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9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STEPHEN RICHER,

12 Plaintiff,

13 v.

14 KARI LAKE, KARI LAKE FOR ARIZONA,
and SAVE ARIZONA FUND,

15 Defendants.

No. CV-2023-009417

MOTION TO DISMISS

(assigned to the Honorable Jay Adleman)

(oral argument requested)

16
17 Defendants KARI LAKE, KARI LAKE FOR ARIZONA, and SAVE ARIZONA
18 FUND (“Defendants”) move for dismissal of this suit for failure to state a claim upon which
19 relief may be granted pursuant to Rule 12(b)(6), Arizona Rules of Civil Procedure.
20
21
22
25

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The Plaintiff in this matter, Maricopa County Recorder Stephen Richer (“Recorder
4 Richer”), generally objects to being criticized. However inconvenient such criticisms are
5 for Recorder Richer, the fact is he is an elected, public, government official, and in America,
6 elected, public, government officials are often subjected to constitutionally protected harsh
7 and severe criticism.

8 Recorder Richer wants to have it both ways regarding his election-related duties. On
9 the one hand, Recorder Richer holds himself out to be the chief elections officer for
10 Maricopa County, but then when people criticize him, claiming he botched Election Day
11 voting, he disavows that particular role and points the finger at others. Recorder Richer’s
12 “cake and eat it too” tactic does not plead an actionable claim for defamation because when
13 it comes to defamation, truth is a defense, but so too is alleging something that one *believes*
14 is true, absent actual malice. When Recorder Richer goes around telling everyone he is in
15 charge of elections, it is only natural that Recorder Richer would be the target of criticism
16 when things go awry on Election Day, as they did in 2022.

17 And to be clear, Recorder Richer chose public life. No one made him run for county
18 recorder. And when he ran for office, he frequently, and harshly, criticized then recorder
19 Adrian Fontes, calling him “incompetent, corrupt, unprofessional.”¹ Recorder Richer
20

21 ¹ Stephen Richer (@stephen_richer), TWITTER (Sept. 2, 2020, 2:22 PM),
22 https://twitter.com/stephen_richer/status/1301269364100931584?s=20 (last accessed Aug.
23 22, 2023)(“Campaign video #1. Time to put an end to this failure and take the nonsense out
of our elections.”)

1 knows that elections are closely scrutinized, just as he harshly blamed and criticized Mr.
2 Fontes for how Mr. Fontes administrated elections.

3 In fact, following widespread concerns raised in 2016 about possible system hacks,²
4 Recorder Richer's own harsh public criticisms of how Mr. Fontes administered the 2018
5 elections,³ and the rhetoric Recorder Richer helped perpetuate leading up to the 2020
6 elections,⁴ Recorder Richer undoubtedly knew exactly what he was getting into when he
7 chose to run for and hold a high-profile public office. He jumped in with eyes wide open
8 knowing that how *he* administered elections would also be highly scrutinized. If he now
9 wants a quiet, uncritical life as to his job performance, he should resign, forthwith.
10 Otherwise, handling public criticism comes with being an elected, public, government
11 official, accountable to his constituents.

12 Even more importantly, Recorder Richer's allegations are not at all new. In fact,
13 though in a different iteration, Recorder Richer's defamation allegations were effectively
14

15 ² David E. Sanger and Catie Edmondson, *Russia Targeted Election Systems in All 50 States*,
16 *Report Finds*, N.Y. TIMES, (July 25, 2019),
17 [https://web.archive.org/web/20230803105656/https://www.nytimes.com/2019/07/25/us/p](https://web.archive.org/web/20230803105656/https://www.nytimes.com/2019/07/25/us/politics/russian-hacking-elections.html)
18 [olitics/russian-hacking-elections.html](https://web.archive.org/web/20230803105656/https://www.nytimes.com/2019/07/25/us/politics/russian-hacking-elections.html) (last accessed Aug. 22, 2023) (report details
19 "hackings directed by Russian intelligence, particularly in Illinois and Arizona" and the "an
20 unprecedented level of activity against state election infrastructure").

21 ³ Stephen Richer, Arizona Republican Party Election Audit Preliminary Report (Jan. 25,
22 2019), [https://www.documentcloud.org/documents/5699777-AZGOP-Preliminary-Audit-](https://www.documentcloud.org/documents/5699777-AZGOP-Preliminary-Audit-Findings.html)
23 [Findings.html](https://www.documentcloud.org/documents/5699777-AZGOP-Preliminary-Audit-Findings.html) (last accessed Aug. 22, 2023) (228-page report detailing specific concerns
regarding the conduct of the 2018 election).

24 ⁴ Stephen Richer (@stephen_richer), TWITTER (May 14, 2020, 8:37 PM),
25 https://twitter.com/stephen_richer/status/1261138680980226049?s=20 (last accessed Aug.
26 22, 2023)("[Adrian Fontes] /has broken the law /botched the 2018 primary /has been
27 mocked as 'mr. Transparency' by even liberal members of the media /has been reprimanded
28 by the aZ Supreme Court for neglecting duties of the office /allocated resources to partisan
29 registration drives. But yeah, swearing 2.")

1 rejected in Court, and issue preclusion applies to bar them here. Specifically, all of the
2 matters Recorder Richer cites in his Complaint concerning the statements made by Kari
3 Lake that he claims are defamatory were also the basis of an election challenge filed by
4 Kari Lake. Recorder Richer twice moved the trial court for sanctions and twice failed.
5 Clearly if a court rejects the argument that the opposing party filed suit making certain
6 claims in bad faith, it is inconceivable that the party would nonetheless be held to have acted
7 *with actual malice* in making those very same claims out of court.⁵

8 In sum, Recorder Richer’s lawsuit fails to state a claim because it is nothing more
9 than an improper third bite at the apple to retaliate against Kari Lake for continuing to voice
10 legitimate concerns about conduct reasonably attributable to Recorder Richer described in
11 the lawsuit she brought against him and others challenging the 2022 election. Recorder
12 Richer’s two prior failed attempts at obtaining sanctions regarding the same issues raised in
13 that lawsuit support a finding of issue preclusion, and the statements made by Kari Lake are
14 protected by the free speech provisions in the Arizona and United States Constitution. This
15 suit must be dismissed.

18
19 ⁵ Issue preclusion aside, Kari Lake’s election contest (and with it, statements raised in the
20 complaint) is still being actively litigated. A Notice of Appeal was filed on May 31, 2023;
21 the opening brief is due September 15. Notice of Appeal, *Lake v. Hobbs, et al.*, Maricopa
22 County Superior Court, Case No. CV2022-095403 (May 31, 2023),
23 <https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/5231/638212345277670000> (last accessed Aug. 22, 2023). If allowed to proceed, it is unclear how the relief requested, *i.e.*, the court declaring statements “false” and “enjoining Defendants to remove” those statements from “any website” or “social media accounts”, could impact on-going litigation and the specific claims Defendants have raised on appeal. Complaint at 44.

1 **II. ARIZONA COURTS HAVE A DUTY TO SAFEGUARD FREE SPEECH**
2 **RIGHTS BY ONLY LETTING TRULY MERITORIOUS DEFAMATION CASES**
3 **PROCEED, DISMISSAL IS WARRANTED**

4 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Neary v.*
5 *Frantz*, 141 Ariz. 171, 178 (App. 1984). A Court “assum[es] the truth of all well-pled
6 factual allegations...” *Sw. Non-Profit Hous. Corp. v. Nowak*, 234 Ariz. 387, ¶10 (App.
7 2014).

8 Generally, a motion to dismiss is converted to a motion for summary judgment if the
9 court considers documents outside of the pleadings. Ariz. R. Civ. P. 12(b); *see also Green*
10 *v. Garriott*, 221 Ariz. 404, 417 (App.2009). However, a court may take judicial notice of
11 “matters of public record” without converting a motion to dismiss into a motion for
12 summary judgment, as long as that fact is not “subject to reasonable dispute.” *Khoja v.*
13 *Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018).

14 In this instance, Defendants offer certain public admissions by Recorder Richer that,
15 while they are outside of the complaint, are directly relevant to his threshold assertions, and
16 we ask the Court to consider them. Recorder Richer’s public admissions are subject to
17 judicial notice as these admissions cannot be reasonably disputed. As explained below, this
18 Court should consider them, especially in light of the nature of this case. As the Arizona
19 Supreme Court has stated, “[i]n reviewing a defamation case, we are also mindful that
20 courts serve as gatekeepers to ensure, especially in the context of political speech, ‘that only
21 truly meritorious defamation lawsuits are allowed to proceed.’” *Harris v. Warner in and for*
22 *Cnty. of Maricopa*, 527 P.3d 314, 317 (Ariz. 2023)(quoting *Rogers v. Mroz*, 252 Ariz. 335,
23 338 ¶4, 502 P.3d 986, 989 (2022).

1 For practical purposes, what the Court stated in *Harris* means this Court should err
2 on the side of a robust review of the Complaint at the earliest possible stage. The free
3 speech concerns are clear—Recorder Richer is an elected, public, government official and
4 Kari Lake, a career journalist, is a high-profile candidate for office. The danger is that even
5 when defamation cases that lack merit, such as this one, are allowed to continue, the mere
6 threat of even unsuccessful litigation causes people to engage in self-censorship. To assess
7 the merits of this case, this Court should review all of Recorder Richer’s admissions
8 included in the materials cited in this Motion. *Khoja*, 899 F.3d at 999.

9 This case must also be considered against the backdrop of the very recent Arizona
10 jurisprudence noted above. Even though politicians suing for defamation seems to be
11 increasing significantly, the Arizona Supreme Court has clearly signaled hostility to
12 political speech related defamation cases. This is evident by the Arizona Supreme Court’s
13 clear expectation that the trial court be *the* “gatekeeper” as noted in the *Harris* case above,
14 decided a few short months ago. Only “truly meritorious” defamation cases must be
15 allowed to proceed, and Recorder Richer’s gripes do not fall into that category. *Rogers*,
16 252 Ariz. at 338 ¶4.

17 The Arizona Supreme Court has exercised this “enhanced appellate review” of
18 defamation cases, as it describes it, twice in the last two years, ordering cases to be
19 dismissed at the trial level. *Rogers*, 252 Ariz. at 340 ¶20; *Harris*, 527 P.3d at 317 ¶9. It is
20 clear Arizona’s jurisprudence frowns on defamation cases, especially those related to core
21 political speech, and that courts at all levels must scrutinize defamation cases, dismissing
22 all but those that truly have merit.

1 This is not a truly meritorious case. The types of statements that Recorder Richer
2 complains of are the types of statements directly related to his job performance that political
3 foes and constituents critical of elected officials ordinarily make. In fact, being criticized
4 and responding to “outrageous” claims is part and parcel with public life. As an example,
5 Kari Lake’s detractors spent untold sums on videos and television ads falsely claiming that
6 Kari Lake wanted Arizona to secede from the United States.⁶ Over the past several years,
7 Kari Lake has also frequently been called an “election denier”, yet such criticisms are
8 clearly hyperbole as no one seriously claims Kari Lake fundamentally denies elections
9 exist—Kari Lake instead denies elections are competently and fairly administered—a
10 concern shared by many Americans.⁷

11 If Recorder Richer does not want to be criticized over his job performance, he should
12 not be a public official, and should resign his office. The alternative, crediting Recorder
13 Richer’s claims, leads to a world in which free speech ceases to be a fact of American life
14 and recedes into an unrealized ideal whereby constituents (and political opponents) are
15 forbidden from criticizing their elected representatives. It is an America that would be not
16 be recognized in terms of its political nature. This path, and the gutting of the First
17

18 ⁶ See e.g., Katie Hobbs (@katiehobbs), TWITTER (Oct. 14, 2022, 8:25 AM),
19 <https://twitter.com/katiehobbs/status/1580942935650025475?s=20> (last accessed Aug. 22,
20 2023)(“Watch: Kari Lake announces that she wants to secede from the United States. Are
21 we in 1860? Lake's dangerous threat to secede would seriously harm Arizonans' health and
22 safety.”).

21 ⁷ See e.g., Katie Hobbs (@katiehobbs), TWITTER (Oct. 16, 2022, 4:33 PM),
22 <https://twitter.com/katiehobbs/status/1581790414637367297> (last accessed Aug. 22, 2023)
23 (“Kari Lake is a threat to our democracy. She’s an election denier who would rather spread
unhinged conspiracy theories and undermine our freedoms than help Arizonans. Lake is
unfit to lead Arizona, and we must defeat her this November.”).

1 Amendment and free speech clauses of the Arizona Constitution that it would engender,
2 must be stopped, starting with dismissal of this matter.

3 **III. ISSUE PRECLUSION BARS RECORDER RICHER'S CAUSE OF ACTION**

4 Recorder Richer previously took his shot on the same claims he makes here in his
5 Complaint and lost; issue preclusion applies. "Issue preclusion bars relitigation of an issue
6 if the issue was previously litigated, determined, and necessary to final judgment." *Special*
7 *Fund Div., Industrial Com'n v. Tabor*, 201 Ariz. 89, 92 (App. 2001).

8 Recorder Richer's two big complaints stem from Kari Lake's claims regarding chain
9 of custody failures affecting about 300,000 ballots and Election Day printer/tabulator issues.
10 These were central claims raised and litigated in the election challenge filed by Kari Lake.
11 *Lake v. Hobbs, et al.*, Maricopa County Superior Court, Case No. CV2022-095403.⁸ To
12 wit, the election challenge devotes a full eight pages to these allegations. Below is a
13 sampling of allegations in Kari Lake's verified election challenge filed in Maricopa County
14 Superior Court:

15 **Illegal Ballot Handling and Chain of Custody Failures with Respect** 16 **To Over 300,000 Ballots Make The Outcome of the Election Uncertain**

17 106. Maricopa County election officials engaged in numerous breaches
18 of Arizona election law in their handling and custody of ballots, making
it impossible to conclude that the vote tallies reported by Maricopa County
accurately reflect the votes cast by Arizona voters.

19 107. Arizona law requires that "[t]he county recorder or other officer in
charge of elections shall maintain records that record the chain of custody for
all election equipment and *ballots during early voting through the*

21 ⁸ Complaint in Special Action and Verified Statement of Election Contest Pursuant to
A.R.S. § 16-672, *Lake v. Hobbs, et al.*, Maricopa County Superior Court, Case No.
CV2022-095403 (Dec. 9, 2022),
22 [https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4151/6380645166](https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4151/638064516668500000)
23 [68500000](https://www.clerkofcourt.maricopa.gov/home/showpublisheddocument/4151/638064516668500000) (last accessed Aug. 22, 2023).

1 *completion of provisional voting tabulation."* Ariz. Stat. § 16-621(E)
2 (emphasis added). *See also* Arizona Elections Procedures Manual 61-61.

