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ARIZONA SUPERIOR COURT  
MARICOPA COUNTY

KARI LAKE,  
Plaintiff/Contestant,  
v.  
KATIE HOBBS,  
Defendant/Contestee.

No. CV2022-095403

**CONTESTEE KATIE HOBBS'S  
MOTION TO DISMISS**

Assigned to Hon. Peter Thompson

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## INTRODUCTION

Kari Lake lost the Governor’s race to Katie Hobbs by 17,117 votes. In the face of this insurmountable margin, Lake brings a sprawling election contest, alleging everything from cyber hacking (Compl. ¶ 183) to Twitter mischief (Compl. ¶ 94) to intra-Republican warfare (Compl. ¶ 123)—all in an effort to sow distrust in Arizona’s election results. But while Lake may try to advance her suspicions of foul play in the court of public opinion, *see* Compl. ¶ 1, a court of law cannot sustain an election contest on these grounds.

Lake’s haphazard, kitchen-sink approach belies any careful, fact-based evaluation of a dispositive number of votes, and thus contradicts the limited purpose that election contests are intended to serve. This Court should not indulge this contest for a minute longer than it takes to dismiss it.

## LEGAL STANDARD

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A.R.S. § 16-672 circumscribes limited statutory grounds for an election contest. Those grounds include: (1) official misconduct on the part of the election boards, (2) ineligibility of the person whose right to office is being contested, (3) bribery or other offenses against the franchise committed by the contestee, (4) illegal votes, or when (5) “by reason of erroneous count of votes the person declared elected . . . did not in fact receive the highest number of votes.” The contestant assumes the burden of showing that her claims fall strictly within the statutory terms. *Henderson v. Carter*, 34 Ariz. 528, 534, 273 P. 10, 12 (1928). As with other complaints, the court need not accept as true “inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 ¶ 4, 121 P.3d 1256, 1259 (App. 2005). When a complaint fails to state a valid claim for an election contest, the court should dismiss it with no further action. “Nothing requires the court to hold an evidentiary hearing on an election contest that, like this one, is subject to dismissal for failure to state a claim.” Ex. A to

1 Governor-Elect Hobbs’s Motion to Dismiss, *Camboni v. Brnovich*, No. 1 CA-CV 15-0014,  
2 2016 WL 388933, at \*2 (Ariz. Ct. App. Feb. 2, 2016).

3 Given the “strong public policy favoring stability and finality of election results,”  
4 *Donaghey v. Att’y Gen.*, 120 Ariz. 93, 95, 584 P.2d 557, 559 (1978), the burden on a  
5 contestant is high, and courts must begin with several presumptions: *First*, Arizona courts  
6 apply “all reasonable presumptions” in “favor [of] the validity of an election.” *Moore v.*  
7 *City of Page*, 148 Ariz. 151, 159, 713 P.2d 813, 821 (App. 1986). *Second*, there is a  
8 presumption “in favor of the good faith and honesty of the members of the election board.”  
9 *Hunt v. Campbell*, 19 Ariz. 254, 268, 169 P. 596, 602 (1917). *Third*, the “returns of the  
10 election officers are prima facie correct.” *Id.* Absent a clear showing of fraud, or that the  
11 election result would have been different but for actual misconduct or illegal votes, the  
12 election return must stand. *See Moore*, 148 Ariz. at 159, 166–67.

### 13 ARGUMENT

14 Lake’s contest fails at every level. All of her claims either are barred by laches, fall  
15 outside the scope of the election contest statute, or fail to allege any actual misconduct.  
16 These legal deficiencies—independently and collectively—are fatal to the contest. Even if  
17 the Court could entertain these allegations, they fall far short of the statutory standard for  
18 nullifying or reversing an election. To trigger these extraordinary remedies, a contestant  
19 must demonstrate either fraud or that official misconduct or illegal votes altered the  
20 outcome of the election. Lake cannot show either. Instead of alleging actual facts and real  
21 numbers, Lake’s contest rests on rank speculation and a cynical mistrust of Arizona’s  
22 election officials. None of Lake’s allegations are sufficiently well-pled to establish a valid  
23 election contest.

#### 24 **I. Half of Lake’s contest claims are barred by laches (Counts 1, 2, 3, 4, 7).**

25 The equitable doctrine of laches bars Counts 1, 2, 3, 4, and 7, each of which could  
26 have been brought well before the election. Laches prevents a lawsuit from proceeding  
27 when a plaintiff’s delay is unreasonable and prejudices other parties. *Sotomayor v. Burns*,

1 199 Ariz. 81, 82–83, 13 P.3d 1198, 1199–1200 (2000). In considering whether laches bars  
2 a late lawsuit, courts (1) “examine the justification for delay, including the extent of  
3 plaintiff’s advance knowledge of the basis for challenge”; (2) analyze “whether [the] delay  
4 . . . was unreasonable”; and (3) consider whether “the delay resulted in actual prejudice to  
5 the adverse parties.” *Harris v. Purcell*, 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998)  
6 (citing *Mathieu v. Mahoney*, 174 Ariz. 456, 459, 851 P.2d 81, 84 (1993)). In evaluating  
7 prejudice in the context of laches, Arizona courts consider fairness to litigants, election  
8 officials, the voters, and the Court. *See id.*; *Sotomayor*, 199 Ariz. at 83.

