Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 05/22/2023

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
I. Ostrander
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, ET AL.

ALEXIS E DANNEMAN

THOMAS PURCELL LIDDY
EMILY M CRAIGER
CRAIG A MORGAN
JUDGE THOMPSON

UNDER ADVISEMENT RULING

The Court has heard and considered the arguments and evidence presented at the hearing on May 17-19, 2023, on Count III of Plaintiff Kari Lake's Statement of Election Contest. The Court rules as follows on this claim.

LEGAL STANDARD

Plaintiff brings a claim of misconduct under A.R.S. § 16-672(A)(1). She must prove, by clear and convincing evidence, "misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." *Id.* She must prove that this misconduct affected the result of the election. *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). And she must do so by "a competent mathematical basis . . . not simply an untethered assertion of uncertainty." *Lake v. Hobbs*, 525 P.3d 664, 668 (App. 2023).

As narrowed by Plaintiff at argument and in her response to the motion to dismiss, Plaintiff brings a claim under *Reyes v. Cuming*, 191 Ariz. 91, 94 (App. 1997). The Court understands this to be a purposeful concession: rather than trying to cast doubt on a specific number of ballots (a herculean evidentiary endeavor in these circumstances), she attempts to prove that the signature review process for Maricopa County was not conducted pursuant to A.R.S. § 16-550(A) or the EPM. More to the point, she was obligated to prove that the process for submitting and processing early ballots did not occur. To do so would prove misconduct pursuant to A.R.S. § 16-676(A)(1). Whether this would require a setting aside of the election outright under A.R.S. § 16-676(B) or a proportional reduction followed by a confirmation or setting aside under *Grounds v. Lawe*, 67 Ariz. 176 (1948), is unclear. In any event, crafting an appropriate remedy is unnecessary.

DISCUSSION

The evidence the Court received does not support Plaintiff's remaining claim. First, Ms. Onigkeit's testimony makes abundantly clear that level one and level two signature review did take place in some fashion. She expressed her concern that this review was done hastily and possibly not as thoroughly as she would have liked – but it was done. Mr. Myers's testimony similarly revealed that he participated in both a level one review and curing process. Mr. Valenzuela testified that four levels of signature verification took place: two levels of verification per se and two levels of auditing. The result was the timely verification and or/curing of about 1.4 million voter signatures.

Mr. Valenzuela's testimony, elicited by both parties, is most helpful to the Court, and the most credible. This is not merely for reasons of honesty (the Court makes no finding of dishonesty by any witness – and commends those signature reviewers who stepped forward to critique the process as they understood it). While Ms. Onigkeit and Mr. Myers have ground level experience with signature review, Mr. Valenzuela provided the Court with both a hands-on view based on the 1,600 signatures reviewed by him personally in November 2022 and a broad overview of the entire process based upon his 33 years of experience.

As he testified, the human element of signature review consisted of 153 level one reviewers, 43 level two reviewers, and two ongoing audits. This evidence is, in its own right, clear indicia that the comparative process was undertaken in compliance with the statute, putting us outside the scope of *Reyes.* 191 Ariz. at 92. There is clear and convincing evidence that the elections process for the November 8, 2022, General Election did comply with A.R.S. § 16-550 and that there was no misconduct in the process to support a claim under A.R.S. § 16-672.

At trial, Plaintiff's case attempted to overcome the barriers created by the bar to her complaints about the process that could have been brought before trial but were not. *See* A.R.S. §§ 16-552(D); 16-591. She conceded that she was not challenging signature matches for any

individual ballots by making a *Reyes* claim. Specifically, Plaintiff's Response to the Motion to Dismiss argues:

> Maricopa violated A.R.S. § 16-550(A) and did not, and could not, perform signature verification given the influx of 1.3 million ballots during the voting period for the November 2022 General Election. The Complaint sufficiently alleges this process was not followed by MCEC because in the 2022 election, Maricopa County officials, instead of attempting to cure ballots, systematically pushed mismatched ballots through for tabulation without following the required procedures."

Plaintiff's evidence and arguments do not clear the bar. Plaintiff's strategy shifted shortly thereafter to attempting to prove that time per signature verification per signature is deficient. Plaintiff argues that 274,000 signatures (or so) were compared in less than two seconds. Plaintiff then zeroes in on 70,000[1] – the number of ballots that she claims were given less than one second of comparison. Plaintiff argues that this is so deficient for signature comparison that it amounts to no process at all.[2] Accepting that argument would require the Court to re-write not only the EPM but Arizona law to insert a minimum time for signature verification and specify the variables to be considered in the process.

Plaintiff asks the Court to interpret the word "compare" in A.R.S. § 16-550(A) to require the Court to engage in a substantive weighing of whether Maricopa County's signature verification process, as implemented, met some analytical baseline. But there are several problems with this. First, no such baseline appears in Section 16-550. Not one second, not three seconds, and not six seconds: no standard appears in the plain text of the statute. No reviewer is required by statute or the EPM to spend any specific length of time on any particular signature. Second, the Court takes seriously the directive of the Arizona Supreme Court concerning statutory interpretation: to "effectuate the text if it is clear and unambiguous," reading words in statutes in their context, and giving "meaning to every provision so that none is rendered superfluous." *In re McLauchlan*, 252 Ariz. 324, 325 ¶ 6 (2022) (citations omitted).