3 The same is true of the Election Day problems, as outlined in paragraph 100 of the
4 election challenge:

5 **Maricopa County Election Officials Are Responsible for The Failures of**
6 **The Ballot On Demand Printers And Tabulators Which Resulted**
7 **From Intentional Misconduct And Disproportionately Targeted**
8 **Republican Voters**

9 100. Given the policies and procedures governing the testing and use of
10 electronic voting systems in Arizona, the extent and character of the
11 problems and breakdowns encountered at Vote Centers in Maricopa County
12 on Election Day eliminate any plausible explanation other than intentional
13 causation as the reason for the widespread breakdowns of printers and/or
14 tabulators at the Vote Centers that day. Maricopa County did not experience
15 these kinds of widespread breakdowns in the days leading up Election Day,
16 or during the limited testing performed on the election equipment. The
17 sudden widespread appearance of preventable breakdowns on Election Day,
18 a day on which it was known that the electorate would be heavily weighted
19 toward voters favoring Lake, was an outcome materially and adversely and
20 Maricopa indicates that the problems were intentionally caused.

21 Recorder Richer twice asked the Maricopa County Superior Court to sanction Kari
22 Lake with respect to these very claims made in her election challenge and the Maricopa
23 County Superior Court twice refused and rebuffed Recorder Richer's request. (Exhibit A
and B). In denying the first request, the trial court stated:

18 There is no doubt that each side believes firmly in its position with great
19 conviction. **THE COURT FINDS** that Plaintiff's claims presented in
20 this litigation were not groundless and brought in bad faith under Arizona
21 Revised Statutes § 12-349(A)(1).

22 Dec. 27, 2022 Minute Entry at 3. (Exhibit A).

23 In the second trial, Lake moved for relief from judgment under Rule 60, Ariz. R. Civ.
P., in connection with, *inter alia*, the ballot sizing issue concerning 19-inch ballot images

1 printed on 20-inch paper which caused tabulators to reject those ballots. At oral argument,
2 in connection with the Rule 60 motion, Lake’s counsel stated that the “evidence would
3 support our allegation that this election was rigged.” Though the Court denied the Rule 60
4 motion, in denying Maricopa’s second request for sanctions after the close of the second
5 trial, the trial court stated “[e]ven if her argument did not prevail, Lake, through her
6 witnesses, presented facts consistent with and in support of her legal argument.” May 26,
7 2023 Minute Entry at 2. (Exhibit B).

8 Simply put, Recorder Richer has already asserted in court that the Defendants’ claims
9 are “groundless” and “full of it”, demanding compensation—and has already been denied.
10 In fact, not once, but twice, the Court explicitly rejected his arguments. To be sure, a
11 defamation cause of action is not a request for sanctions. But nonetheless, the issues clearly
12 overlap—and one cannot conceivably lose on a sanctions motion but nonetheless succeed
13 on a claim that the same opposing party has the requisite **malice** to have committed
14 actionable defamation. This matter must be dismissed.

15 **IV. DEFENDANTS’ COMMENTS ARE PROTECTED BY THE ARIZONA AND** 16 **UNITED STATES CONSTITUTIONS**

17 **A. The Wide Latitude Given to Individuals To Engage in Free Speech**

18 The Arizona Supreme Court has summed up the significant free speech concerns
19 present in any defamation suit as follows:

20 The First Amendment recognizes that “debate on public issues should be
21 uninhibited, robust, and wide-open, and that it may well include vehement,
22 caustic, and sometimes unpleasantly sharp attacks on government and public
23 officials.” *New York Times v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721,
11 L.Ed.2d 686, 701 (1964). *See also* Ariz. Const. art. 2, § 6. In furtherance
of such spirited debate, the law provides that public officials may recover
damages for defamation only if they prove “actual malice,” that is,
“knowledge that [the defamatory statement] was false or with reckless

1 disregard of whether it was false or not.” *New York Times*, 376 U.S. at 279–
2 280, 84 S.Ct. at 726, 11 L.Ed.2d at 706. “Public figures” bear the same
burden....

3 *Currier v. Western Newspapers, Inc.*, 855 P.2d 1351, 1353, 175 Ariz. 290, 292 (Ariz.,
4 1993).

5 Clearly Recorder Richer is both a public official and a public figure, so he must prove
6 actual malice, which at a minimum involves recklessness disregard by Defendants as to the
7 veracity of their statements concerning his job performance.⁹ In addition, in *Rogers*, the
8 Arizona Supreme Court also noted that in order “to establish a defamation claim on matters
9 of public concern: (1) the assertion must be provable as false; [and] (2) the statement must
10 be reasonably perceived as stating actual facts about an individual, rather than imaginative
11 expression or rhetorical hyperbole.”¹⁰ *Rogers*, 252 Ariz. at 341 ¶22.

12 In other words, a viable defamation claim has to pass through what amounts to a
13 legal eye of the needle—a claim must be false, and significant enough to actually matter,
14 without being something that is the product of the speaker’s “imaginative expression” or
15 “rhetorical hyperbole” such that it is something that a reasonable listener would take
16 literally. Recorder Richer fails to thread this needle, and in fact he misses badly.

19 ⁹ Recorder Richer feebly asserts he brings this case in his personal capacity, but all of Kari
20 Lake’s statements relate to Recorder Richer’s elected duties. Notably, his professional
21 background is as an attorney who “focuses his [transactional] practice on buying and selling
22 (M&A), search funds, contract drafting, startup guidance, structuring entities, independent
investigations, and new technologies[,]” hardly election-related work. Stephen Richer,
Contributor Biography, FED. SOC., <https://fedsoc.org/contributors/stephen-richer> (last
accessed Aug. 22, 2023).

23 ¹⁰ The Arizona Supreme Court also quoted this in *Harris*. 527 P.3d at 317.

1 **B. Recorder Richer’s Newfound Attempts to Wash His Hands of Actions on**
2 **Election Day Ring Hollow**

3 In his complaint, Recorder Richer claims repeatedly “that he is not responsible for
4 Election Day operations[.]” Complaint at ¶111. But this would come as news to anyone
5 who listens to how Recorder Richer holds himself out publicly. For example, in a recorded
6 podcast interview with *The New York Times*, Recorder Richer was introduced, without
7 correction as follows: “Stephen Richer oversees elections in Maricopa County, which
8 accounts for more than half of the voters in Arizona.”¹¹ The podcast headline specifically
9 describes Recorder Richer as “the chief election officer in Maricopa County, Ariz.” *Id.* And
10 Recorder Richer claims in the interview that “[w]e tabulated the votes accurately...[w]e
11 tabulated the votes faster than we’d previously tabulate them...[.]” *Id.*

12 According to a biography Recorder Richer presumably submitted himself to the
13 conference organizer, Recorder Richer “is responsible for...election administration for the
14 fourth largest county and second largest voting jurisdiction in the United States.”¹²

15 In a November 5, 2021 Twitter post, Recorder Richer stated:

16 Done. First major election. @TheYellowSheet didn’t even mention the
17 election this week. Hopefully that means the election administration was
18 smooth, uneventful, and — dare I say it — boring! All the credit goes to hard
19 working teams of @MaricopaVote and 155 of whom are full time employees,
20 but we were joined by over 150 temporary workers — regular Arizonans,

21 ¹¹ Michael Barbaro, *Running an Election in the Heart of Election Denialism, A conversation*
22 *with Stephen Richer, the chief election officer in Maricopa County, Ariz.*, N.Y. TIMES, Oct.
23 24, 2022, [https://www.nytimes.com/2022/10/24/podcasts/the-daily/midterm-elections-](https://www.nytimes.com/2022/10/24/podcasts/the-daily/midterm-elections-denialism-stephen-richer.html)
[denialism-stephen-richer.html](https://www.nytimes.com/2022/10/24/podcasts/the-daily/midterm-elections-denialism-stephen-richer.html) (last accessed Aug. 22, 2023).

¹² Stephen Richer, *Speaker Biography*, ASPEN IDEAS,
<https://www.aspenideas.org/speakers/stephen-richer> (last accessed Aug. 22, 2023).

1 your neighbors! — who take up the call every so often to work polls, signature
2 verification, ballot processing, warehousing, site set up, adjudication, etc¹³

3 Recorder Richer’s attempts to take ownership of all things election go on and on.¹⁴

4 While some statements are made by Recorder Richer and some are made by others, there is
5 no indication that Recorder Richer corrected what he now claims are exaggerations of his
6 job responsibilities. It does not matter that Recorder Richer now attempts to retreat from
7 claiming total responsibility for elections—anyone would think he was responsible for
8 elections based on all of *his* public statements and actions. Defamation law does not allow
9 for the nuances that Recorder Richer now attempts to find refuge in, which stand in stark
10 contrast to the way he has let everyone believe he is in charge of elections, period.

12 ¹³ Stephen Richer (@stephen_richer), TWITTER (Nov. 5, 2021, 7:32 PM)
13 https://twitter.com/stephen_richer/status/1456811792399671298?s=20 (last accessed Aug.
22, 2023).

14 ¹⁴ Session, *How Do You Know if Your Vote is Counted?* ASPEN IDEAS, June 30,
2022, <https://www.aspenideas.org/sessions/how-do-you-know-if-your-vote-is-counted>
15 (last accessed Aug. 22, 2023); Dillon Rosenblatt, *Stephen Richer prefers boring, takes on*
Trump, ARIZ. CAP. TIMES, May 21, 2021,
16 [https://azcapitoltimes.com/news/2021/05/21/stephen-richer-prefers-boring-takes-on-](https://azcapitoltimes.com/news/2021/05/21/stephen-richer-prefers-boring-takes-on-trump/)
[trump/](https://azcapitoltimes.com/news/2021/05/21/stephen-richer-prefers-boring-takes-on-trump/) (last accessed Aug. 22, 2023)(“Maricopa County Recorder Stephen Richer speaks
17 at a press conference May 17 to defend his staff against ‘defamatory lies’ spread [that
election tabulation data was deleted from a server] as the Arizona Senate conducts its audit
of the 2020 election.”); Maricopa County (@maricopacounty), Twitter, (Nov. 7, 2022, 5:46
18 PM) <https://twitter.com/maricopacounty/status/1589781271986987008?s=20> (last
accessed Aug. 22, 2023), Pre-Election Joint Press Conference, Maricopa County Board of
19 Supervisors and County Recorder (discussing all aspects of voting from early voting
through canvass); Maricopa County (@maricopacounty), TWITTER, (Nov. 7, 2022, 5:46
20 PM) <https://twitter.com/maricopacounty/status/1589781347241193472?s=20> (last
accessed Aug. 22, 2023) Pre-Election Joint Press Conference, Maricopa County Board of
21 Supervisors and County Recorder (Richer states “if you come down to Maricopa County’s
tabulation center, you would see that at no point are we tabulating without the participation
22 of the political parties”, implying he is a part of the “we” that has responsibility for
23 tabulation.).

1 **C. The Individual Claims by Lake that Form the Basis of this Lawsuit Are**
2 **Not Actionable for Additional Reasons**

3 Though Recorder Richer’s attempt to disavow the narrative that he has tried to create
4 is unavailing, there are additional reasons why the two claims he pleads are not actionable.

5 1. The Election Day Printing/Tabulation Claims

6 Recorder Richer calls the first statement forming the defamation claim the “Ballot
7 Size Sabotage” statement. Defendants will call it the “Election Day Printing/Tabulation
8 Claims”. But whatever we want to call it, this is how Recorder Richer characterizes it:

9 During that [January 29, 2023] rally, Lake falsely and with actual malice
10 accused Richer of sabotaging the 2022 general election by misprinting
11 Election Day ballots. Lake told the assembled crowd that “Richer and
12 [Maricopa County Supervisor Bill] Gates . . . printed a 19-inch image, the
13 wrong image on the ballot, so that the tabulators would jam all day long.
14 That’s exactly what happened. They did not want us to notice this. They didn’t
15 want us to notice it. You know who they want—You know, the only the only
16 person, the only thing they wanted to notice this was the tabulators so that
17 they would jam and spit out ballots, which is exactly what happened all day
18 on Election Day. . . . And Richer and Gates, let’s show those two again, these
19 two men. These two men, we pay their salary, we the people pay their salary,
20 we pay for our elections.”

21 Complaint at ¶16.

22 The undeniable fact is there were a significant number of ballots on Election Day
23 that were unable to be tabulated by the on-site tabulators due, in part, to a misprinted ballot
24 image size. Ruth McGregor, *Maricopa County 2022 General Election Ballot-on-Demand*
25 *Printer Investigation* (Apr. 10, 2023) (“McGregor Report”) at 2.¹⁵ The result: long Election

26 ¹⁵ A complaint’s exhibits, or public records regarding matters referenced in a complaint, are
27 not “outside the pleading,” and courts may consider such documents without converting a
28 Rule 12(b)(6) motion into a summary judgment motion. *Coleman v. City of Mesa*, 230 Ariz.

1 Day lines at the polls and considerable confusion.¹⁶ In fact, these issues were so significant
2 that Maricopa County itself sought the need to go out and hire a former Supreme Court
3 Justice to conduct what the County claimed was an independent investigation of the
4 Election Day maladies. Attached hereto as Exhibit C.

5 What is perhaps most telling, however, about the McGregor Report is how Recorder
6 Richer characterized it in his complaint:

7 On April 10, 2023, former Arizona Chief Justice Ruth V. McGregor issued
8 the findings of a months-long investigation into the Ballot Size Sabotage
9 claims, which concluded—consistent with the Arizona Superior Court’s
factual findings—that the Election Day issues most likely resulted from
technical problems, not intentional misconduct.

10 Complaint at ¶24(d)(emphasis added).

11 Notably, Recorder Richer left out the conclusion in the McGregor Report regarding
12 19-inch ballot images printing on 20-inch ballot paper, stating that “[w]e ***could not***
13 ***determine*** whether this change [in the ballot size] resulted from a technician attempting to
14 correct the printing issues, the most probable source of change, or a problem internal to
15 the printers.” McGregor Report at 12 (emphasis added).

16 In other words, lack of intentional misconduct is not a proven fact, it is an opinion
17 of Justice McGregor as to what “most likely” happened but she “could not determine”
18 what specific actions—whether intentional conduct or system glitches—caused ballot size
19 errors. The McGregor Report demonstrates exactly why this statement is not actionable,

20
21 352, 356, ¶9 (2012); *Workman v. Verde Wellness Ctr., Inc.*, 240 Ariz. 597, 601, ¶10 (App.
2016)

22 ¹⁶ *Long lines to vote across Maricopa County*, AZFAMILY (Nov. 8, 2022, 5:19 PM)
23 <https://www.azfamily.com/video/2022/11/09/long-lines-vote-across-maricopa-county/>
(last accessed Aug. 22, 2023).