9 Counts 1, 2, 3, 4, and 7 are barred by laches because each of these counts “concern[]  
10 alleged procedural violations of the election process” that Lake should have brought “prior  
11 to the actual election.” *Sherman v. City of Tempe*, 202 Ariz. 339, 342, 45 P.3d 336, 339  
12 (2002). “[B]y filing [her] complaint after the completed election,” Lake “essentially ask[s]  
13 [the Court] to overturn the will of the people, as expressed in the election.” *Id.*, 202 Ariz.  
14 at 342 ¶ 11. The Court should reject her attempt to “subvert the election process by  
15 intentionally delaying a request for remedial action to see first whether [she would] be  
16 successful at the polls.” *McComb v. Super. Ct. In & For Cnty. Of Maricopa*, 189 Ariz. 518,  
17 526, 943 P.2d 878, 886 (App. 1997) (cleaned up).

18 Lake’s “late filing defies explanation.” *Sotomayor*, 199 Ariz. at 83. Counts 1, 2, 3,  
19 4, and 7 all challenge election procedures or conduct that have been in place for months, if  
20 not years. Count 1 challenges conduct regarding prevention of election misinformation  
21 dating back to April 2020. Compl. ¶ 91. Count 2 alleges that election equipment was not  
22 properly certified, a process that was completed in 2019.<sup>1</sup> Counts 3 and 4 challenge  
23 procedures for signature verification of early ballots and ballot chain of custody, all of  
24 which were set out in the Elections Procedure Manual (“EPM”) published in 2019.<sup>2</sup> And

25 <sup>1</sup> See SOS’s official list of voting equipment certifications:  
26 [https://azsos.gov/sites/default/files/2020.07.22\\_Official\\_List.pdf](https://azsos.gov/sites/default/files/2020.07.22_Official_List.pdf) (last accessed Dec. 15,  
2022).

27 <sup>2</sup> See A.R.S. § 16-452. The EPM is available at:  
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1 Count 7 challenges the use of early ballots altogether, a voting method that millions of  
2 Arizonans have relied upon for more than three decades.

3 Lake has been running for governor since mid-2021, at which point all of these  
4 procedures and practices became directly relevant to her candidacy. And yet, Lake waited  
5 until *after* she lost the election to file suit. Because she “allow[ed] an election to proceed  
6 in violation of the law which prescribes the manner in which it shall be held,” she “may  
7 not, after the people have voted, then question the procedure.” *Kerby v. Griffin*, 48 Ariz.  
8 434, 444, 62 P.2d 1131, 1135 (1936), *abrogated on other grounds by Fann v. State*, 251  
9 Ariz. 425, 493 P.3d 246 (2021); *see also Bowyer v. Ducey*, 506 F. Supp. 3d 699, 717 (D.  
10 Ariz. 2020).

11 Lake’s inexplicable delay prejudices Governor-Elect Hobbs, election officials, and  
12 all Arizona voters, all of whom relied on each of the challenged procedures in place before  
13 the election. Lake’s requested relief seeks to throw out millions of lawfully cast ballots,  
14 *see, e.g.*, Count 7 (arguing all early mail ballots are unlawful), a clear violation of voters’  
15 due process rights. *See Emmett McLoughlin Realty, Inc. v. Pima Cnty.*, 212 Ariz. 351, 355,  
16 132 P.3d 290, 294 (Ct. App. 2006), as corrected (Mar. 9, 2006) (citations omitted).  
17 Moreover, Governor-Elect Hobbs is “entitled to a meaningful response” for claims of this  
18 scale, the public is entitled to fair administration of justice, and Lake’s inexplicable delay  
19 has undermined both. *Ariz. Pub. Integrity All. Inc. v. Bennett*, No. CV–14–01044–PHX–  
20 NVW, 2014 WL 3715130, at \*3 (D. Ariz. June 23, 2014); *see also McClung v. Bennett*,  
21 225 Ariz. 154, 157, 235 P.3d 1037, 1040 (2010) (applying laches in election appeal, even  
22 though it fell within the statutory deadline, given prejudice to opponent and public). The  
23 impact of Lake’s delay extends to this Court: “The real prejudice caused by delay in  
24 election cases is to the quality of decision making in matters of great public importance.”  
25 *Sotomayor*, 199 Ariz. at 83. Because Counts 1, 2, 3, 4, and 7 “should have been—and could

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27 [https://azsos.gov/sites/default/files/2019\\_ELECTIONS\\_PROCEDURES\\_MANUAL\\_APPROVED.pdf](https://azsos.gov/sites/default/files/2019_ELECTIONS_PROCEDURES_MANUAL_APPROVED.pdf) (last accessed Dec. 15, 2022).  
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1 have been—addressed before the vote,” they are barred laches. *Williams v. Fink*, No. 2 CA-  
2 CV 2018-0200, 2019 WL 3297254 (Ariz. Ct. App. July 22, 2019), at \*3.