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[1] The Court notes that, even if the Court had a basis for disqualifying 70,000 ballots, under the proportional reduction method prescribed by *Grounds v. Lawe*, given the mathematical computation set forth in her Response to Defendants' Motion to Dismiss, Plaintiff would not prevail.

[2] Plaintiff asserted in argument that the signature verification was the only safeguard against fraudulent ballots being counted. The Court disagrees and takes notice of the processes employed by Maricopa County to sanitize early voting lists, address verification, and voter name correlation to ballot envelopes as Mr. Valenzuela testified.

Accordingly, the Court will not give weight to Lake's definition of "compare" to the exclusion of the rest of the statute, which is helpful revisiting here:

> [O]n receipt of the envelope containing the early ballot and the ballot affidavit, the county recorder . . . shall compare the signatures thereon with the signature of the elector on the elector's registration record. If the signature is inconsistent with the elector's signature on the elector's registration record, the county recorder . . . shall make reasonable efforts to contact the voter, advise the voter of the inconsistent signature and allow the voter to correct or the county to confirm the inconsistent signature. . . .

A.R.S. § 16-550(A). Put another way, the recorder or other official must make some determination as to whether the signature is consistent or inconsistent with the voter's record. The Court finds that looking at signatures that, by and large, have consistent characteristics will require only a cursory examination and thus take very little time. Mr. Valenzuela testified that a level one signature reviewer need not even scroll to look at other writing exemplars (beyond the most recent one provided) if the signatures are consistent in broad strokes.

That said, there is an even more important clause ahead:

> If satisfied that the signatures correspond, the recorder or other officer in charge of elections shall hold the envelope containing the early ballot and the completed affidavit unopened in accordance with the rules of the secretary of state.

Id. The question after the comparison is whether the signatures are consistent *to the satisfaction of the recorder*, or his designee. This, not the satisfaction of the Court, the satisfaction of a challenger, or the satisfaction of any other reviewing authority is the determinative quality for whether signature verification occurred. It would be a violation of the constitutional separation of powers – *see* Ariz. Const. art. III – for this Court, after the recorder has made a comparison to insert itself into the process and reweigh whether a signature is consistent or inconsistent.

Even if the Court assumes in the alternative that it must consider whether the comparison was adequate, the Court finds that Mr. Valenzuela provided ample evidence that – objectively speaking – a comparison between voter records and signatures was conducted in every instance Plaintiff asked the Court to evaluate.

It bears noting that this case is based on completely different facts than in *Reyes*, where the county recorder had done *no signature verification whatsoever*. *See Reyes*, 191 Ariz. at 93 (describing Yuma County Recorder's failure as "complete non-compliance" with the statute). Plaintiff may find fault with the process as applied to some number of ballots, but the Court finds

that the process of comparison did take place in compliance with the statute, defeating a *Reyes* claim under misconduct.

While Plaintiff did not demonstrate any lack of compliance with statute or the EPM, she did bring in a signature verification expert who testified what he believed to be necessary for signature verification in his line of work. But there is no statutory or regulatory requirement that a specific amount of time be applied to review any given signature at any level of review. Giving all due weight to Mr. Speckin's signature verification expertise, his analysis and preferred methodology is not law, and a violation of law is what Plaintiff was required to demonstrate. Further, exhibit 47, the chart created by others for Mr. Speckin, depicts his interpretation of data derived from a public records request and was not admitted except as demonstrative to permit him to opine generally.

Mr. Valenzuela testified that the final canvass was accurate. No clear and convincing evidence, or even a preponderance of evidence, contradicts him.

The Court having weighed all the evidence, argument, and legal memoranda and having assessed the credibility and demeanor of witnesses presenting testimony at trial, now enters the following Findings of Fact and Conclusions of Law. Therefore:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As to Count III – Signature Verification:

a. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence of misconduct in violation of A.R.S. § 16-672(A)(1).

b. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct was committed by "an officer making or participating in a canvass" under A.R.S. § 16-672(A)(1).

c. The Court DOES NOT find either clear and convincing evidence or a preponderance of evidence that such misconduct did in fact affect the result of the 2022 General Election by a competent mathematical basis.

Therefore:

IT IS ORDERED: confirming the election of Katie Hobbs as Arizona Governor pursuant to A.R.S. § 16-676(B).

IT IS FURTHER ORDERED: that no further matters remain pending, except for costs, if any, sought by Defendants. In order that an expedited appeal might be taken, Defendants are ordered to submit a proposed form of judgment with finality language pursuant to Arizona Rule of Civil Procedure 56(c) by 5:00 p.m. Tuesday, May 23, 2023. Any objection to the proposed form of judgment and/or statement of costs must be submitted by 5:00 p.m. Wednesday, May 24, 2023. The Court will then enter the judgment required by A.R.S. § 16-676 forthwith.