Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403 12/19/2022

HONORABLE PETER A. THOMPSON

CLERK OF THE COURT
V. Felix
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

KATIE HOBBS, et al.

DAVID ANDREW GAONA

THOMAS PURCELL LIDDY
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE THOMPSON

UNDER ADVISEMENT RULING

After considering the filings and arguments of the Parties and considering all alleged facts and drawing reasonable inferences therefrom in the light most favorable to the non-movant Contestant, the court finds as follows.

BACKGROUND

Contestant Kari Lake initiated this election contest with the filing of her Complaint in Special Action and Verified Statement of Election Contest, naming as Defendants Katie Hobbs, personally as Contestee and in her official capacity as Secretary of State and the following, identified as the "Maricopa County Defendants": Stephen Richer in his official capacity as Maricopa County Recorder; Bill Gates, Clint Hickman, Jack Sellers, Thomas Galvin, and Steve Gallardo in their official capacities as members of the Maricopa County Board of Supervisors; Scott Jarrett, in his official capacity as Maricopa County Director of Elections; and the Maricopa County Board of Supervisors. On December 5, 2022, Secretary of State Katie Hobbs published the official canvass for the general election, identifying 1,270,774 votes cast for Plaintiff and 1,287,891 for Contestee Katie Hobbs.

Pending before the Court are the three Motions to Dismiss Plaintiff's Complaint and Verified Statement of Election Contest filed individually by the Maricopa County Defendants, Katie Hobbs in her capacity as Secretary of State, and Katie Hobbs in her personal capacity as Contestee. Plaintiff filed a combined Response to the motions, and those who had moved to dismiss individually filed replies. The court heard oral argument on the pending motions to dismiss on December 19, 2022.

DISCUSSION

A motion to dismiss ought to be granted if there is no interpretation of the facts alleged in the verified statement, susceptible to proof, that entitles the plaintiff to relief. Ariz. R. Civ. P. 12(b)(6); *see also Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 8 (2012). The court assumes the truth of "well-plead factual allegations and will indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7 (2008). "[A]llegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts," are not presumed true. *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389, ¶ 4 (App. 2005).

A court must apply "all reasonable presumptions" in "favor [of] the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). "[H]onest mistakes or mere omissions on the part of election officers, or irregularities in directory matters, even though gross, if not fraudulent, will not void an election, unless they affect the result, or at least render it uncertain." *Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). An election challenger is required to structure her verified statement in conformity with the applicable election challenge statute, and this court accordingly cannot grant relief in an election contest that falls outside the statute. *See Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978); *see also Burk v. Ducey*, No. CV-20-0349-AP/EL, 2021 WL 1380620, at *2 (Ariz. Jan. 6, 2021), *cert. denied*, 209 L. Ed. 2d 735, 141 S. Ct. 2600 (2021) (applying *Donaghey* to dismiss election contest).

I. Count I – Violation of Freedom of Speech

Plaintiff's first count alleges that Defendants Hobbs and Richer's actions constitute "per se violation[s]"of the First Amendment (and its Arizona Constitution cognate) that merit invalidation of the election results. Not only does the verified statement fail to set forth an unconstitutional infringement on Plaintiff's (or anyone else's) speech, even if it did, it would not set forth misconduct under A.R.S. § 16-672(A)(1).

Plaintiff complains of two acts: 1) the Secretary and Recorder's "censorship" of certain social media posts by reporting them to the Department of Homeland Security and Center for Internet Security's ("CISA's") Election Misinformation Reporting Portal and 2) the Recorder's presentation to CISA on "the needs of election officials" concerning purported election misinformation.

It is unclear after briefing what legal argument Plaintiff is attempting to make by use of the word "censorship." In their response to Defendants' motions to dismiss, Plaintiff argued that she need not set forth a First Amendment claim to prevail – but then argues that the challenged acts were illegal. On what basis illegality of these acts could be argued apart from an alleged infringement of the freedom of speech, the verified statement does not say. Though the quintessential censorship—prior restraint—makes no appearance in the verified statement, given that the verified statement frames this as a First Amendment challenge, the court will proceed on that basis.