3 **II. Lake’s constitutional and federal statutory claims fail as a matter of law**  
4 **(Counts 1, 2, 5, 6, 7, 8, 9, 10).**

5 Seven of Lake’s ten claims—Counts 1, 2, 5, 6, 7, 9, and 10—are not permitted under  
6 the election contest statute.<sup>3</sup> The five exclusive grounds for an election contest are  
7 circumscribed by statute, *see Griffin v. Buzard*, 86 Ariz. 166, 168, 342 P.2d 201, 203  
8 (1959), and the burden is on the contestant to show her case falls within those terms,  
9 *Henderson*, 34 Ariz. at 534. Lake fails to meet her burden, and instead seeks to smuggle  
10 into this contest free-wheeling First Amendment, Equal Protection, Due Process and other  
11 federal claims by simply slapping them with the label of “misconduct.” But the Arizona  
12 Supreme Court has been clear: election contests “may not be extended to include cases not  
13 within the language or intent of the legislative act.” *Id.* at 534-35. Lake’s constitutional and  
14 federal statutory claims plainly fall outside the statute and are not a basis for an election  
15 contest.

16 Even if Lake could advance these claims here, none states a viable claim for relief:

17 Count 1 (Free Speech): Lake’s free speech claims fail because they do not allege  
18 that speech was suppressed at all, and certainly not by Defendants. Lake alleges Defendants  
19 violated free speech protections because (1) Hobbs and Richer requested that Twitter  
20 remove posts on election disinformation, (2) Richer attended a meeting with a  
21 cybersecurity agency and gave “a case study presentation” on election disinformation in  
22 March 2022, and (3) Richer founded a Pro-Democracy Republicans PAC, “which was  
23 expressly created to oppose Lake and her political allies.” *See* Compl. ¶¶ 91-99, 123, 132,  
24 133. The second and third allegations do not allege that Richer suppressed speech or  
25 “restrict[ed] expression” at all, an essential element of a First Amendment claim. *Police*  
26 *Dep’t of Chi. v. Mosley*, 408 U.S. 92, 95 (1972). As it relates to Twitter, the First

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27 <sup>3</sup> Count 8 fails as a matter of law because it depends fully on Counts 1-7, which all fail as  
28 a matter of law.

1 Amendment prohibits only governmental abridgement of speech, not private actors. *See*  
2 *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019); *see also*  
3 *See Prager Univ. v. Google LLC*, 951 F.3d 991, 995 (9th Cir. 2020) (holding “a private  
4 entity hosting speech on the Internet is not a state actor” subject to constitutional  
5 constraints). While a state actor can be responsible for a private decision if it “exercised  
6 coercive power” over the entity, *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982), there is no  
7 allegation that occurred here. To the contrary, all that is alleged is that Twitter, on one  
8 occasion nearly two years before the election, acquiesced in a request by the Secretary of  
9 State’s office to remove a post that likely did not comply with Twitter’s terms of service  
10 in the first place. *See* Compl. ¶ 94. Such allegations do not state a First Amendment claim.  
11 *See, e.g., O’Handley v. Padilla*, 579 F. Supp. 3d 1163 (N.D. Cal. 2022) (dismissing on  
12 12(b)(6) grounds First Amendment claim based on allegations that state reported election  
13 disinformation to Twitter, which Twitter removed from its platform).<sup>4</sup>

14 Count 2 (HAVA): While HAVA sets out various minimum requirements for voting  
15 systems, it does not require that voting systems obtain any specific certifications  
16 (certification requirements are set by state law). 52 U.S.C.A. § 21081. Nonetheless, Lake  
17 asserts a HAVA claim due to “not certified” printers. Compl. ¶ 141. But she fails to allege  
18 that any equipment used in Arizona elections fell short of HAVA’s requirements. Compl.  
19 ¶¶ 137-48. Even if she had asserted that, her claim fails because she cannot explain how  
20 the alleged violations created a legally cognizable injury. *Murawski v. Pataki*, 514 F. Supp.  
21 2d 577, 586 n.6 (S.D.N.Y. 2007).

22 Counts 5 and 10 (Equal Protection): Lake’s equal protection claims fail because  
23 they hinge on allegations of disparate impact. Lake alleges that, “[a]ssuming *arguendo* that  
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25 <sup>4</sup> The conclusion should be the same under the Arizona Constitution, which similarly does  
26 not restrain private conduct, *Fiesta Mall Venture v. Mecham Recall Comm.*, 159 Ariz. 371,  
27 375, 767 P.2d 719, 723 (App. 1988), and is interpreted in line with the free speech  
28 protections of the U.S. Constitution, *State v. Stummer*, 219 Ariz. 137, 142, 194 P.3d 1043,  
1048 (2008).



