

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-014562

11/16/2020

HONORABLE MARGARET R. MAHONEY

CLERK OF THE COURT

K. Ballard

Deputy

LAURIE AGUILERA, et al.

ALEXANDER M KOLODIN

v.

ADRIAN FONTES, et al.

THOMAS PURCELL LIDDY

SARAH R GONSKI
DANIEL A ARELLANO
COURT ADMIN-CIVIL-ARB DESK
DOCKET-CIVIL-CCC
JUDGE MAHONEY

SUE BECKER ESQ
PUBLIC INTEREST LEGAL
FOUNDATION
32 E WASHINGTON ST STE 1675
INDIANAPOLIS IN 46204

HEARING SET

Courtroom: ECB-411

3:43 p.m. This is the time set for an Order to Show Cause Return Hearing as to Plaintiffs' Verified Complaint and Application for Order to Show Cause, both filed 11/12/2020.

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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, Chris Ford (Mr. Ford is appearing telephonically via the public access line only), and Sue Becker (Ms. Becker is an out-of-state attorney from Indianapolis, Indiana who has not yet filed an application for admission pro hac vice). Plaintiff Laurie Aguilera is also present.
- 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 Chuceri, 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, Emily Craiger and Joseph I. Vigil (Mr. Vigil is appearing telephonically via the public access line only) (counsel listed are appearing in place of the primary counsel of record, Thomas P. Liddy).
- Proposed Intervenor Arizona Democratic Party is represented by Counsel Sarah R. Gonski and Daniel A. Arellano.

Court Reporter Scott Coniam is present. A record of the proceedings is also made digitally.

The Court has reviewed the following:

1. Plaintiffs’ Verified Complaint, filed 11/12/2020;
2. Plaintiffs’ Application for Order to Show Cause, filed 11/12/2020;
3. Notice of Appearance on behalf of the Maricopa County Defendants, filed 11/13/2020;
4. Arizona Democratic Party’s (“ADP”) Motion to Intervene, filed 11/15/2020; and
5. Plaintiffs’ Opposition to Arizona Democratic Party’s Motion to Intervene, filed 11/15/2020.

The Court addresses counsel as to the Maricopa County Defendants’ Motion to Dismiss, filed 11/16/2020.

Counsel for proposed Intervenor ADP states if ADP is granted intervention, it will likewise file a Motion to Dismiss.

Due to the expedited nature of this case, counsel are advised that whenever any party files anything in the case, they shall contemporaneously email same to the Court and all other counsel.

Argument is presented on ADP’s Motion to Intervene.

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For the reasons discussed, **THE COURT FINDS** the Motion to Intervene satisfies Rule 24(a), Ariz. R. Civ. P., intervention as of right, and/or alternatively, Rule 24(b) permissive intervention.

Good cause appearing,

IT IS ORDERED granting ADP's Motion to Intervene in this matter.

Scheduling is discussed. The Court intends to set oral argument/evidentiary hearing in this matter on Friday, 11/20/2020.

IT IS FURTHER ORDERED that Intervenor ADP shall file its Motion to Dismiss no later than **11:59 p.m. tonight, 11/16/2020**.

IT IS FURTHER ORDERED Plaintiffs shall file their Response to the Maricopa County Defendants' Motion to Dismiss, length limited to 10 pages of explanatory text, no later than **11:59 p.m. on Tuesday, 11/17/2020**.

IT IS FURTHER ORDERED Plaintiffs shall file their Response to Intervenor ADP's Motion to Dismiss, length limited to 5 pages of explanatory text, no later than **11:59 p.m. on Wednesday, 11/18/2020**.

The Maricopa County Defendants and Intervenor ADP both waive filing written Replies in support of their Motions to Dismiss.

Discussion is held as to the scope of, and the evidence to be presented at, the oral argument/evidentiary hearing. Plaintiffs indicate they intend to explore retention of an expert witness in this matter. Discussion is held as to same.

IT IS FURTHER ORDERED the parties shall confer with one another and file a joint proposal (or separate proposals if an agreement cannot be reached), no later than **4:45 p.m. on 11/17/2020** as to the scope of the hearing (the witnesses and exhibits anticipated), how much time is needed for the hearing, the division of allotted hearing time per party, etc. Plaintiffs' counsel shall have the burden of initiating the draft proposal.

Counsel are advised that the Court's JA will email the parties later today with the hours of the Friday hearing.

Plaintiffs' counsel advises the Court that they intend to confer with the other parties in an effort to agree on stipulated facts in order to streamline the hearing.