1 even if we assume, for the sake of this Motion, that Kari Lake actually accused Recorder
2 Richer specifically of intentional misconduct. To put it another way, the McGregor Report
3 cited by Recorder Richer shows that the issue of intentional misconduct cannot be
4 “provable as false,” which the Arizona Supreme Court stated in *Rogers* was necessary to
5 maintain an action in defamation. 252 Ariz. at 341, ¶ 22; *see also Takieh v. O'Meara*, 252
6 Ariz. 51, 57 (App. 2021)(subjective beliefs are “insulated from defamation liability”).

7 Moreover, a statement need not be true in all respects to defeat a claim for
8 defamation. In Arizona, a statement must only be substantially true as a defense to a claim
9 of defamation. As the Arizona Court of Appeals has stated in a memorandum decision:

10 To be deemed “true” for defamation purposes, every detail of a statement
11 need not be literally accurate; rather, the statement, as a whole, must be
12 “substantially true.” *Read v. Phoenix Newspapers, Inc.*, 169 Ariz. 353, 355
13 (1991). Under this standard, “[s]light inaccuracies” do not “prevent a
14 statement from being true in substance, as long as the ‘gist’ or ‘sting’ of the
15 [statement] is justified.” *Id.* (quoting *Heuisler v. Phoenix Newspapers, Inc.*,
168 Ariz. 278, 285 n.4 (App. 1991)). “When the underlying facts are not
disputed, ‘the determination of substantial truth is a matter for the court,’
which determines whether publishing the literal truth would have made a
‘material difference to [the audience].’ ” *Sign Here Petitions LLC v. Chavez*,
243 Ariz. 99, 108, ¶ 30 (App. 2017).

16 *True North Companies LLC v. Lai*, 2019 WL 5152255, at ¶22 (Ariz.App. 2019).¹⁷

17 The bottom line is that when one holds oneself as being in charge of conducting an
18 election, and something as fundamental as simply tabulating the ballots at the polling sites
19 goes wrong, many people will consider it intentional, even if the ultimate event stems only

21
22 ¹⁷ Defendants offer this as a concise summary of the relevant case law and for its persuasive
23 value only. Ariz. R. Sup. Ct. 111(c)(1)(C). Memorandum decision available at
<https://casetext.com/case/true-n-cos-v-jia-yee-lai>.

1 from the (intentional) failure to properly prepare. The Election Day Printing/Tabulation
2 Claim is simply not actionable.

3 2. The Chain of Custody Claims

4 The Plaintiff calls the second statement the “Bogus Ballot Injection” claim.
5 Defendants call it the “Chain of Custody Claims”. Here is an emblematic example of this
6 claim: “Lake...stat[ed] that ‘they really had to pour in a lot of phony ballots to make that
7 happen. And turns out now we know 300,000 with no chain of custody were tossed in and
8 counted.’” (Complaint at ¶57).

9 Of course, this statement suffers from a failure to allege that it was spoken with
10 regard to Recorder Richer individually at all. *See Reynolds v. Reynolds*, 231 Ariz. 313, 317,
11 ¶8 (App. 2013) (noting that a defamation claim requires a “false and defamatory
12 communication concerning” about the actual Plaintiff); *Yetman v. English*, 168 Ariz. 71, 76
13 (1991)(stating that the challenged statement must “concern” the Plaintiff himself). But even
14 if we assume it states something about Recorder Richer, it is still not actionable.

15 There were clearly chain of custody issues with a large number of ballots. In fact,
16 Maricopa (including Recorder Richer) explained to the Court of Appeals, that unlike every
17 day prior to November 8, 2022, “given the volume of ballot packets received from vote
18 centers on election day... [Maricopa] estimate[s] the number of early ballot packets based
19 on the number of trays” before transporting them to the third-party vendor. *Lake v. Hobbs*,
20 254 Ariz. 570, ¶22 (App. 2023). Kari Lake argued estimating, rather than counting every
21 ballot packet, violated the chain of custody procedures set forth in the Election Procedure
22
23

1 Manual. *Id.* Maricopa admitted it sent an estimated “275,000+” ballots to Runbeck, its
2 third-party vendor for signature scanning. *Id.* at ¶23.

3 Ballot chain of custody is a major issue that, despite Recorder Richer’s efforts to
4 disregard as merely a “ministerial” function, goes to the heart of election integrity. The
5 U.S. Election Assistance Commission has stated that “[c]hain of custody is essential to a
6 transparent and trustworthy election” and that “[c]hain of custody documents provide
7 evidence that can be used to authenticate election results, corroborate post-election
8 tabulation audits, and demonstrate that election outcomes can be trusted.”¹⁸ So what is the
9 converse if proper chain of custody procedures are not followed? The Election Assistance
10 Commission suggests a lack trustworthy results. Kari Lake is hardly alone in pointing out
11 the gravity of chain of custody issues.

12 Of course, these 300,000 ballots did not simply appear, and nobody listening to Kari
13 Lake would reasonably think that is what she communicated. As shown above, Kari
14 Lake’s statement include the fact that these ballots lacked required chain of custody
15 documentation. And this means that the statement is not actionable, as shown by the
16 Arizona Supreme Court’s decision in *Rogers*.

17 In *Rogers*, the Arizona Supreme Court quoted a United States Supreme Court case
18 at length in which the plaintiff had been accused of “blackmail” in a public meeting in
19 which critics of a developer objected to the negotiating tactics of the developer. *Greenbelt*

21 ¹⁸ *Best Practices: Chain of Custody* U.S. ELECTION ASSISTANCE COMM., July 13, 2021,
22 [https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.p](https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf)
23 [df](https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf) (last accessed Aug. 22, 2023) at 2, 3.

1 *Coop. Publ'g Ass'n v. Bresler*, 398 U.S. 6, 12, 90 S.Ct. 1537, 26 L.Ed.2d 6 (1970). In
2 *Greenbelt*, a newspaper reported that at city council meetings, members of the public
3 referred to a local developer's negotiating position with the city over a controversial project
4 as "blackmail." 398 U.S. at 7–8, 90 S.Ct. 1537. The developer sued the newspaper for
5 libel, asserting that the statements implied he had committed the crime of blackmail. *Id.*
6 at 8, 90 S.Ct. 1537.

7 The Court in *Greenbelt* held the statements, considered in their context, were
8 insulated by the First Amendment as a matter of law. *Id.* at 13, 90 S.Ct. 1537. "Because
9 the threat or actual imposition of pecuniary liability for alleged defamation may impair ...
10 First Amendment freedoms," the Court stated that "the Constitution imposes stringent
11 limitations upon the permissible scope of such liability." *Id.* at 12, 90 S.Ct. 1537. The
12 Court reasoned that "[n]o reader could have thought that either the speakers at the
13 meetings or the newspaper articles reporting their words were charging [the developer]
14 Bresler with the commission of a criminal offense." *Id.* at 14, 90 S.Ct. 1537. The Court
15 concluded that "even the most careless reader must have perceived that the word was no
16 more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's
17 negotiating position extremely unreasonable." *Id.*

18 To the extent that Recorder Richer claims that Kari Lake stated literally that the
19 300,000 ballots with chain of custody issues had actually been fabricated or appeared out
20 of thin air, that clearly falls into what the *Rogers* Court called "imaginative expression"
21 and "rhetorical hyperbole" that no reasonable person would take literally. *Rogers* held
22 those kinds of statements are, as a matter of law, not actionable as defamatory.
23

1 The Chain of Custody Claim fails. There were undeniably real issues, and to the
2 extent Kari Lake's statements went beyond that, it is clearly just rhetorical flash, the type
3 of emphasis added to make a point.

4 **V. CONCLUSION**

5 Free speech means allowing speech that not everyone likes. Yet Recorder Richer, as
6 an elected, public, government official thinks he is somehow above criticism of the very
7 duties he has personally ascribed to his position. Furthermore, as outlined in Defendants'
8 Motion to Dismiss Pursuant to A.R.S. § 12-751 filed on August 21, 2023, Recorder Richer
9 has admitted he is using this lawsuit to silence his critics who are engaging in protected,
10 core political speech, a violation of Arizona's prohibition of strategic lawsuits against
11 public participation.

12 If Recorder Richer wanted to live life free from public criticism, he should not have
13 chosen to be in a high-profile intensely-scrutinized public office where he must answer to
14 his constituents. Simply entertaining his claims chills free speech and puts every Arizonan
15 on notice that they too could face an army of attorneys and costly litigation from offended
16 government officials.

17 There is no higher protection in the First Amendment than the right to petition our
18 government about grievances, yet Recorder Richer seeks to abrogate those fundamental
19 rights, not just of Defendants, but of all Arizonans.

20 The Defendants are entitled to have this matter dismissed. They respectfully ask that
21 this Court enter an order dismissing this case with prejudice. This case has far-reaching
22 implications for freedom of speech and must go no further.

1 RESPECTFULLY SUBMITTED this 22nd day of August, 2023.

2 By: /s/ Timothy A. La Sota

3 Timothy A La Sota, SBN # 020539

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12 Maricopa County Superior Court
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/s/ Timothy A. La Sota

EXHIBIT

A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

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

MINUTE ENTRY

Pending before this Court are Maricopa County Defendants' Motion For Sanctions And Application For Attorney Fees, Arizona Secretary Of State Katie Hobbs' Application For Attorney Fees And Expenses, Governor-Elect Katie Hobbs' Partial Attorney Fee Application, Alexis Danneman's Declaration In Support Of Fee Application and Arizona Secretary Of State Katie Hobbs' Joinder In Maricopa County Defendants' Motion For Sanctions, Plaintiff Kari Lake's Response To Defendants' Motions For Sanctions And Applications For Attorney Fees and Plaintiff Kari Lake's Corrected Response To Defendants' Motions For Sanctions And Application For Attorney Fees. The Court has fully considered the arguments, affidavits and memoranda of law submitted by counsel.

Statutory Authority For Award Of Attorney Fees And Expenses

Defendants each seek an award of their attorney fees and expenses pursuant to Arizona Revised Statutes § 12-349(A)(1) which mandates this Court to make such an award if it finds that Plaintiff has brought this action "without substantial justification". Subpart F of the statute defines "without substantial justification" to mean that "the claim or defense is groundless and is not made in good faith".

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

The Court agrees with Defendants' statements that election contests are purely statutory and provide for limited form of relief. *Grounds v Lawe*, 67 Ariz. 176, 186 (1948). Further, that an election contest (1) presumes the good faith of election officials as a matter of law, *Hunt v Campbell*, 19 Ariz. 254, 268 (1917), and (2) draws "all reasonable presumptions [to] favor the validity of an election." *Moore v. City of Page*, 148 Ariz. 151, 155 (App. 1986). As stated in the Court's ruling, an election challenger must establish specific element of A.R.S. § 16-672 by clear and convincing evidence. *Cf McClung v Bennett*, 225 Ariz. 154, 156 (2010).

It is also true that Defendants asked each and every witness at Trial if they had either intentionally committed misconduct or knew anyone who had perpetrated intentional misconduct aimed to influence the outcome of the Election. No witness answered in the affirmative. Nevertheless, it is also true that Defendants alleged in their pleadings, attachments and exhibits and argued at the hearing that the evidence and testimony of the conduct of the Election itself together with statistical analysis would meet the requirements of A.R.S. § 16-672 by clear and convincing evidence. The Court does not doubt Plaintiff's belief in her perception of the evidence. However, the analysis of whether Plaintiff's claims were groundless or made in bad faith is not limited to subjective views.

Although eight of Plaintiff's claims were dismissed as a matter of law, two claims did survive and proceeded to Trial¹. Granting a hearing on those claims was a question of law applied to facts and not a benevolent act. As a result of the hearing required under the law, Plaintiff's allegations that survived dismissal were subject to factual and legal scrutiny and ultimately found by this Court as failing to meet the clear and convincing evidence standard under Arizona Revised Statutes § 16-672.

At the hearing, Plaintiff was not successful in eliciting from any Defendant admissions of intentional malfeasance aimed at altering the Election outcome. However, she did produce testimony of an expert, which ultimately was not accepted by the Court, but who did agree that intentional malfeasance was the root cause of tabulator malfunctions on Election Day. Plaintiff also presented statistical analysis based on 220 Affidavits of voters who did vote but reported frustrations with tabulator malfunctions and the lines on Election Day. Plaintiff also presented expert evidence which attempted to establish a relationship between exit polling results on Election Day and projected Republican voters who did not actually vote. That statistical analysis of polling results also argued a connection between a range of anticipated Republican votes which never materialized and which the witness testified could have influenced the outcome of the Election. That testimony was also not accepted because of faulty underpinnings in fact, unsupported assumptions and foundation.

¹ The arguments that Defendants Richer and Jarret are non-essential parties and should have not been joined under Arizona law were not part of the Motion To Dismiss.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

The case law regarding Election Challenges dates back to Territorial days when ballots were counted by hand. There are no cases which rule in or out a statistical analysis as a method for proving elements of an Election Challenge under A.R.S. § 16-672. But, the law makes clear that Plaintiff is required to show a specific number of votes affected which would impact the Election outcome. The Court was not persuaded that, among other failures of proof, statistical analysis with projected ranges of votes based on assumptions as to people who did not vote, met the burden of clear and convincing evidence of a specific number or votes to be subtracted or added to either Plaintiff or Defendant under A.R.S. § 16-672. This ruling is not an exhaustive recitation of the basis for the Court's ruling of December 24, 2022. The Court refers the parties to that ruling for a more detailed basis of the Court's findings of fact and conclusions of law.

There is no doubt that each side believes firmly in its position with great conviction. The fact that Plaintiff failed to meet the burden of clear and convincing evidence required for each element of A.R.S. § 16-672 does not equate to a finding that her claims were, or were not, groundless and presented in bad faith. Any legal decision must be based on the law and facts rather than subjective beliefs or partisan opinions, no matter how strongly held. The Court has heard all the evidence and arguments. The Court has carefully examined and thought through the facts and evidence before it in the motions and at the hearing.

THE COURT FINDS that Plaintiff's claims presented in this litigation were not groundless and brought in bad faith under Arizona Revised Statutes § 12-349(A)(1). Therefore,

IT IS ORDERED denying Defendants' Motions For Attorney Fees And Sanctions.

Assessment of Taxable Costs

A prevailing party in Superior Court is entitled to an award of taxable costs pursuant to Arizona Revised Statutes § 12-332. Those costs include the fees of witnesses. A.R.S. § 12-332(A)(1). Defendant, Secretary of State Katie Hobbs, has presented her request for \$5,900.00 in expert witness fees for Mr. Ryan Macias who was retained as an expert and testified at the hearing. A separate request for expert witness fees in the amount of \$22,451.00 was submitted by Defendant, Katie Hobbs sued in capacity as Governor-Elect. Defendants have not submitted any other itemized costs pursuant to A.R.S. § 12-332(A).

