

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-014562

11/20/2020

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

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

HEARING

Courtroom: ECB-411

Prior to the commencement of today's proceedings, Plaintiffs' (electronic) Exhibits 1-32 and the County Defendants' (electronic) Exhibits 40-43 and 45-52 are marked for identification. Additionally, the County Defendants' (physical) Exhibit 44 is marked for identification.

**LET THE RECORD REFLECT** Exhibits 33-39 have not been marked and have been designated "UNUSED" for this hearing.

9:15 a.m. This is the time set for (1) Oral Argument on (a) the County Defendants' Motion to Dismiss, filed 11/16/2020, and (b) Intervenor Arizona Democratic Party's Motion to Dismiss, filed 11/16/2020; and (2) Evidentiary Hearing on Plaintiffs' Election Challenge, filed 11/12/2020.

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

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- Plaintiffs Laurie Aguilera and Donovan Drobina are not present but are available nearby, and are represented by Counsel Alexander Kolodin, Christopher Viskovic and Chris Ford (Mr. Ford appearing telephonically only) and Pro Hac Vice Counsel Sue Becker.
- Defendant Adrian Fontes (in his official capacity as Maricopa County Recorder); 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 “County Defendants”) are represented by Deputy County Attorneys (“DCA”) Thomas P. Liddy, Emily Craiger and Joseph LaRue.
- Intervenor Arizona Democratic Party (“ADP”) is represented by Counsel Sarah R. Gonski, Daniel A. Arellano and Roy Herrera (Mr. Herrera is appearing telephonically only).
- Plaintiffs’ expert witness, Jim Sneeringer, is present.
- Plaintiffs’ counsel’s paralegal, and a potential witness for Plaintiffs, Sean Atkinson, is also present.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

The Court has reviewed the following:

1. The County Defendants’ Motion to Dismiss, filed 11/16/2020;
2. Plaintiffs’ Response to Defendants’ Motion to Dismiss, filed 11/17/2020;
3. Intervenor ADP’s Motion to Dismiss, filed 11/16/2020; and
4. Plaintiffs’ Response to Intervenor’s Motion to Dismiss, filed 11/18/2020.

At the joint request of the parties, counsel will present oral argument on the Motions to Dismiss at the same time they present closing arguments on the evidentiary issues after the close of the evidence.

The County Defendants invoke the Rule of Exclusion of Witnesses. Court and counsel discuss the same due to the virtual presentation of today’s hearing.

**IT IS ORDERED** directing Plaintiffs’ counsel to instruct each of his witnesses not to listen to the virtual proceedings unless and until each person is called as a witness.

9:24 a.m. **LET THE RECORD REFLECT** Mr. Atkinson and Dr. Sneeringer exit the virtual proceedings.

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Discussion is held as to the order of testimony due to Witness Scott Jarrett's scheduling conflict, which was disclosed by counsel for the County Defendants and thereafter discussed on 11/19/2020.

Accordingly, the following witness for the **County Defendants** is being taken out of order.

Scott Jarrett is sworn and testifies virtually.

The County Defendants' Exhibit 40 and Plaintiffs' Exhibit 21 are received in evidence by stipulation.

Plaintiffs' Exhibits 23 and 24 are received in evidence by stipulation.

The County Defendants' Exhibit 41 is received in evidence.

The County Defendants' Exhibit 47 is received in evidence.

The County Defendants' Exhibit 45 is received in evidence.

The County Defendants' Exhibit 46 is received in evidence.

The County Defendants' Exhibit 44 is received in evidence.

The video contained on the CD received as Exhibit 44 is presented.

The witness continues testifying.

The County Defendants' Exhibit 42 is received in evidence.

10:29 a.m. Court stands at recess.

10:49 a.m. Court reconvenes with respective counsel appearing virtually and/or telephonically via the GoToMeeting platform.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

Plaintiffs' counsel alerts the Court to a scheduling conflict with Plaintiff Laurie Aguilera, who must leave by 1:00 p.m. Plaintiffs' counsel requests that Mr. Jarrett's testimony be interrupted to accommodate Ms. Aguilera. Court and counsel discuss same.

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Counsel confirm that there are no other witnesses with time constraints.

Plaintiffs' request to interrupt Mr. Jarrett's testimony to accommodate Ms. Aguilera is denied. Mr. Jarrett's testimony will continue at this time as, was previously settled, Mr. Jarrett is not available after noon and must conclude his testimony by noon. Thereafter, and prior to taking the lunch recess, Ms. Aguilera will be called to testify. It appears, based on the parties' time calculations, Ms. Aguilera's testimony will then conclude by 1:00 p.m., which is when Ms. Aguilera's time conflict begins.