1 a state actor caused the tabulator problems . . . the disproportionate burden on a class of  
2 voters—Republicans—warrants a finding of intentional discrimination.” Compl. ¶ 164  
3 (Count 5); *see also id.* ¶ 183 (similar allegations in Count 10). But a basic tenet of equal  
4 protection doctrine is that disproportionate impact alone is insufficient to state a claim of  
5 intentional discrimination. *Washington v. Davis*, 426 U.S. 229, 239 (1976); *see also Valley*  
6 *Nat’l Bank of Phoenix v. Glover*, 62 Ariz. 538, 554 (1945) (state equal protection law  
7 follows federal counterpart). Under the complaint’s theory, any hiccup on Election Day  
8 would have disproportionately affected Republican voters, Compl. ¶¶ 75, 165, and thus  
9 would be sufficient to state a claim for intentional discrimination.

10 Counts 6 and 10 (Due Process): Lake’s substantive due process claims fail because  
11 she does not allege the required patent and fundamental unfairness necessary to state such  
12 a claim. Lake claims the printing and tabulator issues, which allegedly placed a  
13 “disproportionate burden” on Republicans, rises to a substantive due process violation,  
14 Compl. ¶¶ 169, 183. But the alleged burden relates solely to longer lines at some voting  
15 centers at some times on Election Day, *see infra* at Part III, which is the kind of “garden  
16 variety election irregularit[y]” which cannot give rise to a substantive due process  
17 violation. *Griffin v. Burns*, 570 F.2d 1065, 1076 (1<sup>st</sup> Cir. 1978); *see Hennings v. Grafton*,  
18 523 F.2d 861, 862 (7th Cir. 1975) (rejecting substantive due process violation after voting  
19 machines malfunctioned). Courts have found substantive due process violations following  
20 elections only in extraordinary circumstances, such as failure to call an election entirely,  
21 *see Duncan v. Poythress*, 657 F.2d 691 (5th Cir. Unit B 1981), or the retroactive  
22 invalidation of ten percent of all absentee ballots, *see Griffin*, 570 F. 2d at 1078–88. Such  
23 fundamental deprivation of rights is not alleged here.<sup>5</sup>

24 Lake’s procedural due process claim—which she raises in a single sentence for  
25 “intentional failure to follow election law” and “random and unauthorized acts,” *see*

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26 <sup>5</sup> The conclusion should be the same under the Arizona Constitution, which analyzes due  
27 process claims in line with the federal constitutional. *See State v. Arevalo*, 249 Ariz. 370,  
28 374, 470 P.3d 644, 648 (2020) (applying same standards).

1 Compl. ¶ 171—is similarly meritless. Lake does not allege that voters were denied the right  
2 to vote, only that some voters may have chosen to leave the line, *see infra* Part III. Where  
3 a voter is not denied the right to vote, a procedural due process claim must fail. *Cf. Raetzel*  
4 *v. Parks/Bellefont Absentee Election Bd.*, 762 F. Supp. 1354, 1357 (D. Ariz. 1990)  
5 (acknowledging procedural due process violation where voters are actually disenfranchised  
6 and ballots disqualified without proper protections).

7 Count 7 (Secret Voting): Lake’s “secret voting” constitutional claim is not  
8 supported by any allegations whatsoever, but even if it were, it would fail. Lake alleges  
9 that the millions of early mail-in ballots cast in this election violate the Arizona  
10 Constitution’s requirement for “secrecy in voting,” Ariz. Const. art. VII, § 1. The only  
11 court that has reached a decision on this claim has found it meritless, *see* Ex. B to Governor-  
12 Elect Hobbs’ Motion to Dismiss, Court Order/Notice/Ruling, *Ariz. Republican Party v.*  
13 *Hobbs*, No. CV-2022-00594 (Mohave Cnty. Sup. Ct. June 6, 2022), which makes sense:  
14 Secrecy is preserved in how election officials prepare early ballot return envelopes, A.R.S.  
15 § 16-545(B)(2), and in how voters mark, fold, and seal their ballot in the specially provided  
16 envelope, *Id.* § 16-548(A). Ironically, it is Lake’s own request—to throw out all early  
17 ballots cast in the 2022 general election *after the election has already occurred*—that  
18 would itself create a substantive due process violation. *See Griffin*, 570 F. 2d at 1078–88  
19 (finding federal substantive due process violation with retroactive invalidation of absentee  
20 ballots).