It is certainly true that a government "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Indeed, "[c]ontent-based laws—those that target speech based on its communicative content are presumptively unconstitutional" and must pass muster under strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). But this analysis is premised on state action—the First Amendment does not restrain private parties from opposing speech, or choosing what to publish. *See Manhattan Comm. Access Corp. v. Halleck*, 139 S.Ct. 1921, 1928 (2019) ("The threshold problem [of state action] is a fundamental one" in the context of a First Amendment claim).

This is the key deficiency with the claim against the Recorder and Secretary's respective reports to the Election Misinformation Reporting Portal—after the report is made, there is no further conceivable state action. Twitter (to take one example) takes down posts that offend its terms of service after a report is made, and neither the Recorder nor the Secretary are alleged to have control over that process or are alleged to have the authority to *compel* such a take-down. *See Amer. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 52 (1999) ("Action taken by private entities with the mere approval or acquiescence of the State is not state action."). Twitter, or any other social media company, is a private actor, and Plaintiff has alleged no fact – taken in the light most favorable to her – that leads to the reasonable inference of government coercion or control by the Recorder or Secretary.

Nor does the First Amendment restrain the government from engaging in speech contrary to the views of some constituents—a proposition which defeats the claim against the Recorder for his presentation to CISA. *See Pleasant Grove City v. Summum*, 555 U.S. 460, 467-68 (2009) ("A government entity has the right to speak for itself. It is entitled to say what it wishes and to select the views that it wants to express.") (cleaned up). As the United States Supreme Court held in

Matel v. Tam: "When a government entity embarks on a course of action, it necessarily takes a particular viewpoint and rejects others. The Free Speech Clause does not require government to maintain viewpoint neutrality when its officers and employees speak about that venture." 137 S.Ct. 1744, 1757 (2017). Put another way, nothing in the First Amendment keeps a government official from presenting his views on election misinformation to another government body or a private entity. Both of which, in this case, were free to adopt or reject the Recorder's position. Nothing about this allegation raises a First Amendment claim.

To the extent that the verified statement raises the Arizona Constitution's independent, and broader, guarantee of free speech, they do not defend this argument in the briefing. *See generally* Ariz. Const. art. 2 § 6; *see also Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281-82, ¶ 45 (2019) (state constitutional protection of speech is broader than under federal constitution). In any event, the Court finds no support for the proposition that Arizona's Constitution somehow restrains the government from articulating a viewpoint to a public or private party.

Moreover, even if Plaintiff successfully pled a First Amendment challenge, she cannot argue that these alleged First Amendment violations constitute election misconduct. The statute requires 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." A.R.S. § 16-672(A)(1). (emphasis added). Two types of misconduct are therefore implicated: 1) by election boards or members, and 2) any officer making or participating in a canvass. The Secretary and Recorder are not automatically members of election boards, *see* A.R.S. § 16-531(A), so if Defendants committed misconduct, it must be done while "making or participating in a canvass" to come within the ambit of (A)(1). Both actions alleged to be misconduct took place months prior to canvassing, and consequently cannot be considered misconduct under the statute. Even viewing the allegations in the light most favorable to Plaintiff, she has not stated a claim.

Count I must be dismissed.

Count II – Illegal Tabulator Configurations

Plaintiff alleges that the ballot-on-demand ("BOD") printers that malfunctioned on election day were not certified and "have vulnerabilities that render them susceptible to hacking" according to a declaration attached to the statement. Plaintiff alleges separately that the BOD printers malfunctioned because of an "intentional action." Plaintiff alleges that these combined to provide grounds for setting aside election results based on both (A)(1) for misconduct and (A)(4) for illegal votes.

The Court takes Plaintiff to mean two things by this count: 1) the use of BOD printers lacking certification was misconduct by some responsible official and 2) that someone did something to the printers to cause them to misprint ballots.

