Amici Rural Arizona, et al.)

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12 PROCEEDING ENTRIES

12. 25-Oct-2024 Appellant Adrian Fontes, in his official capacity as Arizona Secretary of State (the “Secretary”), filed an emergency complaint for special action relief with the superior court on September 27, 2024, in which he sought a writ of mandamus requiring Appellants, Pinal County election officials, to comply with the Elections Procedures Manual (“EPM”). Specifically, the Secretary contends that Pinal County is required to follow EPM § 6(B)(1)(f), which requires election officials, in counties that conduct assigned-polling-place elections, to allow voters to vote a provisional ballot if the voter’s name does not appear on the precinct’s signature roster because the voter resides in another precinct. Pinal County argues, among other things, that EPM § 6(B)(1)(f) is unenforceable because it creates de facto “voting centers,” thus depriving counties of exclusive statutory authority to determine whether to implement “voting centers.” See A.R.S. § 16 411(B)(4). On October 4, 2024, the superior court entered its order denying Appellant’s request for preliminary injunctive relief. All parties appealed. On October 23, 2024, this Court granted Appellant Fontes’ Motion to Transfer and set an accelerated briefing schedule. The Court has considered the opening and answering briefs of the parties and all amicus briefs.

We review the superior court’s order denying injunctive relief for an abuse of discretion. *Shoen v. Shoen*, 167 Ariz. 58, 62 (App. 1990). “Unless the trial judge either made a mistake of law . . . or clearly erred in finding the facts or applying them to the legal criteria for granting an injunction, we must affirm.” *Id.* For the following reasons, we affirm the order denying injunctive relief.

Shoen requires that a party seeking injunctive relief make four showings: “1) A strong likelihood that he will succeed at trial on the merits; 2) The possibility of irreparable injury to him not remediable by damages if the requested relief is not granted; 3) A balance of hardships favors himself; and 4) Public policy favors the injunction.” *Id.* at 63. The moving party may meet this burden by establishing either “1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and ‘the balance of hardships tip sharply’ in his favor.” *Id.* (quoting *Just. v. Nat’l Collegiate Athletic Ass’n*, 577 F. Supp. 356, 363 (D. Ariz. 1983)).

Here, the superior court found that, under Shoen’s first factor, the Secretary would likely prevail at trial on the merits. As to the second factor, the court concluded that irreparable injury may occur if Pinal County is not required to comply with the EPM. However, under the third factor, the court concluded that “the balance of hardship does not weigh in favor of [the Secretary]” because implementing the Secretary’s injunctive relief was likely impractical and that “there is unacceptable risk” in doing so “at this very late date” in the election process. The court reasoned that, “[a]t this late date, the requested remedy for non-compliance with the EPM is impracticable, if not imprudent, since it creates unacceptable risk of chaos, uncertainty, and confusion in this election” Finally, under the fourth factor, the court found that public policy does not favor the requested injunction.

We affirm the superior court’s denial of the Secretary’s request for injunction based on its ruling under Shoen’s third factor—the balance of hardships. Here, we conclude that the superior court did not abuse its discretion in finding “that there is unacceptable risk to undertake [Appellant’s requested] change at this very late date.” Cf. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (recognizing that courts will generally refrain from altering election procedures on the eve of an election). Under the present circumstances, as the superior court found, at this stage of the election, “the requested remedy for non compliance with the EPM is impracticable, if not imprudent” and “creates unacceptable risk of chaos, uncertainty, and confusion.” Indeed, early voting has already begun. The balance of hardships—the third Shoen factor—tips sharply in Pinal County’s favor and compels this outcome.

Because we affirm the superior court’s denial of injunctive relief based on the hardship that would occur if relief were granted, we need not consider the superior court’s rulings under the first, second, or fourth Shoen factors. Thus, we do not decide whether the Secretary rather than the Attorney General possessed authority to initiate this lawsuit; whether the Secretary was required to exhaust administrative remedies before filing suit; or whether the EPM conflicts with statutory law.

Therefore,

IT IS ORDERED affirming the superior court’s order denying injunctive relief. (Hon. Ann A. Scott Timmer)