21 Count 9 (Declaratory Judgment): Count 9 asserts that the remedies contemplated by  
22 the election contest statute are “inadequate” to protect against her alleged violations and  
23 thus *concedes* that Lake seeks extra-statutory relief. The election contest statute provides  
24 for only three exclusive remedies: (1) a judgment confirming the election, (2) a judgment  
25 annulling and setting aside the election, or (3) a declaration that a different person secured  
26 the highest number of legal votes and is elected. A.R.S. § 16-676(B)-(C). Because “election  
27 contests are purely statutory,” *Griffin*, 86 Ariz. at 168, Lake cannot seek non-statutory  
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1 remedies. *Henderson*, 34 Ariz. at 534–35. Despite the statute’s confines, Lake improperly  
2 seeks a wide range of impermissible remedies, none of which this Court may award.<sup>6</sup>

3 **III. Lake’s misconduct and illegal votes claims fail as a matter of law (Counts**  
4 **2, 3, 4, 5, 6, 8).**

5 Lake’s “misconduct” claims—Counts 2, 3, 4, 5, and 6—do not allege actual  
6 misconduct that falls within the scope of the election contest statute.<sup>7</sup>

7 *First*, while the election contest statute protects against misconduct by the “election  
8 board” and statewide canvass officers, A.R.S. § 16-672A(1), many of Lake’s misconduct  
9 allegations concern behavior by third parties. *See, e.g.*, Compl. ¶¶ 39, 114, 158 (alleging  
10 misconduct by third-party contractor Runbeck); ¶ 62 (alleging misconduct by “third party  
11 contractor, Star Center”); ¶ 147 (alleging misconduct by an unidentified non-governmental  
12 hacker). Accordingly, Lake fails to state a claim for misconduct to support Counts 2, 3, and  
13 4. Lake admits as much, alleging that the contest statute fails to give her adequate remedies  
14 to address the conduct of third parties. *See* Compl. Counts 9 and 10.

15 *Second*, much of the “misconduct” that Lake alleges—such as erroneous printer  
16 settings in Counts 2, 5, and 6—is not misconduct at all, but rather simple mistakes or  
17 administrative difficulties that could occur in any election. As the Arizona Supreme Court  
18 has explained, “unless the [claimed] error or irregularity goes to the honesty of the election  
19 itself, it will be generally disregarded.” *Findley v. Sorenson*, 35 Ariz. 265, 270, 276 P. 843,  
20 844 (1929). Consistent with *Findley*, more recent case law demonstrates what actionable  
21 misconduct looks like. In *Miller v. Picacho Elementary Sch. Dist. No. 33*, 179 Ariz. 178,  
22 877 P.2d 277 (1994), for example, governmental officials went to the homes of electors,

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23 <sup>6</sup> These include but are not limited to: (a) “An opportunity to inspect Maricopa County  
24 ballots from the 2022 general election”; (b) “A root cause analysis and forensic  
25 examination into the causes and extent of the printer-tabulator problems encountered on  
26 election day,” including “an immediate and full forensic audit” of election equipment; (c)  
27 “An order striking all signatures on file with Maricopa County that are not the ‘registration  
28 record’”; (d) “[A]n injunction requiring that Maricopa County re-conduct the gubernatorial  
election . . . under the direction of a special master”; and much more. Compl. at p. 66-67  
& ¶¶ 105, 155, 162.

<sup>7</sup> As noted *supra* n. 3, Count 8 fails as a matter of law because it depends fully on Counts  
1-7, which all fail as a matter of law.

1 personally distributed absentee ballots in violation of the statute, and “stood beside them  
2 as they voted.” *Id.* at. 180. Such patently improper behavior, which was proven to affect  
3 the result of the election, *see id.*, was sufficient to state actionable misconduct under the  
4 election contest statute. But mere mistakes or omissions do not state a claim for  
5 misconduct. Claims 2, 5, and 6 should also be dismissed for this reason.

6 *Third*, Lake’s misconduct allegations fail to identify any law, rule, or procedure that  
7 was actually violated. These allegations can be divided into three categories: signature  
8 verification (Count 3), chain of custody (Count 4), and printer and tabulation errors (Counts  
9 2, 5, and 6).

10 **Signature verification.** Lake’s allegations do not show Maricopa County failed to  
11 comply with lawful signature verification procedures, let alone engaged in misconduct or  
12 counted illegal votes. *See* Compl. ¶¶ 44-62. Lake’s affidavits describe a three-tier review  
13 process for signature verification in Maricopa County. While Lake bemoans the lack of  
14 observers in the process, all she alleges is that “nothing prevented” election workers from  
15 curing ballots improperly. *Id.* ¶¶ 58, 61-62. At best these allegations imply an *opportunity*  
16 for abuse, not actual misconduct. Absent from Lake’s complaint is any allegation that any  
17 signature verification worker failed to comply with the signature matching statute, § 16-  
18 550(A), or the relevant provision of the EPM, *see* EPM at 68. While Lake’s declarants—  
19 who describe themselves as “the most inexperienced” of those conducting signature  
20 review, *see, e.g.*, Ex. 6—anticipated higher numbers of rejected signatures, Compl. ¶¶ 54-  
21 57, and ascribe improper motivations to signature verification managers, *id.* ¶¶ 59-60, mere  
22 suspicions and conjecture do not amount to misconduct. *Hunt*, 19 Ariz. at 264. Lake’s  
23 allegations surrounding the signature analysis conducted by the We the People AZ Alliance  
24 similarly amount to speculation regarding what *could have* taken place during both the  
25 2020 and 2022 elections. *See* Compl. ¶¶ 47-53. Lake’s speculative allegations, without  
26 more, are not sufficient to allege misconduct or illegal votes. *See Cullen v. Auto-Owners*  
27 *Ins. Co*, 218 Ariz. 417, 418–19, 189 P.3d 344, 347 (courts may not “speculate about  
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1 hypothetical facts that might entitle the plaintiff to relief.”).<sup>8</sup>