Scott Jarrett continues testifying.

The County Defendants' Exhibit 43 is received in evidence.

The County Defendants' Exhibit 52 is received in evidence.

Plaintiffs' Exhibit 22 is received in evidence at the request of the County Defendants.

The County Defendants' Exhibit 51 is received in evidence.

The witness is excused.

**Plaintiffs' case:**

Laurie Aguilera is sworn and testifies virtually.

Plaintiffs offer Exhibit 19, to which the County Defendants object.

Discussion is held as to Plaintiffs' Exhibit 19 and associated alleged violations of A.R.S. §§ 16-1018 and 16-515(G) and (H) and potential self-incriminating testimony as a result thereof.

12:15 p.m. Court stands at recess to allow Plaintiffs' counsel to confer with and advise Plaintiff Aguilera regarding Exhibit 19 issues as discussed above.

12:21 p.m. Court reconvenes with respective counsel appearing virtually and/or telephonically via the GoToMeeting platform.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

Plaintiffs withdraw their offer of Exhibit 19.

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**IT IS SO ORDERED.**

Laurie Aguilera continues testifying.

Plaintiffs' Exhibit 2 is received in evidence.

The witness is excused at this time. However, Ms. Aguilera may rejoin the proceedings at any time as she is a Plaintiff in this action.

Scheduling is discussed.

12:36 p.m. Court stands at recess.

1:34 p.m. Court reconvenes with respective counsel appearing virtually and/or telephonically via the GoToMeeting platform.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

Damian Aguilera is sworn.

Discussion is held as to the parties' time usage thus far.

Damian Aguilera testifies virtually.

The witness is excused.

Donovan Drobina is sworn and testifies virtually.

Plaintiffs' Exhibit 3 is received in evidence.

Discussion is held as to Plaintiffs' Exhibit 4.

Plaintiffs withdraw their offer of Exhibit 4.

**IT IS SO ORDERED.**

The witness is excused.

Joshua D. Banko is sworn and testifies virtually.

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The witness is excused.

Brief discussion is held as to the next witness being referred to as an expert witness. Plaintiffs will have the burden of establishing the witness's qualifications.

William James Sneeringer is sworn and testifies virtually.

Plaintiffs' Exhibit 32 is received in evidence.

Discussion is held as to Plaintiffs' Exhibit 30.

DCA Craiger voir dices the witness as to Exhibit 30.

The witness continues testifying.

3:12 p.m. Court stands at recess.

3:34 p.m. Court reconvenes with respective counsel appearing virtually and/or telephonically via the GoToMeeting platform, with the exception of DCA Liddy who has left the proceedings for the remainder of the day.

Court Reporter Hope Yeager is present. A record of the proceedings is also made digitally.

Discussion is held as to the parties' time usage thus far.

Mr. Kolodin states his objection to DCA Craiger's prior voir dire of Witness Sneeringer. Court and counsel briefly discuss the same.

Mr. Kolodin proposes written closing summations due to the limited time remaining today, to which the County Defendants object.

Ms. Becker addresses the Court as to the basis of her questioning of Witness Sneeringer, which drew a number of objections prior to the recess. Court and counsel discuss the same.

William James Sneeringer continues testifying.

The basis of Witness Sneeringer's testimony as to the voting systems is discussed further.

The witness continues testifying.

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For the reasons discussed, the Court will not permit the witness to testify further on the matter discussed.

Further argument is presented as to Witness Sneeringer's testimony.

Discussion is held as to Ms. Becker's request to question Witness Sneeringer further on the limited basis as set forth on the record. The Court will permit the questioning on that basis.

The witness continues testifying.

The witness is excused.

All parties rest.

Oral argument on the pending Motions to Dismiss and closing arguments are presented in a combined fashion.

Based on the record before the Court, the evidence presented and the arguments presented, the Court informs counsel that the Court will be dismissing Plaintiffs' Complaint and will set forth its findings and ruling in a separate Minute Entry in the near future.

4:52 p.m. Matter concludes.

FILED: Trial/Hearing Worksheet

**LET THE RECORD REFLECT** there being no further need to retain the Exhibits not offered in evidence in the custody of the Clerk of Court, and pursuant to the Notice provided in the Minute Entry dated 11/16/2020, filed 11/17/2020, Plaintiffs' Exhibits 4, 5, 7, 12, 16-20, 25-29, and 31, and the County Defendants' Exhibits 48-50 are disposed.

\* \* \* \*

**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.**

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**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.