ARIZONA SUPREME COURT

KARI LAKE, *Plaintiff/Appellant*, v. KATIE HOBBS, *et al.*, *Defendants/Appellees*.	No. Court of Appeals Division Two No. 2CA-CV23-0144 Transferred from Court of Appeals Division One No. 1CA-CV23-0393
KARI LAKE, *Petitioner*, v. THE HONORABLE PETER THOMPSON, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA, *Respondent Judge*, KATIE HOBBS, personally as Contestee; ADRIAN FONTES, in his official capacity as Secretary of State; STEPHEN RICHER, in his official capacity as Maricopa County Reporter, *et al.*, *Real Parties in Interest*.	Maricopa County Superior Court No. CV2022-095403 **PETITION FOR TRANSFER** ARCAP 19(a)

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INTRODUCTION

Pursuant to Rule 19(a), Ariz.R.Civ.App.P., petitioner Kari Lake asks this Court to transfer her appeal from the Court of Appeals based on the extraordinary new evidence presented in Lake's motion for relief from judgment under ARCP 60(b)(2),(3),(6) (the "Rule 60(b) Motion"), this case's statewide importance, and the urgency of remedying election maladministration affecting the 2022 election and the upcoming 2024 election.

BACKGROUND

I. The Rule 60(B) Motion

The explosive new evidence supporting Lake's Rule 60(b) Motion shows that:

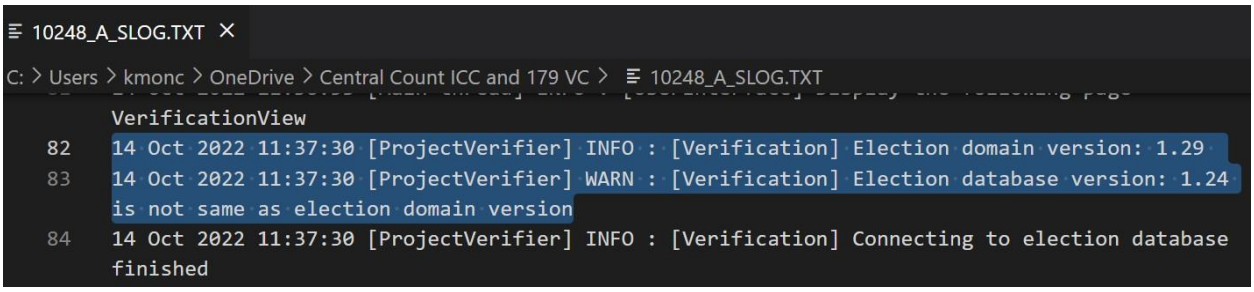
- Maricopa falsely certified that it successfully completed logic and accuracy ("L&A") testing on October 11, 2022 in accordance with A.R.S. §16-449, including all 446 tabulators used at Maricopa's 223 vote centers. Appx:0071-73 (Parikh Decl. ¶¶8(a), 11-13).
- Maricopa conducted unannounced testing of all 446 vote center tabulators on October 14, 17, and 18. Maricopa's tabulator system log files show that 260 tabulators (i.e., 58%) rejected ballots with the same tabulator error codes that recurred on Election Day. Appx:0071, 76-77 (*id*. ¶¶8(b)-(d), 20-22). This suggests Maricopa's unannounced and unlawful testing may have been a dry run for the Election Day debacle.

- The ballot-on-demand printer investigation report by former Chief Justice McGregor ("the McGregor Report") found that "***four printers randomly printed one or a few 'fit to page' ballots in the middle of printing a batch of ballots***…[n]one of the technical people with whom we spoke could ***explain how or why that error occurred***." Appx:0281 (emphasis added). Lake's expert testified this "error" could only result from malware or remote access and resulted in at least 8,000 misconfigured ballots, the vast majority of which were neither duplicated nor counted. Appx:0085-86, 92 (Parikh Decl. ¶¶36-39, 49).
- At the December 2022 trial, Maricopa Co-Director of Elections, Scott Jarrett, falsely testified that the Election Day chaos was a "hiccup", in which misconfigured fit-to-page ballots occurred at only three vote centers, innocently caused by onsite technicians changing printer settings. Appx:0255, 218 (Tr. 180:3-8. 217:14-19).
- In fact, new evidence shows that: (i) misconfigured "fit-to-page" ballots occurred at 127 vote centers on Election Day; and (ii) vote center tabulators logged over 7,000 rejections ***every 30 minutes*** from 6:30 am through 8:00 pm. Appx:0089-92 (Parikh Decl. ¶¶44-49).
- The McGregor Report concluded: "***[w]e could not determine*** whether this change resulted from a technician attempting to correct the printing issues, the

most probable source of change, ***or a problem internal to the printers***." Appx:281 (emphasis added).