2       **Chain of custody.** Lake suggests that election officials failed to abide by requisite  
3 chain of custody procedures, but she fails to allege a single requirement that went unmet.  
4 For example, while Lake alleges that a Runbeck employee observed election workers  
5 delivering early-vote ballots without “any required documentation or paperwork on the  
6 outside of the containers,” Compl. ¶ 112, there is no requirement that paperwork remain  
7 physically attached to secure ballot containers. The only chain of custody paperwork  
8 described in the EPM is a “retrieval form” which, as Lake acknowledges, is required to be  
9 “attached to the outside of the secure ballot container *or otherwise maintained in a manner*  
10 *prescribed by the County Recorder or officer in charge of elections that ensures the form*  
11 *is traceable to its respective secure ballot container.”* EPM at 62 (emphasis added); *see*  
12 *also* Compl. ¶ 110. Similarly, while Lake alleges that the number of ballots left to be  
13 counted increased by 25,000 ballots in the days after Election Day, Compl. ¶¶ 118-20, this  
14 does not show any violation of chain of custody procedures. The EPM requires only that,  
15 “[w]hen the secure ballot container is opened by the County Recorder or officer in charge  
16 elections (or designee), *the number of ballots inside the container shall be counted and*  
17 *noted on the retrieval form.”* EPM at 62 (emphasis added). It does *not* require that a county  
18 provide a public final determination of the total number of outstanding ballots to be counted  
19 on Election Day, as Lake suggests. Her remaining chain of custody allegations similarly  
20 lack any legal foundation. Contrary to Lake’s suggestion, there is no requirement to: record  
21 seal numbers on the retrieval form, *compare* Compl. ¶ 112(c), *with* EPM at 62 (retrieval  
22 form must note “the location *and/or* unique identification number of the location or drop-

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23  
24 <sup>8</sup> Count 3, which seeks to invalidate early ballots based on alleged signature verification  
25 deficiencies, should also be dismissed as an attempt avoid the exclusive statutory  
26 procedures for challenging such ballots. A.R.S. § 16-552 requires that such challenges be  
27 made prior to the opening of the ballot envelope. Moreover, voters must be provided with  
28 notice and opportunity to be heard before their ballots can be invalidated on this basis.  
A.R.S. § 16-552. Lake cannot use an election contest to end run around the explicit  
procedures and timelines set forth in A.R.S. § 16-552 to challenge early ballots and  
disenfranchise some untold number of Arizonans.

1 box,” with no mention of seal numbers); provide a “process to track or account for the  
2 ballots” with “security or monitoring” of the ballots as they are processed at the vote  
3 counting center itself, *compare* Compl. ¶ 112(c), *with* EPM at 72 and 194 (requiring secure  
4 transport *from* processing center *to* counting center); document the “ballot couriers for  
5 every transfer,” *compare* Compl. ¶ 113, *with* EPM at 61 (requiring only that ballot  
6 retrievers be of differing political parties and wear “a badge or similar identification”  
7 showing they are election workers); or track duplicate ballots using delivery or shipping  
8 receipts, retrieval forms, or signatures, *compare* Compl. ¶¶ 115, 160, *with* EPM at 60-62,  
9 201-02 (requiring specific chain of custody documentation only for voted ballots retrieved  
10 from drop-off locations). As a result, Lake’s allegations of improper chain of custody of  
11 ballots fail on their face.

12       **Printing and tabulation errors.** Lake makes much of technical issues that required  
13 some voters to wait in long lines or submit their ballots to be counted once the malfunction  
14 was corrected. *See, e.g.,* Compl. ¶¶ 80-84. But these routine glitches did not disenfranchise  
15 any voters or prevent anyone from voting. As Lake admits, voters who faced technical  
16 issues could place their ballots in Door 3 for tabulation at a later time. *See, e.g., id.* ¶ 78.  
17 The fact that some voters had “strong preferences” to have their ballots tabulated on site is  
18 beside the point. *Id.* And while Lake provides hundreds of voter affidavits alleging  
19 difficulties at the polls, almost every single affiant successfully cast their ballot on Election  
20 Day. Indeed, she identifies by name only *one* individual who said she did not vote as a  
21 result of long lines. *Id.* ¶ 74 n.9. But this voter, like all voters in Maricopa, had numerous  
22 opportunities to cast a ballot on Election Day: they could have gone to any vote center in  
23 the county at any time between 6am and 7pm or dropped off their early ballot instead of  
24 voting in person. *See, e.g., Id.* ¶¶ 40-43 (describing voting options available to Maricopa  
25 voters). For these same reasons, including a failure to prove anyone was disenfranchised,  
26 a court rejected a lawsuit with allegations similar to Lake’s seeking to extend polling hours  
27 in Maricopa on Election Day. *RNC v. Richer*, No. CV2022-014827 (Ariz. Super. Ct. Nov.