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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

4:30 p.m. Matter concludes.

LATER:

As counsel have been notified this date via email from Court staff, the Court has set the hearing on Friday, 11/20/2020 from 9:00 a.m. to noon, and 1:30 p.m. to 4:00 p.m.

IT IS FURTHER ORDERED setting a **virtual** Evidentiary Hearing on Plaintiffs' Verified Complaint, filed 11/12/2020, and Oral Argument on all dispositive motions for **Friday, 11/20/2020 beginning at 9:00 a.m.** in this Division.

Honorable Margaret R. Mahoney
East Court Building
101 West Jefferson, Courtroom 411
Phoenix, Arizona 85003-2202
Telephone: (602) 506-0387

Counsel are hereby advised that the hearing will be **conducted via GoToMeeting**. Court staff will email an invitation to counsel that contains a link and phone number for purposes of participating in the hearing remotely. **PLEASE NOTE: Counsel are responsible for sharing the GoToMeeting invitation with any clients, client representatives and witnesses who will appear at the hearing.**

IT IS FURTHER ORDERED counsel shall file, no later than **4:00 p.m. on Wednesday, 11/18/2020**, a Joint Hearing Statement signed by all counsel/parties that includes:

- a) **Exhibit List and Final List of Witnesses**: The Joint Hearing Statement shall include an Exhibit titled: Exhibit List and Final List of Witnesses. The Exhibit shall contain a list of each party's exhibits and a list of the names of each witness a party **actually intends to call** at the hearing, and the **estimated time needed for direct, cross and re-direct examination**.

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- b) Counsel shall confer with one another to attempt to stipulate to as many exhibits as possible and shall reflect such stipulations in the Exhibit List submitted to the Court and referenced above in “a”.

IT IS FURTHER ORDERED that counsel shall immediately notify the Court if they reach a settlement of the case or otherwise reach an agreement that the oral argument/evidentiary hearing is no longer necessary.

IT IS FURTHER ORDERED that all hearing Exhibits will need to be submitted **electronically** through the Clerk of Court Exhibit Portal (see website below) **and** to this Division’s staff (see email addresses listed above for Court staff) by no later than **10:00 a.m. on Thursday, 11/19/2020**.

Please visit the following Clerk of Court website for information on submitting Exhibits: <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>. The webpage will provide instructions and guidance for electronic submission as well as locations for in-person (paper) submission of exhibits. Due to the expedited nature of this hearing, **electronic exhibits are preferred**.

This Division requires Bench copies of all exhibits to be submitted in binders and with numbered, tabbed dividers for the Judge’s use.

Accordingly, **IT IS FURTHER ORDERED** no later than **1:30 p.m. on Thursday, 11/19/2020**, the parties shall deliver their **set of Bench copies of Exhibits** to this Division.

IT IS FURTHER ORDERED the parties are directed to exchange their Exhibits before presenting same to the Clerk. The parties will make sure they do not present the Clerk a set of Exhibits that includes duplicate Exhibits. The parties should not reserve Exhibit numbers for all Defendants’ Exhibits, all Plaintiffs’ Exhibits, miscellaneous demonstrative Exhibits, and the like.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party’s exhibits before marking the other party’s. Accordingly, the Defendants’ Exhibits numbering shall start at the next number following the last of Plaintiffs’ Exhibits, and then Intervenor ADP’s Exhibits will be marked following Defendants’ Exhibits. (For example, Plaintiff submits 20 exhibits, which are marked Exhibits 1 through 20. Defendants submit 10 exhibits, which are marked 21 through 30). Please do not combine the parties’ Exhibits. Each side’s Exhibits must be submitted separately and in numerical order, this would include any Exhibits submitted by any Intervenor as well.

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NOTICE: Exhibits Marked But Not Offered

Exhibits submitted to the Court for an evidentiary hearing/trial, whether through hard copy or submitted electronically, that are marked as Exhibits but are not offered into evidence at the hearing/trial will be destroyed following the hearing/trial, unless a party requests that the evidence be returned at the conclusion of the hearing. Such requests must be filed with the Court and served on all parties in advance of the hearing/trial or by no later than the conclusion of the hearing/trial.

NOTE: All Court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

To ensure public access to the hearing, **members of the public may call** into the Court's public access number at **1 (866) 952-8437** and enter the following public access code: **572-948-465**. Members of the public will only be able to listen to the proceedings and will not be permitted to participate.

* * * *

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.