Responding to Lake's motion, Maricopa admitted, ***seven months after the fact***, that after L&A testing, they swapped out the memory cards and the election software on Maricopa's 446 vote center tabulators and installed "reformatted" cards purportedly containing the previously certified election program. Appx:0330-31 (Jarrett Decl. ¶¶14-15). Maricopa never disclosed this before responding to Lake's motion. Maricopa did not perform L&A testing in accordance with A.R.S. § 16-449(A) after installing these reformatted cards on the 446 tabulators. *Id*.

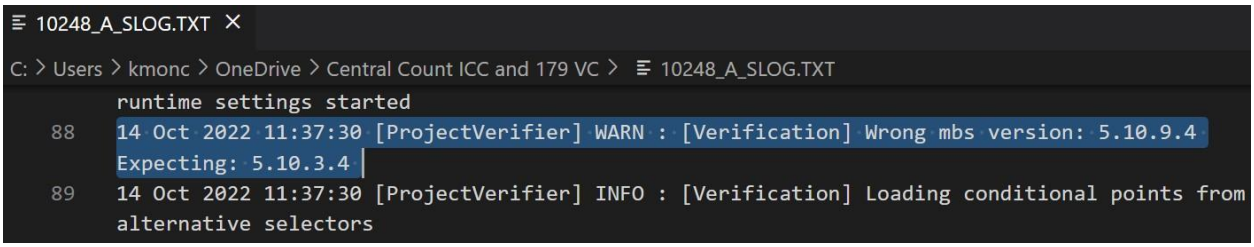
Further, Lake's legal team continued analyzing the 30+ million log entries after the Rule 60(b) Motion was filed. The logs show that Maricopa was warned the election database on the reformatted memory cards failed to match the election domain—which Maricopa did not correct—as shown below:



Appx:0879-81 (Parikh 2nd Supp. Decl. ¶¶6, 11-14)

In addition, the system warned Maricopa that the tabulator Machine Behavior Settings ("MBS") which govern how the tabulators interpret ballots, employed the

"Wrong" software version, "5.10.9.4", when the "expect[ed]" version the tabulator was programmed with was "5.10.3.4"—an error Maricopa did not correct:



Appx:0881 (*id.* ¶¶13-15)

Lastly, the Arizona Secretary of State has only certified Dominion software version 5.5B for use in Arizona elections. The above-described 5.10 Dominion software version actually used by Maricopa shown above is ***not certified*** for use in Arizona, thus was unlawfully employed. A.R.S. § 16-442. The foregoing faults means there is no way to know if the votes cast or tabulated were correctly recorded. Appx:0882 (Parikh 2nd Supp. Decl. ¶17).

II. Maricopa Is Not Performing Signature Verification In Accordance With A.R.S. § 16-550(A)

Maricopa's time stamp log data shows that Maricopa reviewers compared and verified voter signatures under A.R.S. § 16-550(A) at humanly impossible speeds. More than 70,000 voter signatures were supposedly "compared" and "verified" in under two seconds each, and more than 276,000 signatures took less than three seconds each. Appx:0447-50 (Tr. 10:16-13:6). As Lake's signature expert testified, it is impossible to "compare" a voter signature in accordance with A.R.S. § 16-

550(A) at those speeds. *Id*.

ARGUMENT

I. Transfer Is Appropriate

A. Extraordinary circumstances justify transfer.

Three extraordinary circumstances warrant transfer under Rule 19(a)(3). First, the trial court's denial of the Rule 60(b) Motion and its ruling on Count III are facially incorrect and warrant prompt reversal for a new election, or retrial. Second, the cloud over the 2022 election must be resolved to restore faith in that and future Arizona elections. Third, these issues are obviously of statewide importance.