THE COURT FINDS the submitted expert witness fees are appropriate under A.R.S. § 12-332(A)(1).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

12/27/2022

Defendant Katie Hobbs sued in her capacity as Governor-Elect has also submitted a signed declaration of attorney Abha Khanna in support of an award in the amount of \$4,689.50 for the cost of compensation of Maxwell Schechter, the person designated by them to be present at the inspection of the ballots. Mr. Schechter's compensation is represented by counsel in his signed pleading as \$565.00 per hour for the 8.3 hours involved in the inspection. Although he did not testify at Trial, the choice of Defendants to employ Mr. Schechter was based upon his qualifications and credentials to perform this duty much as Plaintiff's expert Mr. Clay Parikh served as her chosen representative for inspection of the ballots.

THE COURT FINDS the submitted compensation of Defendants' designee for inspection of the ballots pursuant to A.R.S. § 16-677(C) is appropriate. Therefore,

IT IS ORDERED awarding Defendant, Secretary of State Katie Hobbs, \$5,900.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

IT IS FURTHER ORDERED awarding Defendant, Governor-Elect Katie Hobbs, \$22,451.00 as taxable costs pursuant to A.R.S. § 12-332(A)(1).

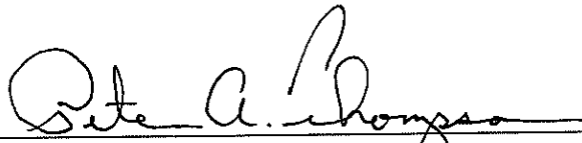
IT IS ALSO ORDERED awarding Defendant, Governor-Elect State Katie Hobbs, \$4,689.50 as compensation of her appointed representative for inspection of ballots pursuant to A.R.S. § 16-677(C).

IT IS ORDERED that the amounts entered with this judgment shall run with an annual interest rate of seven and one half percent (7.5%) per annum until paid in full.

The Court having entered its findings of fact, conclusions of law and orders on December 24, 2022 and all matters concerning this litigation before the Court having been resolved with nothing else pending,

IT IS HEREBY ORDERED confirming the election of Katie Hobbs as Arizona Governor-Elect pursuant to A.R.S. § 16-676(B) and entering final judgment in this matter pursuant to Rule 54(c), Arizona Rules of Civil Procedure.

DATED this 27th day of December 2022.



HONORABLE PETER A. THOMPSON
JUDICIAL OFFICER OF THE SUPERIOR COURT

EXHIBIT

B

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

05/26/2023

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

**Defendants' Motion for Attorney Sanctions;
Plaintiff's Motion to Strike;
Judgment Entered Pursuant TO Rule 54(c), Arizona Rules of Civil Procedure**

Pending before this Court is Maricopa County Defendants' Motion for Sanctions, Governor Katie Hobbs' Statement of Joinder, and Secretary of State Adrian Fontes' Joinder in Motion for Sanctions. The Court has fully considered the memoranda of law submitted by counsel.

The Defendants seek an award of attorneys' fees as sanctions or a levy of other unspecified monetary sanctions against Plaintiff Kari Lake and her counsel pursuant to A.R.S. § 12-349(A) and the Court's "inherent power to impose sanctions for attorney misconduct before the court." In support, Defendants allege that Lake and her counsel "intentionally misrepresented facts to the Court" by misstating or inappropriately grounding factual assertions on unsupportive evidence in

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

05/26/2023

her Rule 60 motion and proceeding to trial on a claim Lake knew “lacked factual merit” and that Lake’s counsel asserted a groundless claim against the Defendants at oral argument.

Discussion

Arizona Revised Statutes § 12-349 mandates that the Court assess reasonable attorney fees and expenses against an attorney or party who brings or defends a claim without substantial justification or primarily for delay or harassment, unreasonably expands or delays the proceeding, or engages in abuse of discovery. A.R.S. § 12-349(A). The statute defines “without substantial justification” as “groundless” and “not made in good faith.” A.R.S. § 12-349(F). A claim is “groundless” if its proponent can present no rational argument based on the evidence or law to support it. *Takieh v. O’Meara*, 252 Ariz. 51, 61 ¶ 37 (App. 2021).

The Defendants contend that Lake “unnecessarily expanded these proceedings” by intentionally misstating the content of a witness’s testimony in her Rule 60 motion and that she proceeded to trial on a claim she knew lacked factual merit based on her own witness’s statements. This view mistakenly looks beyond trial to the ultimate resolution of the merits and does not allow for presentation of evidence to prove a disputed claim. These proceedings were Lake’s opportunity to prove her *Reyes* claim, to pursue which she elected to concede that she was not challenging signature matches for any individual ballots. Specifically, Plaintiff’s Response to the Motion to Dismiss argued:

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 failure to establish her claim by clear and convincing evidence does not equate to bringing a claim “without substantial justification” as “groundless” and “not made in good faith.” Even if her argument did not prevail, Lake, through her witness, presented facts consistent with and in support of her legal argument.

The remainder of Defendants’ allegations appear to rely on the Court’s inherent power as the authority by which they request the Court “award” unspecified sanctions “against” Lake’s counsel. The Court acknowledges its inherent authority to sanction bad faith attorney conduct and that the rules of attorney conduct in the rules of the supreme court provide a legal basis for imposing sanctions against attorneys. *See Hmielewski v. Maricopa Cnty.*, 192 Ariz. 1, 4 ¶ 14 (App. 1997). Nevertheless, there is a distinction between imposing sanctions by the Supreme Court of Arizona for continuing to represent as true facts or arguments which have been adjudicated

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

05/26/2023

previously and found to be without merit and advocacy on a yet to be determined theory of the case in closing argument. Opposing litigants in a heated dispute will naturally view the same evidence differently. The inferences one draws will be anathema to the other, and they may question each other's good faith motivated simply by their conviction of their own cause and incomprehension at the conclusions of the other. The Court does not find that the "misstatements" in the Rule 60 motion briefing or the "remarkably bold assertion" at oral argument alleged by the Defendants stray from advocacy into misconduct as would warrant invocation of the Court's sanctioning authority. The proceedings in which the statements were made were Lake's and the Defendants' opportunity to argue their cases and present their evidence. They did so, and the Court ruled. Therefore,

IT IS ORDERED denying Defendants' Motion for Sanctions.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Strike as moot.

Following remand from, and consistent with the mandate issued by, the Arizona Supreme Court, the Court, having weighed all the evidence, argument, and legal memoranda and having assessed the credibility and demeanor of witnesses testifying at trial, now enters the following Findings of Fact and Conclusions of Law as to Count III of Plaintiff Kari Lake's Statement of Election Contest:

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 entering final judgment as follows:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-095403

05/26/2023

1. AGAINST Plaintiff/Contestant Kari Lake on all claims;
2. IN FAVOR OF Defendant/Contestee Katie Hobbs and all other named Defendants on all claims; and
3. CONFIRMING the election of Katie Hobbs as Arizona Governor pursuant to A.R.S. § 16-676(B).

IT IS FURTHER ORDERED pursuant to Arizona Rule of Civil Procedure 56(c) that no further matters remain pending and this constitutes the judgment required by A.R.S. § 16-676 in this matter.

EXHIBIT

C

**Maricopa County 2022 General Election
Ballot-on-Demand Printer Investigation**

**Submitted By
Ruth V. McGregor
April 10, 2023**

Table of Contents

Introduction.....	2
Summary	2
Investigation Team	3
Sources of Information	4
History of Ballot on Demand Printers in Maricopa County.....	5
Pre-Election Testing of BOD Printers.....	7
Printer Testing On Site	8
Assignment and Tracking of Printers.....	8
Changes Between Primary and General Elections	9
Election Day Printer Issues.....	10
Testing Procedure	12
Selection of Printers.....	12
Printer Test Settings.....	13
Testing Results	15
Paper Weight	15
Lexmark Printers.....	16
Media Weight and Media Type Settings	16
Sequential and Interval Testing.....	18
Printing Order	19
Paper Length.....	20
Pattern of Printer Failures.....	20
Testing for Faulty Printers.....	21
Recommendations and Conclusions	23

Introduction

On general election day in November 2022, a substantial number of ballot-on-demand (BOD) printers at vote centers in Maricopa County produced ballots that could not be tabulated by on-site tabulators. Most of the printers had been used during the August 2022 primary election, as well as in prior elections, without experiencing similar problems.¹

The Maricopa County Attorney's Office (MCAO) retained me to conduct a focused, fact-specific independent review to determine why printers that performed successfully during the primary election evidenced problems during the general election. Specifically, the MCAO asked the investigative team to determine what factor or factors caused the printing problems on general election day; why the problems had not occurred on primary election day; and whether and how Maricopa County can prevent similar problems from occurring in future elections. I was also asked to review the chain-of-custody policies affecting BOD printers and consider whether the election day issues resulted from human error or process and equipment issues.

The MCAO and Maricopa County Board of Supervisors made it clear at the outset that this investigation should be independent and free of any outside influence. We have encountered nothing during the investigation that appeared intended to or that did undermine the independence of the investigation. Both the Maricopa County Election Department (MCED or the Department) and the Maricopa County Recorder's Office personnel have provided all documents and assistance requested.

Summary

During February and March 2023, our investigative team printed and tabulated 9,100 ballots on randomly selected printers and tabulators. We interviewed, often on multiple occasions, seventeen Maricopa County and

¹ Although this investigation examines only the possible explanations for the printer malfunctions on election day, I note that subsequent proceedings have established that all votes were counted, with most of the misprinted ballots being transported to the more powerful election central tabulators, which tabulated them without issue. *Lake v. Hobbs*, CV 2022-095403 ("Plaintiff's own expert acknowledged that a ballot that was unable to be read at the vote center could be deposited by a voter, duplicated by a bipartisan board onto a readable ballot, and – in the final analysis – counted."), affirmed, Arizona Court of Appeals, 1 CA-CV 22-0779, review denied, Arizona Supreme Court, CV-23-0046-PR (March 22, 2023).

Runbeck Elections Systems employees involved with preparing, testing, deploying and operating printers and tabulators. We consulted with several persons who are experts in election procedures, and reviewed thousands of pages of documents. Based on our tests, and for the reasons described in this report, we concluded that the combined effect of using 100-pound ballot paper and a 20-inch ballot during the 2022 general election was to require that the Oki B432 printers perform at the extreme edge of their capability, a level that could not be reliably sustained by a substantial number of printers. Although we further concluded that nothing in the printers' past performance or pre-election stress testing indicated that such a failure was likely, we recommend several alternative approaches that could minimize the likelihood of a similar failure in future elections, including the use of more robust stress testing designed to mimic on-site circumstances.

Investigation Team

With the approval of the MCAO, I added several subject matter experts to the investigation team. Two of them have broad experience and expertise in conducting elections, specifically elections that use vote centers and BOD printers. Neal Kelley served more than 15 years as Registrar of Voters in Orange County, California, the fifth largest voting jurisdiction in the country and similar in size and complexity to Maricopa County. Mr. Kelley presided over the transition from neighborhood polling places to vote centers in Orange County. He has been recognized for his work with county, state and national efforts to improve election administration. Lynn Constabile served as the Elections Director for Yavapai County, Arizona, from 2004 until 2022. During her tenure, Yavapai County transitioned to vote centers.² Ms. Constabile is intimately familiar with Arizona's election procedures and laws. I asked Mr. Kelley and Ms. Constabile to analyze Maricopa County's procedures and training programs related to the testing and use of the BOD printers, with the goals of identifying factors that may have contributed to the failure to anticipate the printer problems encountered in 2022 and of recommending steps that could be taken to prevent similar problems in future elections. Each worked independently; each provided us valuable

² Yavapai County, as is true of Apache, Coconino, Gila, Mohave, Pima, Pinal, and Santa Cruz Counties, transports all ballots from its vote centers to its central election office to be tabulated, rather than use on-site tabulators as does Maricopa County.

information about election systems and each assisted us in identifying areas for consideration.

We retained the services of Doug Meyer, owner and president of Meyer Enterprises, Inc., operating under the name CTS Office Supply, in Cottonwood, Arizona. For many years, Mr. Meyer has provided and maintained the BOD printers used by Yavapai County, Arizona, including Oki printers similar to those used in Maricopa County. His company also provides Oki printers to the Salt River Materials Group in their various operations in five states.³ Mr. Meyer oversaw the print tests we conducted using Oki B432 and Lexmark C4150 printers that had been used in the primary and general elections in Maricopa County and analyzed print test results. His business partner, Barbara Meyer, served as a technician throughout the testing.

Finally, I associated attorney Sandra Thomson, who recently retired after serving nearly twenty years as a permanent judicial law clerk at the Arizona Court of Appeals, the United States District Court for the District of Arizona, and the Ninth Circuit Court of Appeals. Ms. Thomson assisted in all aspects of the investigation.

Sources of Information

Although the focus of this investigation is narrowly centered on the performance of the BOD printers in the 2022 general election, understanding all the factors that could have affected their performance required that we have a broad understanding of election procedures. To learn about the procedures followed in preparing and testing the BOD printers, we spoke on multiple occasions with Scott Jarrett, Co-Director of Elections for Maricopa County. We conducted in-person interviews with employees in charge of IT for the MCED and the Recorder's Office, the Department's vote center manager and head of the election day command center, tabulation manager, tabulation analyst lead, help desk supervisor, and the personnel in charge of printer preparation and testing.

We also interviewed several temporary technical workers involved in both the 2022 primary and general elections. For the 2022 general election, Maricopa County hired approximately 60 temporary technical workers, referred to as t-

³ Maricopa County is not part of the area served by Mr. Meyer's company.

techs. Among other responsibilities, the t-techs set up and test the BOD printers after they are installed at the vote centers; they also respond to technical problems that arise during the elections. We spoke with five experienced t-techs, who had been present for both the primary and general elections and who were retained until December 2022 to assist in post-election testing, about their training, the procedure followed in setting up vote centers, and their experiences on general election day, as well as with those responsible for training and supervising the t-techs. We also spoke with experienced poll workers.

Maricopa County's election system depends in several ways upon services and assistance provided by Runbeck Election Services. To understand Runbeck's role, both before and during the primary and general elections, we spoke with Jeff Ellington, CEO of Runbeck Election Services, and Anthony Paiz, who has now retired from his position as Vice President, Field Services.

