

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020-014083

11/05/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT

K. Ballard

Deputy

LAURIE AGUILERA, et al.

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, et al.

JOSEPH EUGENE LA RUE

SARAH R GONSKI

BRETT W JOHNSON

ROY HERRERA

THOMAS J. BASILE

COURT ADMIN-CIVIL-ARB DESK

DOCKET-CIVIL-CCC

JUDGE MAHONEY

HEARING

Courtroom: ECB-411

3:59 p.m. This is the time set for an Order to Show Cause Return Hearing as to Plaintiff's Application for Order to Show Cause, filed 11/4/2020.

Appearances are all virtual and/or telephonic through the GoToMeeting platform and are as follows:

- Plaintiffs Laurie Aguilera and Donovan Drobina are represented by Counsel Alexander Kolodin, Christopher Viskovic and Sue Becker (Ms. Becker is an attorney from Indianapolis, Indiana who has a pending but not yet approved application for admission pro hac vice). Plaintiff Laurie Aguilera is also present.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020-014083

11/05/2020

- Defendant Adrian Fontes (in his official capacity as Maricopa County Recorder); Defendant Fran McCarroll (in her official capacity as Clerk of the Maricopa County Board of Supervisors); Defendants Clint Hickman, Jack Sellers, Steve Chucri, Bill Gates, and Steve Gallardo (in their official capacities as members of the Board of Supervisors for Maricopa County); and Defendant Maricopa County (collectively, the “Maricopa County Defendants”) are represented by Deputy County Attorneys (“DCA”) Joseph LaRue, Joseph I. Vigil, Thomas P. Liddy, Emily Craiger, and Joseph J. Branco.
- Proposed Intervenor Arizona Democratic Party is represented by Counsel Sarah R. Gonski, Roy Herrera and Daniel A. Arellano.
- Proposed Intervenors Donald J. Trump for President, Inc. and Republican National Committee are represented by Counsel Thomas Basile, Kory Langhofer, Brett W. Johnson, and Eric H. Spencer.

A record of the proceedings is made digitally in lieu of a court reporter.

The Court has reviewed the following:

1. Plaintiff Laurie Aguilera’s Verified Complaint for Special Action, filed 11/4/2020;
2. Plaintiff Laurie Aguilera’s Application for Order to Show Cause, filed 11/4/2020;
3. Plaintiffs Laurie Aguilera and Donovan Drobina’s First Amended Verified Complaint for Special Action, filed 11/5/2020;
4. Arizona Democratic Party’s (“ADP”) Motion to Intervene, filed 11/5/2020;
5. Donald J. Trump for President, Inc. and Republican National Committee’s Motion to Intervene, filed 11/5/2020;
6. Notice of Appearance on behalf of the Maricopa County Defendants, filed 11/5/2020; and
7. Declarations of Service as to the Maricopa County Defendants, filed 11/5/2020.

Discussion is held as to the Motions to Intervene, neither of which is opposed.

THE COURT FINDS the Motions to Intervene satisfy Rule 24(a), Ariz. R. Civ. P., intervention as of right, or alternatively, Rule 24(b) permissive intervention.

There being no opposition, and good cause appearing,

IT IS ORDERED granting the Motions to Intervene and permitting (1) Arizona Democratic Party and (2) Donald J. Trump for President, Inc. and Republican National Committee to intervene in this matter.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020-014083

11/05/2020

Discussion is held as to what type of hearing should be set in this matter, the discovery each side believes is necessary prior to any such hearing and the timeframe for conducting such discovery, and the timeframe and length of said hearing.

The Court has also received Plaintiffs' Motion for Association of Counsel Pro Hac Vice, filed 11/5/2020. The Court advises counsel that Exhibit "A" attached thereto is missing the Verified Application of Sue Becker. **IT IS ORDERED** Plaintiffs shall promptly file a Supplement to the Motion for Association of Counsel Pro Hac Vice attaching the intended complete Exhibit "A".

DCA Liddy requests that Plaintiffs' Prayer for Relief listed, at item "C" in the First Amended Verified Complaint, p. 10, be denied as an impossibility as it is the position of the Maricopa County Defendants that the relief cannot physically occur for the reasons set forth on the record. Discussion is held as to same.