1. The trial court's facially incorrect rulings warrant immediate transfer.

Transfer is warranted because the trial court's facially erroneous legal rulings on the Rule 60(b) Motion and Count III can be summarily corrected by this Court upon transfer, namely that:

(i) Lake switched her claim from a "printer-based claim" to a "tabulator-based claim" stating "[t]his is not newly discovered evidence that goes to the claim as presented to the Court in December and reviewed on appeal, it is a wholly new claim, and therefore Count II remains unrevived.";

(ii) "Fraud" or a knowing "misrepresentation" must exist for relief under ARCP 60(b)(3); and

Appx:008-11 (5/15/23 UAR 5-8).

(iii) With respect to Count III, the statutory requirement of what it means to "compare" voter signatures under A.R.S. § 16-550(A) is not judicially reviewable. Appx:0014-16 (5/22/23 UAR).

First, Lake did not change Count II from a "printer-based claim" to a "tabulator-based claim." Count II has ***always*** centered on the Election Day tabulation chaos caused by misconfigured and defective ballots and Maricopa's failure to perform proper L&A testing, which would have detected these issues.[1]

Second, it is sufficient for relief under Rule 60(b)(3) that new evidence contradicts Jarrett's testimony about the cause and scale of tabulation ballot rejections. The McGregor Report "could not determine" why printer misconfigurations occurred.[2] The logs and other Maricopa documents show ballot rejections were vastly more widespread than Jarrett attested. Relief from judgment may be based on an opposing party's "even accidental omissions"—not only "fraud" or "misrepresentation." *See Estate of Page v. Litzenburg*, 177 Ariz. 84, 93 (App. 1993) ("'[m]isconduct' within the rule need not amount to fraud or misrepresentation but may include even accidental omissions."); *see also Norwest*

[1] Appx:0029-30 (Issues Presented for Review 4 and 5).

[2]In subsequent briefing on sanctions, Lake addressed the court's finding in the 5/15/23 UAR that the McGregor Report did not support falsity. Appx:0367-68. The court did not disagree. Appx:0019-20 (5/26/23 Judgment).

Bank (Minnesota), N.A. v. Symington, 197 Ariz. 181, 186 (App. 2000) (same). The court misapplied the law by holding "even if … Mr. Jarrett was mistaken on the first day of trial, that is not sufficient for Rule 60 relief." Appx:0010.

Third, the court's ruling that judicial review of the word "compare" in A.R.S. § 16-550(A) is unavailable, leaving Arizona voters with no remedy, contradicts long-standing precedent. *See, e.g.*, *State v. Miller*, 100 Ariz. 288, 296, 413 P.2d 757 (1966) ("the words of a statute are to be given their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.").

2. This appeal affects the 2022 general election and the upcoming 2024 election.

The need for a timely determination justifies transfer because the controversies at issue are not only important and may recur in future elections. *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 404-05 (2020); *see also Fleischman v. Protect Our City*, 214 Ariz. 406, 409, ¶14 (2007). Compounding these exceptional circumstances, is the startling related new evidence uncovered after filing the Rule 60(b) Motion that shows Maricopa is conducting elections using software ***not certified*** by the Arizona Secretary of State.

3. This matter presents legal issues of statewide importance.

There is scarcely a matter of greater statewide importance than protecting the electoral process: "the political franchise of voting [is] a fundamental political right, because preservative of all rights." *Reynolds v. Sims*, 377 U.S. 533, 562 (1964).

Approximately 60% of the 2,592,313 votes cast in the 2022 Arizona general election came from Maricopa. Elections in Maricopa affect all Arizonians.

CONCLUSION

This Court should transfer and expeditiously hear this case.

Dated: July 14, 2023

Respectfully submitted,

/s/Bryan James Blehm

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CERTIFICATE OF COMPLIANCE

Pursuant to Arizona Rules of Civil Appellate Procedure Rule 14(a)(5), the undersigned counsel certifies that the Petition for Transfer is double spaced and uses a proportionately spaced typeface (*i.e.*, 14-point Times New Roman) and contains 1,399 words according to the word-count function of Microsoft Word.

Dated: July 14, 2023

Respectfully submitted,

/s/Bryan James Blehm

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