In addition, we reviewed the following documents: 2022 Elections Plans for the August Primary and November General; November General Election Canvass; 2022 November General Election Training; 2022 General Election Poll Worker Training; 2022 Vote Center Technical Procedures, including Auditor Checklist, ICX Set-up Guide, Quality Control Checklist for Vote Centers, Tabulator Setup, and T-Tech Training; Maricopa County's November 27, 2022 Response Report to the Attorney General; 2022 General Election Printer Assignments; Printer Configuration Quality Assurance Documents; 2022 Spanish Sample Quality Assurance; General Election Reporting System Tickets from Vote Centers on Election Day; and Runbeck reports of election day technical assistance.

History of Ballot on Demand Printers in Maricopa County

Prior to 2018, Maricopa County utilized a precinct model, under which voters were assigned to a single precinct on election day and could vote only at that location. In 2018, the County used a hybrid model consisting primarily of precinct locations in conjunction with a small number of vote centers using BOD printers for ballots and receipts and separate printers for envelopes. In 2020, the MCED fully implemented an in-person "vote anywhere" vote center model to provide more convenience for voters.⁴ Under that model, a voter can vote at any center regardless of the precinct in which the voter resides. Because Maricopa

⁴ Maricopa County Elections Department 2022 Elections Plan, p.7.

County must make available at each center thousands of ballot styles to assure that a voter can obtain a ballot specific to the voter's precinct, BOD printers, which can print any of the more than 12,000 ballot styles required during the 2022 general election, provide the only realistic option for making all those forms available at each center.⁵

The County made significant investments to upgrade its BOD printer fleet. In 2017, the County had acquired commercial off the shelf Oki B432 printers to use with the Oki 9650 BOD printers.⁶ In 2020, the County retrofitted the Oki B432 printers, which previously printed only voter envelopes, to function as BOD printers, capable of printing ballots, control slips, and envelopes. In 2021, the County replaced two older BOD printer models, the Oki 9650 and the Lexmark 923, with Lexmark C4150 printers.⁷

During the 2022 August primary and November general elections, the County used the retrofitted Oki B432 and the Lexmark C4150 BOD printers at the vote centers. These printers had updated firmware and were installed with uniform settings that were the same settings as those used in the 2020 August primary and November general elections.⁸ During the general election, the Department initially assigned 591 printers to the 223 voting centers.⁹

During the 2022 general election, Maricopa County increased the ballot length from 19 inches, which was used for the primary election ballot, to 20 inches. Due to the number of contests, the number of propositions, the language used to describe them, and the Spanish translation, the ballot could not fit on a typical 19-inch ballot.¹⁰

⁵ Interview with Scott Jarrett, Co-Director of Elections (Election Day and Emergency Voting), Maricopa County.

⁶ Id.

⁷ Interview with Jeff Ellington.

⁸ Id.

⁹ MCED 2022 General Printer Assignments.

¹⁰ Interview with Scott Jarrett. Maricopa County's ballot is complex, as the county includes portions of eight of Arizona's congressional districts and 22 of 30 of the state's legislative districts. Because results must be reported by precinct, a ballot must be available for each voter that reflects not only the appropriate congressional district and legislative district but also all federal, state, municipal, school district, supervisory district, precinct, and fire district races, in addition to the propositions presented and their descriptions, and all available in both English and Spanish. As a result of these requirements, the ballot for one precinct included 80 separate races and decisions and Maricopa County required more than 12,000 distinct ballots for the 2022 general election. Interview with MCED lead tabulation analyst, who prepares the ballot in accord with statutory requirements.

Pre-Election Testing of BOD Printers

August 2022 Pre-Primary Election Testing

In April 2022, prior to the August primary election, the MCED tested 100-pound ballot paper, which would be used for the first time in the primary election. The Department selected a sample of Oki B432 and Lexmark C4150 BOD printers and ran more than three hundred test prints consisting of a 19-inch ballot, a receipt, and an envelope through each selected machine. The test results showed no smearing or flaking on the ballot, receipt, or envelope. The central count tabulator successfully counted all the ballots. Accordingly, the MCED concluded that the Oki and Lexmark printers would function effectively with the change to 100-pound paper.¹¹ And, during the primary election, the on-site tabulators did successfully process more than 100,000 ballots.¹²

November 2022 Pre-General Election Testing

In September 2022, prior to the November general election, the MCED conducted an extensive stress test on the Oki B432 and Lexmark C4150 BOD printers. The Department randomly selected four Oki and four Lexmark printers for testing. Two tests used 100-pound paper and a ballot that was increased in length from 19 inches to 20 inches to accommodate the number of contests, the number of propositions, and the Spanish translations. In the first test, one hundred double-sided ballots were run through each test machine without the envelope or receipt. In the second test, the same number of ballots were run, along with an envelope and receipt. In both tests, the prints were run sequentially, but not intermittently. The media weight settings on the Oki printers were set to heavy for the ballot and medium for the envelope and receipt. The media weight was set to normal on the Lexmark printers for all three settings. The results indicated that two of the Oki printers showed speckling at the edge of the

¹¹ Maricopa Recorder Ballot on Demand Printer Testing document, p. 12.

¹² A suggestion of a problem did occur during early voting in the primary. Ballots from early voting are returned to the MCTEC in envelopes, removed by bi-partisan teams of workers, and tabulated on central equipment. Some of the workers noted flaking or speckling on some ballots and brought it to the attention of supervisors. Because the central tabulators read all ballots, however, the issue was not regarded as affecting the ability to count all ballots and no testing was done using on-site tabulators. Whether such testing would have detected the problem experienced on general election day cannot now be determined. Interview with MCED personnel.

ballot, but that the actual ballot page was clear and not damaged as to the ballot's overall integrity. The central count tabulator successfully counted all ballots, as did an on-site tabulator. In light of the successful primary election experience using 100-pound ballot paper and its additional tests, the Department concluded that the Oki and Lexmark printers would successfully print the new 100-pound, 20-inch ballot in the general election.¹³

Printer Testing On Site

In addition to the pre-election testing of printers conducted at the MCED, t-techs run test prints on site following the set-up of a vote center. The t-tech first does a speed check to determine that the SiteBooks are properly connected to the printers. The t-tech then runs test prints, printing from each SiteBook to each printer. The test prints at a minimum contain two envelopes, one "test successful" ballot, one Provisional Paper, and one ICX Paper (Accessible Voting Device). The t-tech visually inspects the test ballots, checking for flaking or speckling, and also rubs the test ballots to ensure the print is dry and doesn't smear. At the completion of the test, the t-tech spoils the ballot and places it in a secure bag identified by printer, to be returned to the MCTEC. Finally, the t-tech completes a "Site Setup: Completion Checklist" verifying the steps taken, which is then signed and dated by an Auditor.¹⁴

Assignment and Tracking of Printers

Scott Jarrett, Maricopa County Co-Director of Elections, and the vote center manager decide which printers are assigned to each vote center location. In making the assignments, they consider the size of the room, because Lexmark printers are larger than the Oki printers, as well as historic voter turnout. In general, then, they assign the Lexmark printers to the vote centers that are open for the most days for early voting, have sufficient space to accommodate the Lexmark printers, and traditionally experience heavy voter participation.¹⁵ For most vote centers, the County sends two Lexmark printers or three Oki printers, four if the Oki printers will be used in a heavy turnout area.

¹³ Id. pp. 13-15 and Supporting Document 13 #2022, Extensive Stress Test Executive Summary.

¹⁴ Interview with t-tech; Maricopa County Election Department Site Setup: Completion Checklist.

¹⁵ Interview with vote center manager.

Each printer and its associated laptop is assigned a bar code that is on a label fixed to the equipment. The bar code is scanned and assigned to a vote center at the warehouse, scanned again as the printers and laptops are loaded onto a truck for transport, again as the equipment is unloaded at a vote center, and finally when the equipment returns to the warehouse. All the data is scanned into an internal database. In addition, the County places port protectors and a socket lock on each printer for added security. As Mr. Kelley noted in his review of the chain of custody for the printers and laptops, these steps constitute good practices. While Mr. Kelley recommended added layers of protection that could provide even more security,¹⁶ there was no indication of tampering with any printer or laptop, and all port protectors remained in place at the close of the election.¹⁷

Changes Between Primary and General Elections

Maricopa County made several changes between the 2020 and 2022 elections and between the 2022 primary and general elections that could have affected the performance of the printers. We designed our tests to determine whether any of these variables, or a combination of them, caused the printer malfunction that occurred during the 2022 general election.

The first variable considered was the weight of the ballot paper. Prior to 2020, Maricopa County's ballots were printed on 110-pound paper. In 2020, Maricopa County purchased a new type of on-site tabulator that could use either 80-pound or 100-pound paper. As a result of pandemic-induced supply issues, only 80-pound paper could be obtained in sufficient quantities for the March 17, 2020 Presidential Primary Election (PPE).¹⁸ The PPE, which involved a single race and a one-sided ballot, experienced no issues with the BOD ballots. During the 2020 general election, however, on some ballots, the ink from the "Sharpie" pens provided at the vote centers bled through the paper.¹⁹ Because voting bubbles are offset on the front and back of ballots, any bleed-through cannot actually

¹⁶ Mr. Kelly suggested, for instance, that serialized tamper seals be placed over the port protectors and that the serial numbers be included in chain of custody documents.

¹⁷ Interview with MCED personnel.

¹⁸ Interview with Scott Jarrett, Director of Elections (Election Day and Emergency Voting), Maricopa County.

¹⁹ Maricopa County preferred that voters use these pens because the ink dries quickly, as opposed to ballpoint ink, which takes more time to dry and thus can transfer onto the tabulator and cause the tabulator to reject ballots because it "reads" the transferred ink and detects it as a fault.

affect the correct tabulation of votes, and all votes can be counted even if bleed-through occurs.²⁰

Within hours of the polls closing, however, a claim went viral over social media asserting that certain ballots filled out with Sharpies could not be read by vote-scanning machines in Maricopa County, a theory colloquially known as “SharpieGate.”²¹ Although the theory was unfounded, to allay voter concerns and prevent bleed-through in future elections, Maricopa County election officials decided to use heavier, 100-pound paper during 2021 and for the 2022 primary and general elections.²²

Maricopa County also changed the length of the ballot, which was 19 inches for the primary election. Due to the number of federal, state, municipal, school district, and precinct contests, the number of propositions and the language used to describe them, and the required Spanish translations, the ballot for the 2022 general election could not comply with required guidelines²³ unless it was extended to 20 inches.²⁴

One other factor changed between the primary and general elections. During the primary election, the BOD printers printed first a ballot and then the control slip that identified the voter. Because poll workers indicated it would be more convenient for them if the order were reversed, the settings for the general election changed to request that the control slip be printed first, followed by the related ballot.²⁵

Election Day Printer Issues

Beginning almost immediately on the morning of election day, the MCTEC command center received calls from poll workers reporting that some of the tabulators were not accepting ballots. Each call was memorialized as an Election Reporting System (ERS) ticket by the person receiving the call. If an issue could not be resolved by advice from the command center, a t-tech or Runbeck

²⁰ Interview with Scott Jarrett.

²¹ See, e.g., [azcentral.com/story/news/politics/elections/2020/11/05/sharpiagate-hasnt-halted-arizona-count-but-theory-persists/6180778002/](https://www.azcentral.com/story/news/politics/elections/2020/11/05/sharpiagate-hasnt-halted-arizona-count-but-theory-persists/6180778002/).

²² Interview with Scott Jarrett

²³ A.R.S. section 16-502.

²⁴ See footnote 9 above.

²⁵ Interview with Scott Jarrett.

employee went to the affected vote center to attempt to resolve the reported problem. Runbeck and County technical workers travelled to approximately 70 vote centers to troubleshoot the reports of problems with the BOD printers.²⁶

At the outset, Maricopa County and Runbeck identified the cause of the reported problem as being either the on-site tabulators or the BOD printers. As technicians and Runbeck personnel had more opportunities to examine the problematic ballots, it became clear that the ballots in question could not be read by the tabulator because the print was not properly adhering to the ballot. As a result, some print flaked off, leaving the timing marks²⁷ needed for the tabulator to record the ballot too faint to serve their purpose. The flaking print also could accumulate on the face of the tabulator, making it unable to read even properly printed ballots until it was cleaned.

After consultation among Maricopa County and Runbeck personnel, the County concluded that the printing issue was being caused by a failure of the printer fuser to maintain a heat sufficient to fuse the toner onto the paper. As explained by Mr. Meyer, the fuser consists of an upper (hollow, Teflon-coated steel) cylinder and lower (silicone) pressure roller that are supported in the fuser frame by sleeves of bearings. Heat is produced by a halogen lamp or heating grid inside the upper fuser roller and temperature is controlled by a thermistor (temperature sensor). When the printer is powered on, the fuser is energized and heats until it reaches the set temperature of approximately 190 degrees. The paper with a latent image then passes between the upper and lower rollers. The heat and pressure from the upper and lower rollers heat and press the latent toner into the paper fiber, and fusing is complete. If the fuser does not maintain an appropriate heat, the toner will not properly adhere to the paper, causing flaking and speckling.

After trying several approaches to resolve the issue, Maricopa County concluded that the most promising approach involved setting all media weight settings to “heavy,” theorizing that the fuser would then maintain a high temperature at all times and would properly fuse the toner to the paper, and

²⁶ Settings were not changed at most sites that operated without issues. And, as we found during testing, settings were not successfully changed at all sites that reported problems.

²⁷ Timing marks are the black horizontal lines along the sides of a ballot that allow a tabulating machine to “read” the ballot.

instructed its t-techs to make that change when called to a vote center. In addition to that change, Runbeck personnel called to vote centers changed the media type, or paper, setting from plain to cardstock for ballots.²⁸

Another printing anomaly occurred at several vote centers, where ballots were re-sized as “fit to page,” a process that entirely changed the location of the timing marks on the ballots and assured that neither the on-site tabulators nor the central count tabulators could read the ballots. We 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. During our testing, four printers randomly printed one or a few “fit to page” ballots in the middle of printing a batch of ballots. None of the technical people with whom we spoke could explain how or why that error occurred. The ballots mis-sized on election day were delivered to bi-partisan teams that duplicated the votes on a ballot that was then tabulated at the central facility.²⁹

Testing Procedure

Selection of Printers

On the basis of the calls received and information from the t-techs and Runbeck personnel on site, Maricopa County identified approximately 60 vote centers that experienced the printer problems described above.³⁰ Because print jobs from the SiteBooks at each vote center enter a queue for printing by one of the available printers, Maricopa County could not determine which printer caused problems at each site. Hence, if a vote center experienced problems, workers were instructed to change the media weight settings on all printers at that site. In selecting printers to test, therefore, we could not select from among printers that had been individually identified as causing problems; we could only select between sites that experienced problems and those that did not.

²⁸ Interview with Jeff Ellington.