The former is not enough to state a claim. Plaintiff cites 52 U.S.C. § 21081(b) and A.R.S. § 16-442 for the proposition that devices such as tabulators and election software must be certified under the Help America Vote Act ("HAVA"). But Plaintiff goes further, arguing that the BOD printers, because they fall under the definition of "voting system" under HAVA, must also be certified. Defendants argue, making reference to the title of A.R.S. § 16-442, under Arizona law only the "vote *tabulating* system" is required to be certified pursuant to HAVA. However, this Court will only result to using the title of the statute to help discern legislative intent when the statute is ambiguous. *See* A.R.S. § 1-212; *Secure Ventures, LLC v. Gerlach in and for Cnty. of Maricopa*, 249 Ariz. 97, 100, ¶ 7, n.1 (App. 2020).

Recourse to such methods is unnecessary where context is fruitful. *State v. Martinez*, 202 Ariz. 507, 510, ¶ 15 (App. 2002) (courts "give the words of a statute their commonly accepted meaning unless . . . a special meaning is apparent from the context.") From context alone, the Court agrees with Defendants that the "machines and devices" in subsection (B) are the same as those in (A). And thus, only machines and devices that record or tabulate votes must be certified in compliance with HAVA to comply with Arizona law. A.R.S. § 16-442(A)-(B). Moving from there to A.R.S. § 16-444, the Court finds the definition of "vote tabulating equipment" must apply to: any "apparatus necessary to automatically examine and count votes as designated on ballots and tabulate the results." A.R.S. § 16-444(A)(7).

Consequently, a ballot printer, which neither examines nor counts, nor tabulates, is not a component of the vote tabulating system and need not be laboratory certified. *See also* A.R.S. § 16-449(B)-(C) (requiring logic and accuracy testing of "electronic ballot *tabulating* systems"). While the federal definition of "voting system" certainly is more expansive, and could conceivably include ballot printers, the federal "voting system" definition does not limit the devices that Arizona can employ for printing ballots, and in fact prescribes neither a certification requirement for printers nor a federal remedy (i.e. reconducting an election) for failure to certify equipment. *See* 52 U.S.C. § 21081(b). Nor does that statute even reference laboratory certification. *Id.* Indeed, since state use of federally accredited laboratories for certification is discretionary, a federal penalty would make no sense. *See* 52 U.S.C. § 20971(a)(2). Thus, the lack of certification of any BOD printer cannot give rise to a claim under A.R.S. § 16-672(A)(4).

The twin allegation that the BOD printer failures render the vote illegal also fails. An illegal vote is one that is either cast by a voter who is ineligible to vote, *see Moore v. City of Page*, 148 Ariz. 151, 156-7 (App. 1986), or one cast in a manner that – by statute – *invalidates* the vote. *See Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178, 180 (1994). What Plaintiff is essentially arguing is essentially a fruit of the poisonous tree argument – that contamination in one part of an election process renders the result illegal. However, that is not the framework given in either the election statutes (which, again, this Court must construe in favor of an election result) or the over a century of Arizona caselaw interpreting these statutes. Plaintiff cannot point to a single case where an illegal vote was a *missing* vote. To the extent such a claim is cognizable, it is under (A)(5) and is not raised here. Because Plaintiff does not allege that the BOD printer failure either 1) caused a vote to be cast by an ineligible voter, or 2) caused a vote to be cast *and counted* when the vote *should not have been*, she has not stated a claim under subsection (A)(4).

While the Court finds that Plaintiff does not state a claim under A.R.S. § 16-672(A)(4), the Court finds that Plaintiff does state a claim under (A)(1). Viewing the Complaint in the light most favorable to the non-movant, Plaintiff specifically alleges that a person employed by Maricopa County interfered with BOD printers in violation of Arizona law, resulting in some number of lost votes for Plaintiff. Plaintiff is entitled to attempt to prove at trial that 1) the malfeasant person was a covered person under (A)(1); 2) the printer malfunctions caused by this individual directly resulted in identifiable lost votes for Plaintiff; and 3) that these votes would have affected the outcome of the election.