1 8, 2022). Lake’s “misconduct” claims based on technical malfunctions should likewise be  
2 dismissed.

3 **IV. Lake cannot obtain statutory relief to undo the election because she fails**  
4 **to adequately allege fraud or a dispositive number of unlawful votes.**

5 Even if Lake’s contest could overcome these legal deficiencies, none of her claims  
6 provides a basis to throw out the election or declare Lake the winner. Lake is entitled to  
7 this extraordinary relief only if she can demonstrate either (1) fraud or (2) that but for  
8 misconduct or illegal votes, “the result would have been different.” *Moore*, 148 Ariz. at  
9 159. Lake’s complaint fails on both counts.

10 **A. Lake’s complaint does not allege facts sufficient to infer fraud.**

11 While Lake asks for this Court to set aside the election result, *see* Compl. ¶ 184, the  
12 only way to trigger such relief is to establish fraud. *See Moore*, 148 Ariz. at 159. Lake’s  
13 complaint notably does not allege fraud as the specific basis for any claim, even though  
14 Lake’s “misconduct” allegations repeatedly invite the Court to *assume* fraud for Counts 2,  
15 3, 4, 5, and 6. *See, e.g.*, Compl. ¶¶ 2, 13 (alleging “hundreds of thousands of illegal ballots  
16 infected the election”); *id.* ¶ 10 (alleging hacking of machines); *id.* ¶¶ 100, 145 (alleging  
17 possibility that tabulator problems resulted from “intentional action” by government  
18 employees). But allegations of fraud face an extraordinarily high bar, requiring the  
19 complaint to “state with particularity the circumstances constituting fraud.” Ariz. R. Civ.  
20 P. 9(b); *see also Hancock v. Bisnar*, 212 Ariz. 344, 348, 132 P.3d 283, 287 (2006) (election  
21 contests must conform to rules of civil procedure). This heightened pleading standard is  
22 compounded here by “[t]he presumption [] in favor of the good faith and honesty of the  
23 members of the election board.” *Hunt*, 19 Ariz. at 264. As the Arizona Supreme Court  
24 explained, fraud “ought never to be inferred from slight irregularities, unconnected with  
25 incriminating circumstances; nor should it be held as established by mere suspicions.” *Id.*  
26 at 264. “[N]othing but the most credible, positive, and unequivocal evidence should be  
27 permitted to destroy the credit of official returns.” *Id.* at 271.

1 Lake alleges nothing of the sort. Rather than plead particular circumstances of fraud,  
2 Lake simply airs baseless suspicions that someone—maybe even *everyone*—involved in  
3 the election was out to get her. That is not enough to trigger the legal machinery for an  
4 election contest.

5 Lake alleges that the printer and tabulator issues experienced on Election Day were  
6 the result of foul play (Counts 2, 5, and 6). But the only basis for this claim is that “it was  
7 known” that Election Day voters “would be heavily weighted toward voters favoring  
8 Lake.” Compl. ¶ 100; *see id.* (“the extent and character of the problems and breakdowns  
9 encountered . . . on Election Day eliminate any plausible explanation other than intentional  
10 causation”); *id.* ¶ 142 (citing purported expert affidavit concluding same because Maricopa  
11 officials could not immediately fix issue). By this standard, *any issue* which occurred at  
12 polling places on Election Day was the result of intentional action against Lake. That  
13 inference is absurd. All elections have flaws, and understandably, many of those issues are  
14 not revealed until Election Day. Lake offers no basis for this Court to entertain such  
15 “unreasonable inferences” of intentional sabotage, *Jeter*, 211 Ariz. at 389.<sup>9</sup>

16 The same is true for Lake’s chain of custody (Count 4) and signature verification  
17 (Count 3) allegations, which allege that an unknown number of unlawful ballots “infected”  
18 the election. Compl. ¶ 2; *see, e.g., id.* ¶ 114 (“There is no way to know whether 50 ballots  
19 or 50,000 ballots were unlawfully added into the election in this way.”); *id.* ¶¶ 61-62  
20 (alleging signature verification workers were not monitored and implying malfeasance).  
21 But even if election workers had made errors in documenting chain of custody or verifying  
22 signatures—which Lake’s allegations do not show, *see supra* Part III—it is a far cry to  
23

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24 <sup>9</sup> Indeed, Lake’s competing theories about the cause of the printer and tabulator issues in  
25 Maricopa gives away the game. The complaint sets forward three possibilities: (1)  
26 intentional hacking by the government, 145, (2) intentional hacking by a non-government  
27 actor, *id.* ¶ 147, or (3) an unintentional error, *id.* ¶ 146. Lake’s “choose your own  
28 adventure” approach to pleading election fraud not only fails to spell out any particular  
circumstances indicating fraud, but also makes clear that even *she* is guessing about the  
universe of possibilities for these technical malfunctions. This is particularly inappropriate  
and insufficient to support a verified complaint.