²⁹ Interviews with MCED personnel. Unlike the problems involving the toner/fuser issue, the “print to fit” issue occasionally arose on election day with both Oki and Lexmark printers.

³⁰ The number may have been somewhat higher, based on our review of the election report logs. Whatever the precise number, we can fairly state that although approximately two-thirds of the vote centers did not experience printer issues, a substantial number of the vote centers utilizing Oki B432 printers experienced problems and were not able to tabulate some ballots on site.

We designed the test of printers to utilize, at least initially, 12 printers: five Oki B432 printers from sites with known problems; five Oki B432 printers from sites with no known problems; and two Lexmark printers for comparison purposes. Maricopa County had already tested ten Oki B432 printers as part of its extensive post-election testing and review. To avoid duplicate testing, we first removed the printers tested by Maricopa County from the pool of printers and then randomly selected printers that had been used in both the primary and general elections. We also randomly selected two Lexmark printers.³¹

Following the November general election, Maricopa County election workers placed all the printers in a secure room at the MCTEC. All remained secured at the time we began this investigation. I selected the group of printers for testing and was present as they were removed from the secure room and placed in a conference room in the MCED offices. Access to the conference room was limited to those admitted when I or a member of my team was present, and I was present for all four days of testing. We recorded all results in hard copy and on free-standing laptop computers, thus avoiding use of the County internet system. At the close of each day, I placed a security tape on the conference room door. The door is also monitored by 24-hour security cameras.³² No unauthorized person accessed or attempted to access the room during the course of the investigation. After we completed our testing, under my supervision all equipment used during our tests was labelled and removed to a secure area, as were the test ballots, all closed in envelopes fastened with security tape.³³

Printer Test Settings

We designed the printer tests to determine the impact of the change from 80-pound to 100-pound paper, as well as the impact of changes between the primary and general elections to the length of the ballot and the order of printing. We tested two additional factors that may have affected the failure rate of the printers.

³¹ No Lexmark printers produced ballots that could not be read by the on-site tabulators on election day due to flaking or speckling. We therefore selected two printers at random from the entire group of Lexmark printers rather than from specific sites.

³² To further avoid any suggestion that a person other than the investigative team had access to the ballots tested, as an additional precaution we removed the ballots from the MCED offices to another secure location until all ballots had been tabulated and visually examined.

³³ The actual ballots from the 2022 election have been stored and preserved as required by A.R.S. section 16-624.

The first involved the method used to print the ballots to be tested. In the pre-election tests done before the 2022 elections, and indeed for elections in prior years, Maricopa County tested batches of ballots run sequentially, i.e., without any pause between ballots. On election day, however, the printers typically do not run constantly. Rather, they print ballots as voters send information to the printer queue and therefore experience pauses between print jobs. The interval between print jobs creates a demand for the printer alternately to heat to print and cool to idle. During the time required for the fuser to recover to optimal heat after idling, the printer could experience an inability to properly fuse the toner to the paper, which in turn would result in the flaking and speckling observed on some of the printed ballots.³⁴ We therefore added a program that incorporated short pauses between prints to allow tests of ballots produced by interval, rather than sequential, printing. For sequential printing, each “ballot batch” consisted of 50 ballots; for interval printing, each batch consisted of 25 ballots.

Finally, we tested the impact of the changes in settings that were made on election day in an attempt to improve the performance of the printers. Two settings are involved. When the printers left the Maricopa County warehouse, the media weight setting, which affects the heat produced by the fuser, was set to medium for control slips and envelopes and heavy for ballots; the media type, which is the type of paper used, was set to plain for all three types of documents. As discussed above, County technical staff who were called to vote centers experiencing printer problems changed the media weight setting to heavy for control slips and envelopes, resulting in all three document types being set to a heavy media weight. Runbeck personnel also changed the media type to cardstock. We therefore compared the performance of each printer when set as it left the warehouse (WH) to its performance with the change of media weight (CH) and to its performance with changes to both media weight and media type (CH+), as well as against the other variables noted above. In total, we printed and tested 9,100 ballots, using the Maricopa County “famous names” ballot for all tests.³⁵

³⁴ Some high-volume printers utilize multiple heaters and sensors to recover more quickly and maintain more consistent fuser heat, but the Oki B432 is constructed as a low to mid-volume printer, which can be a weakness when used as a BOD printer. Interview with Doug Meyer.

³⁵ The famous names ballot was designed to mimic the 2022 general election ballot and included federal, state, and local races, as well as propositions. The difference, of course, is in the names: the candidates for President, for

We used eight randomly-selected on-site tabulators to test the ballots. Because a tabulator will reject a ballot that does not have any of the selection “bubbles” filled, a group of MCED employees assisted us by filling in thousands of ballot bubbles. In addition, MCED employees who are expert in the operation of tabulators operated those for us.

After the rejected ballots from each printer were separated from those accepted by the tabulator, Mr. Meyer visually inspected each rejected ballot to determine the cause of the rejection. As reported below, we found multiple issues that affected the tabulator’s ability to read some ballots.

Testing Results

Attachments A through C set out our findings in detail. As explained below, the weight of the paper had the greatest impact on printer failures in our tests and printer failures were greatest when 100-pound paper was used with a 20-inch ballot. Other variables impacted results to some degree. Testing also revealed that conducting interval tests of the printers, rather than sequential tests, is more likely to identify printers that will fail under election-day conditions.

Paper Weight

Maricopa County printed its ballots on 80-pound paper for the 2020 primary and general elections. During those elections, MCTEC received no reports of flaking that caused misprinted ballots. To compare 80-pound with 100-pound paper, we first tested 500 19-inch and 500 20-inch ballots using 80-pound paper on the ten test Oki printers, using the warehouse settings for media weight and type and conducting both sequential and interval printing. We recorded just one misread³⁶ from the 1,000 test ballots. In addition, although this was not the focus of our investigation, we saw no evidence of bleed-through when we filled out ballots using the pens provided by Maricopa County during the 2022 elections. These results, coupled with the earlier positive experience of Maricopa County in using 80-pound paper, led us to conclude that additional tests of 80-pound paper were not required. We concluded that the Oki B432 printers can print either 19-

instance, are George Washington, John Adams and Alexander Hamilton, and Sandra Day O’Connor is among the judicial candidates in retention elections.

³⁶ As used in this report, “misread” refers to a ballot that cannot be tabulated due to faulty printing.

inch or 20-inch ballots on 80-pound paper without causing printing or tabulation issues.

Lexmark Printers

The results of our tests using Lexmark printers replicated the performance of those printers during the 2022 general election. We tested two randomly-selected Lexmark printers and printed 300 ballots on each, using warehouse settings, 19-inch and 20-inch ballots, and sequential and interval printing. All ballots printed could be read by the on-site tabulators. Because the Lexmark printers performed without issue using warehouse settings, we had no reason to conduct additional tests using the change settings applied in the field on election day.³⁷

Media Weight and Media Type Settings

Table 1 summarizes the test results set out in detail in Attachment A. The headings in the top row define the printing sequences and setting used: Warehouse sequential (WH Seq) and warehouse interval (WH Int), which used a media weight of heavy for ballots and medium for control slips and envelopes and used plain paper for all; change sequential (CH Seq) and change interval (CH Int), which maintained the plain paper setting but set the media weight to heavy for control slips and envelopes as well as for ballots; and change sequential plus (CH Seq+) and change interval plus (CH Int+), which used a heavy media weight for all three types of documents and also changed the media type for ballots from plain to cardstock. Group A consists of the Oki B432 printers from sites that did not report issues; Group B consists of the Oki B432 printers from sites that did report printer issues. Finally, Table 1 reports the results from tests that used a print order of control slip and then ballot, the setting used during the general election.

³⁷ As noted, the Lexmark printers printed all ballots without problem, and the Oki B432 printers produced only one faulty ballot when using 80-pound paper. Because those tests did not help identify the source of printing problems, we excluded those results from the information set out in Attachments A and B and examined the factors that did affect or could have affected ballots printed on 100-pound paper. Attachment C includes all results from Oki B432 printers, including the results from testing ballots printed on 80-pound paper.

Table 1

	WH Seq	WH Int	CH Seq	CH Int	CH + Seq	CH + Int
19-inch Misreads						
Group A	0	0	0	0	18/250	6/125
Group B	9/250	27/125	8/250	13/125	17/250	17/125
20-inch Misreads						
Group A	14/250	2/125	6/250	20/125	2/250	9/125
Group B	67/250*	36/125	31/250	7/125	9/250	16/125
19-inch Percent Misreads						
Group A	0	0	0	0	7.2	4.8
Group B	3.6	21.6	3.2	10.4	6.8	13.6
20-inch Percent Misreads						
Group A	5.6	1.6	2.4	16	.8	7.2
Group B	26.8*	24	12.4	5.6	3.6	12.8

The test results indicate that the changes made to increase the media weight and to change the media type had some impact in reducing the number of faulty ballots, but in no instance did either change eliminate the problem. In some cases, the change in settings actually resulted in an increase in faulty ballots. The negative impact of the changes is evident in the results for the Group A printers: while both the change in media weight and media type reduced the number of errors for ballots printed sequentially, the errors for ballots printed using interval printing actually increased.

The changes in settings generally did improve the performance of the Group B printers, lending support to the possibility that the fusers on these printers were less likely than those in Group A to reach the heat level required to

cause the toner to adhere to the paper under warehouse setting conditions, thus making it more likely that changes to the heat setting would improve fuser performance.

The test results are consistent with reports from the vote centers on election day. Although initially the County and Runbeck believed that the change in settings had resolved, at least to a considerable degree, the issue with faulty ballots, the command center continued to receive reports of printers not operating correctly throughout election day, although the reports diminished from the volume reported in the morning.³⁸

Sequential and Interval Testing

We anticipated that the tests would reveal more misreads using interval printing, and for the most part that was true.³⁹ The numbers noted with an asterisk in Table 1 appear to have skewed the results for this small sample of printers. Printer 404 produced 44 of 50 misread ballots in the warehouse sequential setting, a result that may reflect a transfer of ink to the tabulator, causing subsequent misreads independent of the condition of the ballots being tested. The extreme result from that one printer tends to mask the fact that, for every other printer in both groups, the misreads in the warehouse interval setting exceeded the misreads in the warehouse sequential setting. See results in Attachment A.

The test results show that, for both groups of printers, using interval printing generally resulted in the printers producing a greater number of faulty ballots. As the results in Table 1 show, the increased misreads for Group B printers on the interval setting using 19-inch ballots are striking: from 3.6 percent on the warehouse sequential setting to 21.6 on the interval setting and from 3.2 percent on the change sequential setting to 10.4 on the change interval setting.⁴⁰

³⁸ Our review of the Election Reporting System summary reveals reports about print quality and misreads from at least 38 votes centers during the afternoon of election day.

³⁹ The exceptions occurred on the Group A warehouse sequential setting, although both numbers are relatively small, and the Group B change sequential setting.

⁴⁰ Another unexpected result involved the Group A 19-inch ballot results. That group of printers produced no misreads on 19-inch ballots, except for the printing done after changes were made to both media weight and media type. In this case, the changes, designed to improve printer success, actually resulted in a substantial number of failures.

Using only sequential testing thus tends to mask difficulties the printers can experience during field printing.

Printing Order

We also tested using the alternate order of printing used in the primary election, setting the printers to print first the ballot and then the control slip. Because we were testing only whether that change in order could have caused failures on election day, we limited our testing to warehouse and change settings. Table 2 summarizes those results, which are fully set out in Attachment B.

Table 2

Groups A and B Average Misreads: Ballot/Control Slip

	WH Seq	WH Int	CH Seq	CH Int
19-inch Misreads				
Group A	9/250	6/125	11/250	8/125
Group B	6/250	4/125	0/250	6/125
20-inch Misreads				
Group A	11/250	27/125	19/250	20/125
Group B	25/250	33/125	41/250	50/125
19-inch Percent Misreads				
Group A	3.6	4.8	4.4	6.4
Group B	2.4	3.2	0	4.8
20-inch Percent Misreads				
Group A	4.4	21.6	7.6	16.
Group B	10.	26.4	16.4	40.

Several differences in result are apparent. First, printing with the ballot first generally resulted in more faulty ballots in Group A, the printers from sites with no reported issues, when compared with printing the control slip first. The percent of misreads also tends to be greater overall in the ballot-first test, as compared with the control slip-first test, particularly with regard to interval printing. The results confirmed that the change in order for the general election is

not likely to have caused more printer failures in the general election and may actually have helped printer performance.

Paper Length

With relatively few exceptions, using 20-inch, 100-pound paper resulted in more failures than did using 19-inch, 100-pound paper. See Attachment A. For the Group A printers, for instance, no failures resulted from printing ballots on 19-inch paper in the warehouse sequential setting; 14 resulted from printing on 20-inch paper. The warehouse interval setting caused only two misreads in total, both of those on 20-inch paper. The change interval setting did show a significant difference, as it resulted in no misreads using 19-inch paper and 20 using 20-inch paper.

For the Group B printers, those from sites that experienced issues, ballots printed on the warehouse sequential setting on 19-inch paper resulted in nine misreads, while those on 20-inch paper resulted in 67. The results varied relatively little on the change interval setting: 13 on 19-inch paper and 18 on 20-inch paper.

Our tests revealed more misreads using a 20-inch ballot, across categories and in both groups of Oki B432 printers. These results are consistent with the suggestion that the fusers on some Oki printers could not maintain an adequate temperature. When heavier paper is used, the fuser heat dissipates more quickly. The impact of the heat variation becomes more pronounced as the length of the ballot and therefore the area of printing increases. The combined effect of the increased ballot length and 100-pound paper on the ability of the fuser to maintain optimum fusing temperature with stability helps explain the difference between the primary and general election results.⁴¹

Pattern of Printer Failures

During our interviews, we heard varying descriptions of the type of print failure seen on the misprinted ballots: some observers reported that the failure

⁴¹ Interview with Doug Meyer.

occurred only on the bottom of the first page printed, others that the problem was more widespread. To determine the pattern of print failure and consider whether that pattern helps explain the problems seen on election day, we conducted a visual examination of all the ballots rejected during our tests.⁴²

Our examination revealed that the poor fusing identified as the source of the misprints was not limited to one portion of the ballots: poor fusing produced misprints on the first side, second side, and both sides of affected ballots.⁴³ As noted above, the poor fusing causes toner to remain on the heat roller and become “offset,” or applied further down the page or on successive pages. As a result, many of the ballots also exhibited toner offset and toner misting. The extent of printing errors varied substantially. On some ballots, the printing failure is immediately obvious, even to the untrained eye. On others, only a close examination reveals the location and extent of the failure. These results are consistent with our conclusion that some Oki B432 printers did not initially reach the optimum temperature or did not maintain sufficient, consistent heat to allow proper printing of 20-inch ballots printed on 100-pound paper.