Plaintiff initially cited to *Hunt* for the proposition that, instead, if this count survives it must result in a revote of the entire election because of "fraudulent combinations coercion and intimidation." *See Hunt v. Campbell*, 19 Ariz. 254, 265-66 (1917); *see also Findley v. Sorenson*, 35 Ariz. 265, 269 (1929). But Plaintiff has not alleged fraud, nor plead it with particularity. *See* Ariz. R. Civ. P. 9(b) (fraud must be plead with particularity); *see also Hunt*, 19 Ariz. at 264 ("[Fraud] ought never to be inferred from slight irregularities, unconnected with incriminating circumstances; nor should it be held as established by mere suspicions, often having no higher origin than partisan bias and political prejudices.") (citation omitted). Indeed, on pages 6 and 7 of Plaintiff's response to the instant motions and at oral argument, she disclaimed her previous theory of fraud. The Court therefore dismisses any claim under Count II alleging fraud.

Plaintiff has, nonetheless, also alleged intentional misconduct sufficient to affect the outcome of the election and thus has stated an issue of fact that requires going beyond the pleadings. The Court takes no position as to the evidentiary weight it will give Plaintiff's proffered experts at trial and notes that, at trial, it must indulge all reasonable assumptions in favor of the election when weighing the evidence before it. However, evidence is not before the Court at the motion to dismiss stage—pleadings, made under the auspices of Rule 11 are. Accordingly, Plaintiff

must show at trial that the BOD printer malfunctions were intentional, and directed to affect the results of the election, and that such actions did actually affect the outcome.

Defendants' motions are denied as to Count II as narrowed above.

Count III – Invalid Signatures on Mail-In Ballots

Plaintiff next argues that the signature validation methodology utilized by Maricopa County did not comply with the statute. Specifically, Plaintiff argues that the review of mail-in ballot signatures, conducted pursuant to the Maricopa County Election Manual was inadequate. She makes reference to Maricopa County signature reviewer declarations that are critical of the process used to cure ballots that, at first glance, did not match the signature on file for that voter. But the Defendants argue that this claim is subject to laches.

Laches is an equitable doctrine that precludes claims that are brought 1) after an unreasonable delay where 2) that unreasonable delay prejudices the other parties, the administration of justice, or the public. *League of Ariz. Cities and Towns v. Martin*, 219 Ariz. 556, 558, ¶ 6 (2009); *Prutch v. Town of Quartzsite*, 231 Ariz. 431, 435, ¶ 13 (App. 2013). This doctrine bars procedural challenges by election contestants after an election has already taken place. *See e.g., Allen v. State*, 14 Ariz. 458, 462 (1913); *Tilson v. Mofford*, 153 Ariz. 468, 470 (1987) ("[P]rocedures leading up to an election cannot be questioned after the people have voted, but instead the procedures *must* be challenged before the election is held.") (citing *Kerby v. Griffin*, 48 Ariz. 434, 444-46 (1936)). A challenger may not "ambush an adversary or subvert the election process by intentionally delaying a request for remedial action to see first whether they will be successful at the polls." *McComb v. Super. Ct. in and for Cnty. of Maricopa*, 189 Ariz. 518, 526 (App. 1997) (quoting *United States v. City of Cambridge, Md.*, 799 F.2d 137, 141 (4th Cir. 1986)).

"Election procedures generally involve 'the manner in which an election is held.'" *Sherman v. City of Tempe*, 202 Ariz. 339, 342, ¶ 10 (2002) (quoting *Tilson*, 153 Ariz. at 470). The reconciliation of ballot envelope signatures with voter file signatures is an election procedure, as this process takes place in the course of the election itself – the casting and counting of ballots. Thus, absent a reason for the delay or a lack of prejudice, the challenge may not proceed after the election has taken place.