1 infer from those mistakes that countless ballots were *fraudulent*. Because Lake’s contest  
2 fails to come forward with any specific, factual basis to call into question the presumed  
3 good faith of election officials and veracity of election returns, she is foreclosed from  
4 seeking a wholesale nullification of the election results.

5 **B. Lake’s does not adequately allege the result would have been different**  
6 **absent misconduct or illegal votes.**

7 Absent a showing of fraud, the only way Lake could obtain relief under the contest  
8 statute is to establish that but for the alleged misconduct or illegal votes, the result of the  
9 election would be different. Simply alleging “the outcome would have been different” does  
10 not suffice. *See Cullen*, 218 Ariz. at 419 ¶ 7 (holding complaint without sufficient factual  
11 allegations does not satisfy Arizona’s notice pleading standard under Rule 8). None of  
12 Lake’s claims clear this bar:

13 Count 1 (Free Speech): Though Lake objects to Hobbs’s and Richer’s efforts to  
14 combat election disinformation, *See Compl.* ¶¶ 91-99, 121-124, 132-135, she does not  
15 claim *any* votes were affected by this supposed misconduct, let alone votes sufficient to  
16 “have affected the result of the election.” *Fink*, 2019 WL 3297254, at \*3 (quotation  
17 omitted).

18 Counts 2, 5, and 6 (Printing and Tabulator Issues): While Lake makes a series of  
19 conclusory assertions that the devices used by the County during the election were not  
20 certified, did not comply with HAVA, and that intentional, widespread technical issues on  
21 Election Day violated the constitution, *see Compl.* ¶¶ 63-75, 100-105, 136-148, 163-172,  
22 Lake does not identify a single “illegal vote” that was wrongfully counted because of these  
23 errors. Rather, Lake’s entire claim rests on speculation about what might have been had  
24 those technical malfunctions not occurred. Even if this Court could add hypothetical votes  
25 to the count after the election—which there is no precedent for—Lake does not come close  
26 to showing the result would have been different in a race separated by over 17,000 votes.  
27  
28

1 Rather, she identifies only a handful of voters who chose not to wait in a long line. *See id.*  
2 ¶ 74, n. 8-9.

3 In an attempt to close the gap, Lake relies on the Declaration of Richard Baris to  
4 argue these Election Day issues impacted “the outcome of the Governor race” because  
5 Election Day voters are disproportionately Republican and more Republicans would have  
6 voted absent tabulator issues. *Id.* ¶ 143. Baris’s declaration—based on an opinion poll that,  
7 among other flaws, failed to ask whether anyone could not vote due to administrative issues  
8 on Election Day—argues that if only Republican turnout had been higher, Kari Lake would  
9 have won. *See Ex. 11.* This “expert” theory should be dismissed out of hand. By Lake’s  
10 standard, any allegation of depressed voter turnout could trigger an election contest.

11 Count 3: Lake’s signature verification claim fails to allege any actual ballots that  
12 were improperly verified in the 2022 gubernatorial election. Mere suspicions about the  
13 process do not amount to a number of votes sufficient to reverse the election. *See supra*  
14 Part IV(A). And allegations regarding illegal votes (in the form of signature mismatches)  
15 in a *prior election* (2020) are not a proper basis to deem votes illegal in the contested  
16 election.

17 Count 4: Far from specifying a number of outcome-determinative votes, Lake’s  
18 chain of custody claim asserts that “there is no way to know whether 50 ballots or 50,000  
19 ballots” were added.” Compl. ¶¶ 114, 158; *see also Ex. A-9* at 3 (Runbeck employee stating  
20 that she saw “about 50 ballots” dropped off by employees which they believed “were  
21 legitimately employee or employee family’s ballots,” with no mention of “50,000 ballots”).  
22 Lake cannot so casually wave away thousands of ballots. Election contests are neither  
23 guessing games nor fishing expeditions. Absent well-pled allegations that a specific  
24 amount of ballots was wrongfully counted or rejected, her claim must be dismissed.

25 Counts 7, 8, 9, 10: Counts 8 through 10 make no new allegations of misconduct or  
26 illegal votes and seek only remedies to address Lake’s previously identified grievances.  
27 While Count 7 does seek the invalidation of more than a million ballots, this claim is not a  
28

1 serious one, nor is it one this Court could grant retroactively after millions of Arizonans  
2 relied on early ballots. *See supra* Part I.

3 Ultimately, the math just doesn't add up. Courts entertain election contests only  
4 where the alleged misconduct or illegal votes amount to a "sufficient number[] of votes "to  
5 alter the outcome of the election." *Miller*, 179 Ariz. at 279. Lake's contest fails to  
6 adequately plead away a 17,117-vote margin.

7 **CONCLUSION**

8 For any and all of these reasons, Lake's attempt to overturn the will of Arizona's  
9 voters should be dismissed. Governor-Elect Hobbs also reserves her right to pursue  
10 attorneys' fees pursuant to A.R.S. § 12-349.

11 Dated: December 15, 2022

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