Testing for Faulty Printers

Although most of our test printers produced faulty ballots, it is important to keep in mind the fact that, on general election day, the large majority of Oki B432 printers performed well and produced few faulty ballots. Two-thirds of the general election vote centers reported no issues with misprinted ballots; approximately 94 percent of election day ballots were not faulty. In addition, none of the tested printers produced only faulty ballots.⁴⁴ In one sense, that fact speaks well of the general capability of the Oki B432 printer. In another, the variation among printers makes designing a test procedure sufficient to detect faulty printers more difficult.

One of the most striking findings in our tests involved the considerable differences among printers. At the extremes, one printer (Printer 406), printed

⁴² To maintain consistency of observation, only Doug Meyer and Barbara Meyer reviewed the ballots.

⁴³ Of the misprints, approximately 11 percent occurred just on the first side of the ballot, 47 percent on the second side of the ballot, and 42 percent on both sides of the ballot.

⁴⁴ As Attachment A sets out, the average misprints for the Group B printers for 20-inch ballots on the warehouse interval setting was 13 and on the change interval setting was 4, with misprints varying by printer from 0 to 13. For Group A, the averages are <1 and 4, respectively, with misprints varying by printer from 0 to 11.

850 ballots at all settings with only one misread ballot. Printer 491 did almost as well, with only 13 misread ballots. In contrast, Printer 404 produced 92 misread ballots and Printer 323 produced 72. All printers are the same model Oki printer; all were tested using the same settings and same paper; all the ballots were tabulated using the same model on-site tabulators.⁴⁵ The wide range of performance among printers makes random testing of these printers an unreliable predictor of the success of any particular printer.

If the County were to test a sufficient number of printers to be confident that the group tested is representative of the printers as a whole, the County would also need to define the level of performance deemed acceptable. In the 2022 general election, 6.7 percent of the ballots were placed in Door 3 for secure transport to and tabulation at the MCTEC.⁴⁶ That percent was substantially higher than the percent of ballots placed in Door 3 in recent prior elections.⁴⁷ Assuming for discussion that the percent of ballots placed in Door 3 approximates the percent of ballot misread due to printer failure, the question is whether a five or six percent printer failure rate is acceptable or whether a higher level of performance should be required.

Assuming also that all or at least a sufficient number of printers could be tested before being used in an election, our testing indicates that a substantial number of the Oki B432 printers would fail to meet a standard that requires a failure rate of five percent or less. Among the Group A printers, two (Printers 332 and 407) had failure rates exceeding five percent on the 20-inch warehouse sequential setting (10 percent and 16 percent, respectively), although both succeeded on the interval testing. Among the Group B printers, we found substantial levels of failure. Among the printers in that group, two had more than five percent failures when tested on the warehouse sequential setting: Printer 404, 88 percent failure on 20-inch ballots and Printer 323, with a ten percent

⁴⁵ The differences also cannot be explained by comparing total pages printed. The expected print-life for the Oki B432 printers is 100,000 pages; none of the printers exceeded 20,000 by the end of the 2022 election. Interview with Scott Jarrett.

⁴⁶ Although most of these ballots resulted from printer misprints, a misprinted ballot did not cause all those rejections. In any election, ballots can be rejected or otherwise placed in Door C for several reasons: the voter used a checkmark or an x rather than fill in the ballot balloon; the voter made ambiguous marks on the ballot; the printer printed the ballot as fit-to-page; or the tabulator did not function. Interview with Scott Jarrett.

⁴⁷ In the 2022 primary election, for instance, the percent was .6; in the 2020 general election 1.2 percent; in the 2018 general election .16 percent. Id.

failure rate on 19-inch ballots and a 34 percent failure rate on 20-inch ballots. Four printers in Group B failed on the warehouse interval test, using both 19 and 20-inch ballots. (Printer 215, failure rates of 28 percent on 19-inch and 48 percent on 20-inch; Printer 404, 28 percent on 19-inch and 40 percent on 20-inch; Printer 323, 40 percent on 19-inch and 36 percent on 20-inch; and 529, 12 percent on 19-inch and 20 percent on 20-inch.) As is apparent, even if the acceptable standard were set at ten percent, these printers would fail to meet the standard.

We printed 25 ballots for each interval test. That number of ballots was sufficient to identify the relatively high failure rate of four of the five test printers that came from vote centers with reported issues. Whether such testing is possible on a large scale and whether the County has sufficient printers to serve all vote centers if a decision is made that only printers that meet the adopted standard should be used are questions of policy.

Recommendations and Conclusions

We began this investigation understanding that, on general election day, some of Maricopa County's Ballot-on-Demand printers at a number of vote centers produced ballots that could not be read by the on-site tabulators. Our task was to define the potential cause or causes of that failure and to recommend steps to take to prevent a similar failure in future elections.

During our investigation, we spoke with multiple election workers who prepared for, participated in, and conducted a post-election analysis of election procedures. In addition to the printer tests we conducted, we questioned all those interviewed about their understanding of the causes of printer failures and asked for their recommendations for reducing or eliminating similar problems in future elections. I was impressed, as were other members of the investigative team, by the knowledge and dedication the election workers bring to their jobs and by their willingness to revise practices and procedures to prevent future issues.

Two factors proved to be of primary importance in explaining the Oki B432 printer failures that occurred during the general election but not the primary election: the increased length of the general election ballot, coupled with the use of 100-pound paper for the ballot. Maricopa County's experience during the primary election amply demonstrated that printing ballots on 100-pound paper

does not exceed the capacity of the Oki B432 printer. The experience during the general election tells us that, when 100-pound paper was coupled with a lengthier, 20-inch ballot, the task being asked of the Oki B432 printer simply exceeded the capacity of many, although clearly not all or even most, of the printers.⁴⁸ The combined effect of the heavy paper, longer ballot, and intermittent burst of print demand pushed the printers to perform at the very edge of or past their capability, so that any decrease in fuser performance in an individual printer could result in problems.⁴⁹ The distinct difference in performance from one printer to another suggests that the fuser on some of the printers is not capable of recovering quickly enough to maintain optimum fusing temperature during on-site interval printing.⁵⁰

The fuser inadequacy on some printers is not a problem easily remedied, as the fuser on the Oki B432 cannot be separately replaced.⁵¹ That problem is further exacerbated by the fact that the Oki B432 manufacturer, which has withdrawn from the North and South American markets, has established December 31, 2025 as the end of life for these printers, after which repair parts and consumables will no longer be manufactured.⁵² Any decision about remedial actions obviously must take these factors into account.

Our team has identified several approaches that, based on our findings, would eliminate or greatly reduce the printer problems experienced during the general election. All involve policy issues and considerations that are beyond the scope of this report.

One approach would be to return to using 80-pound paper for ballots. Both Maricopa County's past experience and our test of the printers demonstrate the ability of the Oki B432 printers to produce readable ballots using 80-pound paper, whether the ballot is 19 or 20 inches long.⁵³ Given the prior "SharpieGate" experience, however, whether that change can be made without reducing public

⁴⁸ According to the manufacturer's instructions, the Oki B432 should have been able to print the 20-inch ballots on 100-pound paper by using custom settings. Interview with IT manager.

⁴⁹ Interview with Doug Meyer.

⁵⁰ County and Runbeck employees, as well as Mr. Meyer, have extensive experience with Oki printers. None had experienced any issues with quality control in Oki printers, specifically with the fusers.

⁵¹ Interview with Doug Meyer.

⁵² Interview with Jeff Ellington.

⁵³ If the ballot were to exceed 20 inches, further stress testing would be required.

confidence is an issue for the Board of Supervisors, the Maricopa County Recorder's Office, and the MCED. Our test experience with the pens used during the 2022 general election and 80-pound paper suggests that bleed-through would not be a problem, although additional testing designed to evaluate that factor would be advantageous.

Another approach is to eliminate the use of on-site tabulators. Maricopa County could return to its earlier practice, and that used in half of Arizona's counties,⁵⁴ and transport the ballots from vote centers to the MCTEC for tabulation in the more powerful central count tabulators. During the 2022 general election, that procedure permitted tabulation of the misprinted ballots in Maricopa County.

Replacing the Oki B432 printers with other printers is another option that could eliminate or substantially reduce the printer issues seen during the general election. During our tests, the Lexmark printers used during the general election successfully printed the 20-inch ballots on 100-pound paper without requiring any adjustment to the printer warehouse settings. If the County decides that the Oki B432 printers cannot be relied upon during future elections, deciding whether making the required expenditure to purchase new printers is the best course presents another policy issue.

If the Oki B432 printers are retained for use in future elections, the MCED should undertake more robust stress testing of printers before sending them out to vote centers. Testing using interval printing and on-site tabulators rather than sequential printing and the central count tabulators would more fairly represent election day conditions than does the sequential printing used in the past, and doing so would detect more faulty printers. As noted above, however, given the substantial variation among printers, such testing would have to be conducted on a large scale to achieve confidence that faulty printers are detected.

Additional steps could be taken if the Oki B432 printers are retained for future use. We found that the change in weight and media settings reduced, but did not eliminate, the production of faulty ballots. Given that limitation in achieving better results, the County could determine that a certain level of ballot

⁵⁴ As noted earlier, Apache, Coconino, Gila, Mohave, Pima, Pinal, Santa Cruz, and Yavapai Counties transport ballots from vote centers to their central election offices for tabulating.

errors is acceptable and undertake efforts to better educate voters about the possibility of receiving a misprinted ballot and alternatives to on-site tabulation. The County also could provide additional training to poll workers so they could better anticipate the possibility of misprinted ballots and could better reassure voters that a ballot that cannot be read on-site will be stored securely and tabulated at the central facility.⁵⁵

I note one additional element that could affect vote center equipment. Several persons with whom we spoke reported that some sites have relatively limited power sources. Because limited power can affect the operation of all the equipment at a vote center, site assessment should include an assessment of the adequacy of the available power.

Finally, we were asked to determine whether the problems occurring on election day were the result of human error, procedural shortcomings, or equipment failure. Although separating related causes is always difficult, in my judgment, the primary cause of the election day failures was equipment failure. Despite the assurances of the manufacturer, many of the Oki B432 printers were not capable of reliably printing 20-inch ballots on 100-pound paper under election-day conditions.

Any failure in process or human error relates to a failure to anticipate and prepare for the printer failures experienced. But nothing we learned in our interviews or document reviews gave any clear indication that the problems should have been anticipated. MCED leadership and staff were uniformly confident that the general election would run smoothly, and there was reason for their confidence: the Oki B432 printers had performed reliably in the past, both in Maricopa County and elsewhere; the County's experience with 100-pound paper had been positive in the primary election; and the printer stress tests with 20-inch ballots on 100-pound paper revealed no problems.

As is often the case, hindsight allows us to define changes in process that might have prevented or alleviated the printer issues encountered. But while pre-election testing that used interval testing and on-site tabulators would have been

⁵⁵ The training materials for poll workers anticipate most issues that can occur during an election and provide steps to take to remedy the issues. The unanticipated nature of the printing problems encountered in 2022 explains the lack of training in how to respond to the issue.

more likely to detect the printer shortcomings, nothing in the County's past experience or that of the employees at Runbeck suggested such testing was needed. Similarly, had the County anticipated the printer issues that occurred, specific training of poll workers about how to respond to the issue could have reduced the amount of voter confusion and concern.

The problems encountered in the 2022 general election have identified issues affecting the printing and tabulation of vote center ballots. I trust that this analysis and that undertaken by the County will help to prevent similar problems from arising in future elections.

ATTACHMENT A

Printer Order: Control Slip/Ballot

Printer Groups A and B

Paper Weight: 100-pound

Ballot Length: 19 and 20-inch

Settings: WH, CH, CH+

WH:

Media Weight: Heavy for ballots; medium for control slip and envelopes

Media Type: Plain for all

CH:

Media Weight: Heavy for all

Media Type: Plain for all

CH+

Media Weight: Heavy for all

Media Type: Cardstock for ballots; plain for control slips and envelopes

Print Sequence: Sequential and Interval

Control Slip/Ballot: Group A: No Printer Fuser Issues Reported

Printer	WH Seq: Number and Misread	WH Seq: Per- cent Mis- read	WH Interval: Number and Misread	WH Int: Percent Misread	CH Seq: Number and Misread	CH Seq: Percent Misread	CH Int: Number and Misread	Ch Int: Percent Misread	Ch + Seq: Number and Misread	Ch+: Seq: Percent Misread	Ch+: Int: Number and Misread	Ch+ Int: Percent Misread	
332													
100/19	50/0	0	25/0	0	50/0	0	25/0	0	50/16	32	25/3	12	
100/20	50/5	10	25/0	0	50/3	6	25/1	4	50/2	4	25/2	8	
491													
100/19	50/0	0	25/0	0	50/0	0	25/0	0	50/1	2	25/0	0	
100/20	50/0	0	25/2	8	50/2	4	25/5	20	50/0	0	25/4	16	
407													
100/19	50/0	0	25/0		50/0	0	25/0	0	50/1	2	25/3	12	
100/20	50/8	16	25/0		50/1	2	25/11	44	50/0	0	25/2	8	
183													
100/19	50/0	0	25/0	0	50/0		25/0	0	50/0	0	25/0	0	
100/20	50/1	2	25/0	0	50/0		25/2	8	50/0	0	25/1	4	
406													
100/19	50/0	0	25/0	0	50/0	0	25/0	0	50/0	0	25/0	0	
100/20	50/0	0	25/0	0	50/0	0	25/1	4	50/0	0	25/0	0	
Total 19- inch	0/250		0/125		0/250		0/125		18/250		6/125		24/1125 2.13
Total 20- inch	6/250		2/125		6/250		20/125		2/250		9/125		45/1125 4.0
Ballots A 100-lb	500	14/50 0 2.8	250	2/250 .8	500	6/500 1.2	250	20/250 8.0	500	20/250 8.0	250	15/250 6.0	