The Court will not make any substantive rulings on any verbal requests today as the requests may need to be submitted in writing and briefed for the parties to be heard fairly, depending on the nature of the request.

The Court inquires as to the status of the Election Department's response to the 11/4/2020 letter from the Attorney General (Exhibit "E" to the First Amended Verified Complaint). DCA Liddy avows that the Maricopa County Attorney's Office has sent a written response to the Attorney General, and DCA Liddy will make said response available to all counsel in this case if they have not otherwise received it.

DCA Liddy requests that the Court order Plaintiffs' attorneys to cease and desist contacting or speaking to Maricopa County employees without Maricopa County Defendants' counsel present, as they appear to have done so with Joshua Banko, from whom Plaintiffs' counsel secured a Declaration that was attached to the First Amended Verified Complaint, Exhibit "B", despite Joshua Banko being employed as a Clerk for the Maricopa County Elections Department.

Discussion is held as to the timeframe for the parties to brief the legal issues.

Plaintiffs' counsel requests immediate relief as to Plaintiffs' Prayer for Relief item "C" of the First Amended Verified Complaint.

As counsel for the Maricopa County Defendants and Intervenor ADP have indicated that they intend to file Motions to Dismiss, discussion is held as to a timeframe for filing same. DCA Liddy indicates he can file a Motion to Dismiss by 11/10/2020. Counsel for Intervenor ADP

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020-014083

11/05/2020

requests a deadline of one week to file Intervenor ADP's Motion to Dismiss, and a week later to hold oral argument on same and/or any evidentiary hearing necessary.

Further discussion is held as to the relief being requested and a timeframe and procedure for resolving same.

Plaintiffs' counsel clarifies the relief being requested in Plaintiffs' Prayer for Relief item "C" of the First Amended Verified Complaint. Court and counsel discuss same.

DCA Liddy states that the counting process may be viewed online by going to the Recorder's Office website. DCA Liddy further indicates that the counting currently underway and observable is of the tabulation of primarily mail-in ballots and a limited number of early ballots as the ballots cast in person on Election Day (i.e., in the manner Plaintiffs claim their votes were harmed) have already been tabulated. Court and counsel discuss same and the process for allowing representatives to view the counting in person.

Plaintiffs' counsel references the Court to an Addendum to the Election Procedures Manual, p. 3, subsection D, ¶ 1, in support of Plaintiffs' Prayer for Relief item "C".

IT IS ORDERED the parties shall confer with one another and submit a joint proposal (or separate proposals if an agreement cannot be reached) to the Court, via email, no later than **11:30 a.m. on 11/6/2020** as to what type of hearing needs to be scheduled and what discovery needs to be taken prior to the hearing, as well as timeframes for both. After reviewing same, the Court may schedule another conference with counsel or may simply set a hearing date.

Plaintiffs' counsel, Ms. Becker, requests that DCA Liddy provide the Maricopa County Attorney's Office response to the Attorney General to all counsel tonight. DCA Liddy agrees to do the same.

IT IS SO ORDERED, with a copy emailed to this Court also.

Email addresses for Court staff are as follows:

JA, Jennifer "JJ" Sommerville, Jennifer.Sommerville@jbazmc.maricopa.gov
Courtroom Assistant/Bailiff, Ana Meza, Ana.Meza@jbazmc.maricopa.gov

5:06 p.m. Matter concludes.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV2020-014083

11/05/2020

LATER:

IT IS FURTHER ORDERED granting the Maricopa County Defendants' request that no represented party or employee/agent of such a party be contacted directly by another party's counsel.

* * * *

PLEASE NOTE: This Division requires that all motions, responses, replies and other Court filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. **No filing will be accepted if filed in combination with another. Additionally, all filings shall be fully self-contained and shall not "incorporate by reference" other separate filings for review and consideration as part of the pending filing.**

ALERT: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a Court facility to wear a mask or face covering at **all times** while they are in the Court facility. With limited exceptions, the Court will not provide masks or face coverings. Therefore, any individual attempting to enter the Court facility must have an appropriate mask or face covering to be allowed entry to the Court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the Court facility or asked to leave. In addition, all individuals entering a Court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the Court facility.