Considering first Plaintiff's delay, Plaintiff makes much of a report by Arizona Attorney General Mark Brnovich – issued on April 6, 2022 – that reported that the "early ballot affidavit signature verification system in Arizona, and particularly when applied to Maricopa County, may be insufficient to guard against abuse." Whatever the merits of that position, applied to these facts, Plaintiff was on notice by April (at the latest) of the procedural defects she now raises in her challenge and offers no explanation for the delay. *See Mathieu v. Mahoney*, 174 Ariz. 456, 459

(1993) (applying laches to election challenge based on publicly available documents). To the extent she relies on a ballot review conducted of 2020 ballot signatures, the report Plaintiff relies on was presented in June 2022, again months before the instant election. To bring a belated action under these circumstances is not justifiable.

As for prejudice, as another department of this Court indicated in dismissing another election claim, any procedural challenge post-election "ask[s] us to overturn the will of the people as expressed in the election." *Finchem v. Fontes*, CV2022053927, at 5 (Maricopa Cnty. Super. Ct. Dec. 16, 2022) (quoting *Sherman*, 202 Ariz. at 342, ¶ 11). This is an exceedingly high degree of prejudice against both the parties and the public, which this Court is loath to excuse. Therefore, because Plaintiff was on notice (at a minimum) months before the election as to the nature of the ballot signature reconciliation process and chose not to challenge it then, her claim is barred by laches.

Count III must be dismissed.

Count IV – Ballot Chain of Custody

Plaintiff next claims that violations of the County Election Manual pertaining to chain of custody constitute misconduct pursuant to A.R.S. § 16-672(A)(1). Specifically, Plaintiff argues that: 1) the ability of employees of the county's ballot contractor to add ballots of family members and 2) the lack of an Inbound Receipt of Delivery form both constitute misconduct. This is in addition to complaints about the handling of ballots in the 2020 election. The allegations concerning 2020 have no bearing on this contest, and the Court does not consider them.

Plaintiff alleges that ballots, of some number, were added by Runbeck employees to the total in violation of A.R.S. § 16-1016. Further, Plaintiffs allege that the lack of Receipt of Delivery forms were violations of state law that permitted an indeterminate number of votes to be added to the official results, constituting misconduct. The Court, drawing inferences in the light most favorable to Plaintiff as it must at this stage, finds that Plaintiff has stated a claim of misconduct by a person under control of Maricopa County that affected the canvass under A.R.S. § 16-672(A)(1). Defendants argue that laches applies. However, laches do not apply to contests arising from *violation* of election day procedures as opposed to challenges to the procedures themselves. *See McComb*, 189 Ariz. at 525-26 (laches inapplicable where "little time" existed before election to file suit). Delay, to the extent there was any, was reasonable here.

Defendants dispute the lack of compliance with chain of custody laws and claim that Plaintiff has misunderstood the forms required. As presented, whether the county complied with its own manual and applicable statutes is a dispute of fact rather than one of law. This is true as to whether such lack of compliance was both intentional and did in fact result in a changed outcome.

Consequently, Plaintiff has stated a claim under A.R.S. § 16-672(A)(1).

Defendants' motions are denied as to Count IV.

Count V: Equal Protection and Count VI: Due Process

In her Counts V and VI, Plaintiff asserts that various facts she alleges warrant findings of, respectively, "intentional discrimination" and "a due process violation," under the United States or Arizona Constitution. The nearest Plaintiff comes to suggesting the relevance of these allegations to her contest is her citation to A.R.S. Section 16-672(A)(1), which permits election contest on the ground of official misconduct, and (A)(4), which permits election contest on the ground of illegal votes.

Even if the Court assumes officials' alleged violations of equal protection and due process in the conduct of an election would constitute "misconduct" contemplated by Section 16-672(A)(1), allegations of such violations are merely cumulative and unnecessary to successfully plead an election contest. An instance of misconduct by either an election board or a person making or participating in a canvass need not result in a harm against a protected class in order to be successful. A bootstrapped constitutional argument takes the verified statement beyond the remedies provided by the election contest statute, which is impermissible. *See Donaghey*, 120 Ariz. at 95.