Control Slip/Ballot: Group B: Fuser Issues Reported

Printer	WH Seq: Number and Misread	WH Seq: Percent Misread	WH Int: Number and Misread	WH Int: Percent Misread	Ch. Seq: Number and Misread	CH Seq: Percent Misread	CH Int: Number and Misread	CH Int: Percent Misread	Ch+ Seq: Number and Misread	Ch+ Seq: Percent Misread	Ch+ Int: Number and Misread	Ch+ Int: Percent Misread	
215													
100/19	50/0	0	25/7	28	50/2	4	25/3	12	50/7	14	25/5	20	
100/20	50/4	8	25/12	48	50/7	14	25/12	48	50/1	2	25/6	24	
404													
100/19	50/3	6	25/7	28	50/1	2	25/1	4	50/2	4	25/1	4	
100/20	50/44	88	25/10	40	50/20	40	25/1	4	50/1	2	25/1	4	
323													
100/19	50/5	10	25/10	40	50/5	10	25/9	36	50/8	16	25/2	8	
100/20	50/17	34	25/9	36	50/1	2	25/1	4	50/7	14	25/2	8	
408													
100/19	50/1	2	25/0	0	50/0	0	25/0	0	50/1	2	25/2	8	
100/20	50/0	0	25/0	0	50/0	0	25/2	8	50/0	0	25/2	8	
529													
100/19	50/9: fit to page	0	25/3	12	50/0	0	25/0	0	50/3	6	25/7	28	
100/20	50/2	4	25/5	20	50/3	6	25/4	16	50/1 One fit to page	0	25/5	20	
Total 19-inch	9/250		27/125		8/250		13/125		21/250		17/125		95/1125 8.44
Total 20-inch	67/250		36/125		31/250		19/125		9/250		16/125		178/1125 15.82
Ballots B 100- lb	500	76/500 15.2	250	63/250 25.2	500	39/500 7.8	250	32/250 12.8	500	30/500 6.0	250	33/250 13.2	
Total A and B	1,000	90/1000 9.0	500	65/500 13.0	1,000	45/1000 4.5	500	52/500 10.4	1,000	50/1000 5.0	500	48/500 9.6	

ATTACHMENT B

Printer Order: Ballot/Control Slip

Printer Groups A and B

Paper Weight: 100-pound

Ballot Length: 19 and 20-inch

Settings: WH, CH

WH:

Media Weight: Heavy for ballots; medium for control slip and envelopes

Media Type: Plain for all

CH:

Media Weight: Heavy for all

Media Type: Plain for all

Ballot/Control Slip: Group A: No Printer Fuser Issues Reported

[illegible]

Ballot/Control Slip: Group B: Fuser Issues Reported

Printer	WH Seq Number and Misreads	WH Seq: Percent Misreads	WH Int: Number and Misreads	WH Int: Percent Misreads	Ch. Seq: Number and Misreads	CH Seq: Percent Misreads	CH Int: Number and Misreads	CH Int: Percent Misreads	Total by 19 and 20-inch
215									
100/19	50/0	0	25/0	0	50/0	0	25/0	0	
100/20	50/7	14	25/3	12	50/17	34	25/6	24	
404									
100/19	50/1	2	25/2	4	50/0		25/2	8	
100/20	50/4	8	25/2	4	50/2	4	25/19 Toner fused to ballot	76	
323									
100/19	50/0	0	25/0	0	50/0	0	25/1	4	
100/20	50/8	16	25/3	12	50/7	14	25/8	32	
408									
100/19	50/5	10	25/1	4	50/0	0	25/0	0	
100/20	50/0	0	25/3	12	50/8	16	25/6	24	
529									
100/19	50/0	0	25/1	4	50/4	8	25/3	12	
100/20	50/1	2	25/22	88	50/7	14	25/11	44	
19-inch	5/250		12/125		4/250		6/125		27/750 3.6
20-inch	20/250		33/125		41/250		50/125		144/750 19.2
Ballots B 100- lb	500	25/500 5.0	250	45/250 18.0	500	45/500 9.0	250	56/250 22.4	
Total Ballots, B/CS	1000		500		1000		500		

ATTACHMENT C

All Printers and Groups

ALL

Group A: No printer fuser issues reported

Group B: Fuser Issues reported

Control Slip/Ballot																					Ballot/Control Slip													
Group	Printer #	WH Seq:	WH Seq:	WH Seq:	WH	WH	WH Int:	CH Seq:	CH Seq:	CH Seq:	CH	CH Interval:	CH Int:	CH+ Seq:	CH+ Seq:	CH+ Seq:	CH+	CH+	CH+	CH+ Int:	WH Seq:	WH Seq:	WH Seq:	WH	WH	WH Int:	CH Seq:	CH Seq:	CH Seq:	CH	CH	CH	CH Int:	
		Number	Misreads	Percent	Interval:	Interval:	Percent		Number	Misreads	Percent	Interval:	Percent		Number	Misreads	Percent	Interval:	Interval:	Percent		Number	Misreads	Percent	Number	Misreads		Percent	Interval:	Interval:	Percent	Number	Misreads	Percent
A	332																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	0	0%	50	0	0%	25	0	0%	50	16	0%	25	3	12%		50	9	18%	25	5	20%	50	11	22%	25	7	28%		
	100/20	50	5	0%	25	0	0%	50	3	0%	25	1	4%	50	2	4%	25	2	8%		50	4	8%	25	13	52%	50	10	20%	25	12	48%		
A	491																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	0	0%	50	0	0%	25	0	0%	50	1	2%	25	0	0%		50	0	0%	25	0	0%	50	0	0%	25	0	0%		
	100/20	50	0	0%	25	2	8%	50	2	4%	25	5	20%	50	0	0%	25	4	16%		50	1	2%	25	3	12%	50	0	0%	25	3	12%		
A	407																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	1	4%	25	0	0%																											
	100/19	50	0	0%	25	0	0%	50	0	0%	25	0	0%	50	1	2%	25	3	12%		50	0	0%	25	1	4%	50	0	0%	25	1	4%		
	100/20	50	8	16%	25	0	0%	50	1	2%	25	11	44%	50	0	0%	25	2	8%		50	6	12%	25	10	40%	50	8	16%	25	4	16%		
A	183																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	0	0%	50	0	0%	25	0	0%	50	0	0%	25	0	0%		50	0	0%	25	0	0%	50	0	0%	25	0	0%		
	100/20	50	1	2%	25	0	0%	50	0	0%	25	2	8%	50	0	0%	25	1	4%		50	0	0%	25	1	4%	50	0	0%	25	1	4%		
A	406																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	0	0%	50	0	0%	25	0	0%	50	0	0%	25	0	0%		50	0	0%	25	0	0%	50	0	0%	25	0	0%		
	100/20	50	0	0%	25	0	0%	50	0	0%	25	1	4%	50	0	0%	25	0	0%		50	0	0%	25	0	0%	50	1	2%	25	0	0%		
B	215																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	7	28%	50	2	4%	25	3	12%	50	7	14%	25	5	20%		50	0	0%	25	0	0%	50	0	0%	25	0	0%		
	100/20	50	4	8%	25	12	48%	50	7	14%	25	12	48%	50	1	2%	25	6	24%		50	7	14%	25	3	12%	50	17	34%	25	6	24%		
B	404																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	3	6%	25	7	28%	50	1	2%	25	1	4%	50	2	4%	25	1	4%		50	1	2%	25	2	8%	50	0	0%	25	2	8%		
	100/20	50	44	88%	25	10	40%	50	20	40%	25	1	4%	50	1	2%	25	1	4%		50	4	8%	25	2	8%	50	2	4%	25	19	76%		
B	323																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	5	10%	25	10	40%	50	5	10%	25	9	36%	50	4	8%	25	2	8%		50	0	0%	25	0	0%	50	0	0%	25	1	4%		
	100/20	50	17	34%	25	9	36%	50	1	2%	25	1	4%	50	7	14%	25	2	8%		50	8	16%	25	3	12%	50	7	14%	25	8	32%		
B	408																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	1	2%	25	0	0%	50	0	0%	25	0	0%	50	1	2%	25	2	8%		50	5	10%	25	1	4%	50	0	0%	25	0	0%		
	100/20	50	0	0%	25	0	0%	50	0	0%	25	2	8%	50	0	0%	25	2	8%		50	0	0%	25	3	12%	50	8	16%	25	6	24%		
B	529																																	
	80/19	25	0	0%	25	0	0%																											
	80/20	25	0	0%	25	0	0%																											
	100/19	50	0	0%	25	3	12%	50	0	0%	25	0	0%	50	3	6%	25	7	28%		50	0	0%	25	1	4%	50	4	8%	25	3	12%		
	100/20	50	2	4%	25	5	20%	50	3	6%	25	4	16%	50	0	0%	25	5	20%		50	1	2%	25	22	88%	50	7	14%	25	11	44%		
Total		1500	91		1000	65		1000	45		500	53		1000	46		500	48		1000	46		500	70		1000	75		500	84				

ALL PRINTERS

GROUP A

GROUP B

19" BALLOT

20" BALLOT

801b

100lb

Total Percent			Group A:			Group B:												100lb		
Total Ballots	Total Failures	Failure	Ballots	Failures	Percent	Ballots	Failures	Percent	19" Ballot	Failures	Percent	20" Ballot	Failures	Percent	80lb Ballot	Failures	Percent	Ballot	Failures	Percent
50	0	0%	50	0	0%				50	0	0%				50	0	0%			
50	0	0%	50	0	0%							50	0	0%	50	0	0%			
375	51	14%	375	51	14%				375	51	14%							375	51	14%
375	52	14%	375	52	14%							375	52	14%				375	52	14%
50	0	0%	50	0	0%				50	0	0%				50	0	0%			
50	0	0%	50	0	0%							50	0	0%	50	0	0%			
375	1	0%	375	1	0%				375	1	0%							375	1	0%
375	20	5%	375	20	5%							375	20	5%				375	20	5%
50	0	0%	50	0	0%				50	0	0%				50	0	0%			
50	1	2%	50	1	2%							50	1	2%	50	1	2%			
375	6	2%	375	6	2%				375	6	2%							375	6	2%
375	50	13%	375	50	13%							375	50	13%				375	50	13%
50	0	0%	50	0	0%				50	0	0%				50	0	0%			
50	0	0%	50	0	0%							50	0	0%	50	0	0%			
375	0	0%	375	0	0%				375	0	0%							375	0	0%
375	6	2%	375	6	2%							375	6	2%				375	6	2%
50	0	0%	50	0	0%				50	0	0%				50	0	0%			
50	0	0%	50	0	0%							50	0	0%	50	0	0%			
375	0	0%	375	0	0%				375	0	0%							375	0	0%
375	2	1%	375	2	1%							375	2	1%				375	2	1%
50	0	0%				50	0	0%	50	0	0%				50	0	0%			
50	0	0%				50	0	0%				50	0	0%	50	0	0%			
375	24	6%				375	24	6%	375	24	6%							375	24	6%
375	75	20%				375	75	20%				375	75	20%				375	75	20%
												0								
50	0	0%				50	0	0%	50	0	0%				50	0	0%			
50	0	0%				50	0	0%				50	0	0%	50	0	0%			
375	20	5%				375	20	5%	375	20	5%							375	20	5%
375	104	28%				375	104	28%				375	104	28%				375	104	28%
50	0	0%				50	0	0%	50	0	0%				50	0	0%			
50	0	0%				50	0	0%				50	0	0%	50	0	0%			
375	36	10%				375	36	10%	375	36	10%							375	36	10%
375	63	17%				375	63	17%				375	63	17%				375	63	17%
50	0	0%				50	0	0%	50	0	0%				50	0	0%			
50	0	0%				50	0	0%				50	0	0%	50	0	0%			
375	10	3%				375	10	3%	375	10	3%							375	10	3%
375	21	6%				375	21	6%				375	21	6%				375	21	6%
50	0	0%				50	0	0%	50	0	0%				50	0	0%			
50	0	0%				50	0	0%				50	0	0%	50	0	0%			
375	21	6%				375	21	6%	375	21	6%							375	21	6%
375	60	16%				375	60	16%				375	60	16%				375	60	16%
8500	623	7%	4250	189	4%	4250	434	10%	4250	169	4%	4250	454	11%	1000	1	0%	7500	622	8%

Seq			
Seq	Ballots	Failures	Percent
	25	0	0%
	25	0	0%
	250	36	14%
	250	24	10%
	25	0	0%
	25	0	0%
	250	1	0%
	250	3	1%
	25	0	0%
	25	1	4%
	250	1	0%
	250	23	9%
	25	0	0%
	25	0	0%
	250	0	0%
	250	1	0%
	25	0	0%
	25	0	0%
	250	0	0%
	250	1	0%
	25	0	0%
	25	0	0%
	250	9	4%
	250	36	14%
	25	0	0%
	25	0	0%
	250	7	3%
	250	71	28%
	25	0	0%
	25	0	0%
	250	14	6%
	250	40	16%
	25	0	0%
	25	0	0%
	250	7	3%
	250	8	3%
	25	0	0%
	25	0	0%
	250	7	3%
	250	13	5%
	5500	303	6%

Int			
Int	Ballots	Failures	Percent
	25	0	0%
	25	0	0%
	125	15	12%
	125	28	22%
	25	0	0%
	25	0	0%
	125	0	0%
	125	17	14%
	25	0	0%
	25	0	0%
	125	5	4%
	125	27	22%
	25	0	0%
	25	0	0%
	125	0	0%
	125	5	4%
	25	0	0%
	25	0	0%
	125	0	0%
	125	1	1%
	25	0	0%
	25	0	0%
	125	15	12%
	125	39	31%
	25	0	0%
	25	0	0%
	125	13	10%
	125	33	26%
	25	0	0%
	25	0	0%
	125	22	18%
	125	23	18%
	25	0	0%
	25	0	0%
	125	3	2%
	125	13	10%
	25	0	0%
	25	0	0%
	125	14	11%
	125	47	38%
	3000	320	11%

Ballot/Control Slip		
Ballott	Failures	Percent
0	0	0%
0	0	0%
150	32	21%
150	39	26%
0	0	0%
0	0	0%
150	0	0%
150	7	5%
0	0	0%
0	0	0%
150	2	1%
150	28	19%
0	0	0%
0	0	0%
150	0	0%
150	2	1%
0	0	0%
0	0	0%
150	0	0%
150	1	1%
0	0	0%
0	0	0%
150	5	3%
150	27	18%
0	0	0%
0	0	0%
150	1	1%
150	26	17%
0	0	0%
0	0	0%
150	6	4%
150	17	11%
0	0	0%
0	0	0%
150	8	5%
150	41	27%
3000	275	9%

Control Slip/Ballot		
Ballott	Failures	Percent
50	0	0%
50	0	0%
225	19	8%
225	13	6%
50	0	0%
50	0	0%
225	1	0%
225	13	6%
50	0	0%
50	1	2%
225	4	2%
225	22	10%
50	0	0%
50	0	0%
225	0	0%
225	4	2%
50	0	0%
50	0	0%
225	0	0%
225	1	0%
50	0	0%
50	0	0%
225	24	11%
225	42	19%
50	0	0%
50	0	0%
225	15	7%
225	77	34%
50	0	0%
50	0	0%
225	35	16%
225	37	16%
50	0	0%
50	0	0%
225	4	2%
225	4	2%
50	0	0%
50	0	0%
225	13	6%
225	19	8%
5500	348	6%