

SUPREME COURT OF ARIZONA

KARI LAKE,

Plaintiff/Appellant,

v.

KATIE HOBBS, et al.,

Defendants/Appellees.

ARIZONA SUPREME COURT
NO. T-23-0005

COURT OF APPEALS, DIVISION TWO
NO. 2CA-SA 2023-0144

MARICOPA COUNTY SUPERIOR
COURT
No. CV2022-095403

**MARICOPA COUNTY
DEFENDANTS-APPELLEES'
RESPONSE TO PLAINTIFF-
APPELLANT'S PETITION FOR
TRANSFER**

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Introduction

Kari Lake (“Lake”) lost the 2022 Arizona gubernatorial election. She also lost a two-day trial on her election contest, [[Under Advisement Ruling, Dec. 24, 2022](#)], her appeal, *Lake v. Hobbs*, 254 Ariz. 570 (App. 2023), and a three-day trial concerning a single issue that this Court remanded for consideration. [[Under Advisement Ruling, May 22, 2023.](#)]

Following that loss, [Lake appealed again](#) on May 31, 2023. In July, Lake filed a Petition to transfer her appeal to this Court, which denied that Petition. The Court explained that a briefing schedule had been set by the Court of Appeals, Lake’s opening brief was due to be filed in September, and “no good cause appears to transfer the matter to this Court.” [No. T-23-0004-CV, [Order \(July 26, 2023\)](#).]

Now, after Lake’s appeal is fully briefed, Lake has again filed a Petition to Transfer (the “Petition”). This Court denied Lake’s prior petition a few months ago and the only development since then is the completion of briefing before Division Two. Absolutely nothing has happened since the prior denial which would change the result of this Petition. Although the Maricopa County Defendants-Appellees have complete confidence in both this Court and the Court of Appeals to consider Lake’s appeal, this Court should deny the Petition.

Argument

I. There is no ARCAP 19 Basis for Transfer.

Pursuant to ARCAP 19(a), this Court has discretion to transfer an appeal if (1) the appeal requests that a Supreme Court decision be qualified or overruled, (2) the appeal raises an issue about which there are conflicting appellate decisions, or (3) “[o]ther extraordinary circumstances justify transfer.” None of these conditions are present here. Lake does not assert that this appeal fits with either of the first two conditions for transfer. And Lake’s only claimed “extraordinary circumstance[.]” is the flimsy contention that the trial court got the facts wrong. No “extraordinary circumstance” justifies transfer where, as here, the matter is fully briefed before Division Two.¹ Because no basis to transfer exists, this Court should deny the Petition.

II. The “New Evidence” Cannot Alter the Outcome Below.

The purported “new evidence” about ballot-on-demand (“BOD”) printer and tabulator problems cannot change the result of Lake’s election contest. The Petition alleges that “new evidence” establishes that BOD printer problems “could only result from malware or remote access[.]” vote center tabulators “logged over 7,000

¹ Lake’s Petition asserts transfer is warranted “based on the extraordinary new evidence,” “Maricopa’s admissions in its answering brief filed in Division Two,” and “this case’s statewide importance, and the urgency of remedying election maladministration affecting the 2022 election and the upcoming 2024 election.” [Pet. at 1.] None of those bases qualify an appeal for transfer.

rejections every 30 minutes” because of those problems, and 260 tabulators rejected ballots during pre-election testing because of the BOD printer problems. [Pet. at 2-4.] Even if the Petition’s spurious allegations were accurate—and, they are not—the alleged BOD printer and tabulator problems did not affect the outcome of the 2022 election. At the first trial in December 2022, Lake’s witness, Parikh, testified that all ballots unable to be read at vote centers could be “could be deposited by a voter, duplicated by a bipartisan board onto a readable ballot, and – in the final analysis – counted.” [[Under Advisement Ruling, Dec. 24, 2022](#), at 6.] Parikh’s testimony established that the Election Day issues “did not actually affect the results of the election.” [*Id.*] Accordingly, this “new evidence” cannot alter the outcome of Lake’s election contest.