Nor is it apparent from the Complaint that Plaintiff has successfully pled a successful due process or equal protection challenge at all. *Cf. Aegis of Ariz., L.L.C. v. Town of Marana*, 206 Ariz. 557, 570 (App. 2003) (government acts in violation of law, in bad faith, or beyond jurisdiction do not necessarily equate to a due process or equal protection challenge); *Vong v. Aune*, 235 Ariz. 116, 123, ¶ 31 (App. 2014) (equal protection protects against discriminatory classifications). Plaintiff does not clearly allege that an actor actually discriminated against a class (i.e. Republicans) or that this discrimination could actually alter the outcome given ticket splitters even among election day voters. Plaintiff has trouble even at this stage drawing a through-line from purported discrimination to well-pled impact.

In any event, a finding of either violation is not necessary ultimately to succeed in an election contest under either Section 16-672(A)(1) or (A)(4). The addition of this constitutional argument is unnecessary. Even assuming equal protection or due process claims lie in the circumstances surrounding the 2022 election, they are outside of the scope of Plaintiff's Section 16-672 election contest.

Count V and Count VI must be dismissed.

Count VII – Secrecy Clause

Plaintiff argues that the mail-in ballot procedure is unconstitutional under the Arizona Constitution's Secrecy Clause. *See* Ariz. Const., art. VII, § 1. Whatever merit this challenge has, it is squarely barred by laches for the same reasons as Count III. The current absentee ballot statute was adopted in 1991. 1991 Ariz. Sess. Laws, ch. 51, § 1. Lake could have brought this challenge at any time in the last 30 years. To do so now is to invite confusion and prejudice when absolutely no explanation has been given for the unreasonable delay. Laches conclusively bars this challenge as to the instant election.

Count VII must be dismissed.

Count VIII: Incorrect Certification

As noted in Ms. Hobbs's motions in her capacity as Secretary of State and Contestee, Plaintiff's Count VIII contains no new factual allegations. The Count only asserts that "the cumulative impact of [Counts I through VII] invalidates significantly more Hobbs votes than the certified margin of victory for Hobbs" and that the court will have to declare Hobbs' certification of election invalid and declare that Plaintiff is elected governor. *See* A.R.S. § 16-676(C). The court reads Count VIII as Plaintiff's request for the specific relief available under A.R.S. Section 16-676(C) if any of Counts I through VII are sufficiently proven but dismisses it as an independent cause of action because it is not a cause of action in itself.

Count VIII must be dismissed.

Count IX: Inadequate Remedy

In her Count IX, Plaintiff asserts that, "[t]o the extent that the special nature of these proceedings precludes bringing concurrent federal claims against Maricopa County's 2022 general election, this Court has jurisdiction under Arizona's Uniform Declaratory Judgment Act to declare that the remed[ies] provided by A.R.S. § 16-672 [are] inadequate to protect those federal rights and requirements."

First, insofar as the "federal claims" to which Plaintiff here refers are those included in her complaint, the "special nature of these proceedings" does *not* preclude concurrently bringing those claims against appropriate parties, so Plaintiff's Count IX invocation of the Court's jurisdiction to provide declaratory relief is unnecessary and outside the scope of an election challenge.

Second, in any case, the Court may not provide the suggested relief. A court may provide declaratory judgment only over a "justiciable controversy between plaintiff and defendant that is ripe for adjudication." *Moore v. Bolin*, 70 Ariz. 354, 355 (1950). The specific question of whether A.R.S. § 16-672 is adequate to protect Plaintiff's "federal rights and requirements" was not in controversy between Plaintiff and the Defendants before declaratory action was brought. "No proceeding lies under the declaratory judgments acts to obtain a judgment which is merely advisory or which merely answers a moot or abstract question," *Id.* at 357 (quoting 16 Am. Jur., Declaratory Judgments, § 9, p. 282), such as the adequacy of Section 16-672 to remedy federal claims. Beyond all this, the request for the court to concoct a new remedy is a straightforward invitation for judicial legislation which must be denied. *See McNamara v. Citizens Protecting Tax Payers*, 236 Ariz. 192, 195-96, ¶¶ 10-11 (App. 2014) (declining in campaign finance context to "infer a statutory remedy . . . that the legislature eschewed") (quoting *Pacion v. Thomas*, 225 Ariz. 168, 169, ¶ 9 (2010)). Count IX must be dismissed because it is unnecessary by its own terms and requests an unavailable remedy.

Plaintiff in her reply argues that "the Court has a justiciable controversy as to whether it may consider at trial claims in an election-contest action," Resp. at 30, but this misunderstands the nature of a declaratory action. The "justiciable controversy" requirement is provided by a plaintiff's assertion of "a legal relationship, status or right" in which the party has a definite interest and 'the denial of it by the other party." *Original Apartment Movers, Inc. v. Waddell*, 179 Ariz. 419, 420 (App. 1993) (quoting *Morris v. Fleming*, 128 Ariz. 271, 273 (App. 1980)). The relationship of the Plaintiff and the Defendants exists prior to the bringing of the declaratory action and does not arise, as claimed here, by the Defendants defending against a claimed right in the midst of litigation.

Count IX must be dismissed.

Count X: Constitutional Rights

In her Count X, Plaintiff alleges that certain actions of Maricopa County may have violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment. Plaintiff states that such violations may be remedied by this court under 42 U.S.C. § 1983 independently of A.R.S. § 16-672 and then claims that, "[a]ccordingly, [Plaintiff] is entitled to an order setting aside the election in its entirety and ordering a new election." The statement is correct insofar as "this

Court"—the superior court as Arizona's "single unified trial court of general jurisdiction," *see Marvin Johnson, P.C. v. Myers*, 184 Ariz. 98, 102 (1995)—may hear such claims under Section 1983. However, when, as here, the gravamen of her complaint is the improper conduct of an election, her challenge must conform with the provisions of Section 16-672. *See Donaghey*, 120 Ariz. at 95. This Court may hear Plaintiff's civil rights claims in a separate action, but they must be dismissed from this election contest as out of the scope of Section 16-672.

Count X must be dismissed.

CONCLUSION

IT IS ORDERED dismissing all counts of Plaintiff's Verified Statement of Election contest except for Count II and Count IV.

IT IS FURTHER ORDERED affirming this Court's prior order concerning ballot inspection to take place at 8:00 a.m. on Tuesday, December 20, 2022.

IT IS FURTHER ORDERED accepting and adopting Maricopa County's recommendation, appointing Lynn Constable as the Court's inspector pursuant to A.R.S. § 16-677(B).

****FURTHER ORDERS AND TRIAL INSTRUCTIONS****

The Court originally allocated two days for the trial of this election challenge. That allocation of time was based on the original nine counts of the Petition being heard. The ruling on the Motions To Dismiss has reduced the number of remaining counts substantially. Therefore, the original time estimate should be more than adequate to accommodate a full hearing on the merits.

The compressed time for presentation is based not only on the time constraints imposed by A.R.S. § 16-676 and the short time frame before January 2, 2023, but the parties' expressed desire to leave at least some time to file an appeal of this Court's rulings before January 2, 2023.

The time allocated means each side will have five and a half hours available for opening statement, direct examination of witnesses, cross examination of opposing witnesses, re-direct examination of witnesses and closing argument. Thirty minutes is deducted from each side's allocated six hours to allow for a 15-minute break each morning and afternoon.

IT IS ORDERED that the parties shall meet and confer to provide the Court with the list of witnesses to be called by each party together with anticipated time required for direct, cross, and re-direct examinations as well as opening statements and closing arguments by 12:00 noon on Tuesday, December 20, 2022.

IT IS FURTHER ORDERED that the parties shall either have physically marked and exchanged all hearing exhibits or uploaded all electronic exhibits to be used at the hearing to the Electronic Exhibits Portal of the Clerk of Maricopa County Superior Court not later than 12:00 noon on Tuesday, December 20, 2022.