III. The Petition Misstates the Record and the Law.

The Petition relies on demonstrably false factual allegations and misrepresentations of the record. This is a recurring problem that this Court already sanctioned, [[Order, Dated May 4, 2023](#), Case No. CV-23-0046-PR, at 5], and the trial court noted, [[Under Advisement Ruling, May 15, 2023](#), at 6 (“The Court notes that counsel’s representation of what the McGregor report would show is 180 degrees from what the report actually says”).]

For example, Lake’s attorneys allege that “at least 8,000 misconfigured ‘fit-to-page’ ballots occurred at 127 vote centers on Election Day, the vast majority of

which were not duplicated[,]" citing [Parikh's Declaration](#),² ¶¶ 44–49. [Pet. at 2–3.] But those paragraphs do not say that the affected ballots were not duplicated, [Lake-APPX 0089–0092], and Parikh's testimony at trial was that they *were* duplicated and counted, [[Under Advisement Ruling](#), Dec. 24, 2022, at 6.]

Similarly, the Petition states that Parikh testified that problems experienced by some BOD printers "could only result from malware or remote access." [Pet. at 2.] Lake made this same argument to the trial court. [[Rule 60 Motion](#) at 15–16.] Both times, Lake's attorneys failed to inform the Court of countervailing testimony provided by Lake's other witness, Betencourt, that "the BOD printer failures were largely the result of unforeseen mechanical failure." [[Under Advisement Ruling, May 15, 2023](#), at 7.]

Lake's attorneys assert that Maricopa County did not dispute that 260 vote center tabulators "rejected ballots with 'the same type of 'Ballot Misread' errors that also occurred on Election Day' " during pre-election testing, citing the County's [Answering Brief](#), page 40, as if this were some revelation. [Pet. at 4 (citing Lake-APPX 0769).] Actually, on the very page Lake cited, the Answering Brief explained that the test ballots included overvotes, blank ballots, and accessible voting ballots that "produce the same type of 'Ballot Misread' errors that also occurred on Election Day in connection with the BOD printer issue." This test therefore did not

² The Declaration begins on page 26 of the PDF.

demonstrate any issues with the tabulators, but instead shows that the tabulators were correctly reading these ballots as errors.

Lake's attorneys also falsely assert that Maricopa County did not conduct the logic and accuracy testing required by A.R.S. § 16-449 on all of its tabulators, citing Parikh's Declaration, which claims that *no* tabulator was tested. [Pet. at 1, 5; *see* Lake's Appx 0071, ¶ 8(a).] First, that statute, which concerns the Secretary of State's logic and accuracy testing, doesn't specify that "all" tabulators must be tested, and the 2019 Elections Procedures Manual, which has the force of law under A.R.S. § 16-452, specifies that the Secretary's logic and accuracy testing must be conducted on "selected equipment," not all of it. 2019 EPM at 87. Second, the record reveals that the Secretary's logic and accuracy testing of Maricopa County's tabulators occurred on October 11, 2022, as required. [Ex. 1 to Parikh's Decl., Secretary of State's Logic & Accuracy Equipment Certificate (Lake-APPX 0094).]

Lake's attorneys also assert that Maricopa County never tested all of its tabulators that would be used on election day. [Pet. at 7.] But that is false. Lake's Appendix contains [Scott Jarrett's Declaration](#), in which he testified that the County tested all of its tabulators on October 4 through 10, 2022, and installed the final Election Program, which successfully passed the Secretary's logic and accuracy testing, on October 14 through 18. [Lake-APPX 0328–0332, ¶¶ 4–17.]

Additionally, Lake's attorneys continue to cast aspersions at Scott Jarrett,

claiming that he “testified falsely.” [Pet. at 2, 6.] The record, however, demonstrates the opposite. [See, e.g., [Under Advisement Ruling, Dec. 24, 2022](#), at 5 (finding Jarrett’s testimony credible); [Under Advisement Ruling, May 15, 2023](#), at 6 (“Rather than demonstrating that Mr. Jarrett lied, [Lake’s new evidence] actually supports his contention that the machine error of the tabulators and ballot printers was a mechanical failure”).]

Conclusion

The Petition is based on misrepresentations of the factual record and lacks any basis whatsoever in ARCAP 19(a). This Court has already denied this request, and absolutely nothing has materially changed since that denial. The Petition is frivolous. This Court should deny the Petition.

RESPECTFULLY SUBMITTED this 17th day of November, 2023.

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