

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-051480

11/29/2023

HONORABLE JOHN R. HANNAH JR

CLERK OF THE COURT
A. Walker
Deputy

KARI LAKE

BRYAN JAMES BLEHM

v.

STEPHEN RICHER, et al.

JOSEPH EUGENE LA RUE

JUDGE HANNAH

RULING

The Court has considered the testimony and other evidence admitted at trial on September 21st and 25th, 2023, the parties' legal briefs and the arguments of counsel. For the reasons stated below,

IT IS ORDERED denying plaintiff Kari Lake's statutory special action petition pursuant to the Arizona public records law, A.R.S. section 39-121 *et seq.*, requesting an order that would compel defendant Maricopa County Recorder Stephen Richer to allow her to inspect the ballot affidavit envelopes, or the electronic images of those envelopes, from the 2022 general election.

IT IS FURTHER ORDERED directing defendant Richer to lodge a proposed form of judgment, and to file any application for costs or attorneys' fees that may be appropriate, within 20 days of the date on which the Clerk issues this order.

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FINDINGS OF FACT

Background

Arizona law requires every voter who receives a ballot at a place or time other than a polling place on Election Day to return the ballot in a “ballot affidavit envelope.” Arizona law dictates most of the ballot affidavit envelope’s form and content. *See* A.R.S. § 16-547. In its Maricopa County version, the ballot affidavit envelope includes the voter’s pre-printed name and address, a “piece identification” code that uniquely identifies both the voter and the ballot, and a return address for the Maricopa County vote-counting center. After placing the ballot in the envelope, the voter must sign the envelope before returning it by mail, drop-off at an authorized location or personal delivery at a polling place. The signature is a declaration under penalty of perjury that the signer is registered to vote, that he or she did not and will not vote more than once, and that the enclosed ballot is his or her own and not someone else’s. A.R.S. § 16-547(A). Most voters also put their phone numbers on the envelopes, though they are not required to do so, in case election officials need to contact them to verify their identity before counting their votes.

In Maricopa County, the county recorder is legally responsible for the receipt and processing of the so-called “early ballots” that voters return in ballot affidavit envelopes. The Office of the Maricopa County Recorder examines the ballot affidavit envelopes in a variety of ways, to verify the integrity of the vote, before “extracting” the ballots from the envelopes and sending them on for counting. The last of these steps, the “signature verification,” is mandated by Arizona law. *See* A.R.S. § 16-550. The statute requires the Office of the Recorder to compare the signature on the ballot affidavit envelope with exemplar signatures maintained in the Recorder’s voter’s registration database. A.R.S. § 16-550(A). If the signatures are “inconsistent,” or if the envelope is unsigned, the Recorder’s Office must “make reasonable efforts to contact the voter,” advise the voter of the problem and allow the voter to correct it. *Id.* The ballot is not counted unless the signature is timely verified (“cured”), either before the polls close on Election Day (for unsigned envelopes) or by the fifth business day after the election (for inconsistent signatures).

Separate and apart from the responsibility for early voting, the county recorder is also legally responsible for maintaining the voter registration database. In Maricopa County, the Recorder creates an electronic image of each ballot affidavit envelope as it is processed after an election. Upon signature verification (in the initial review or through the curing process), the Recorder stores the electronic image permanently in the voter’s registration record, along with the voter’s initial registration form and other voter registration documents like change of address forms. The image and others like it are then used as exemplars for the signature verification process in subsequent elections.

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The 2022 General Election Cycle and Lake's Public Records Request

During the 2022 general election cycle, the Office of the Recorder processed some 1.3 million "early ballots," about 84 percent of the total votes cast in Maricopa County. The signature verification required "all hands on deck," including more than 40 temporary employees in addition to the Recorder's entire 60-person staff. After the initial signature review and a second-level review by a manager, about 16,000 of the signatures on the ballot affidavit envelopes were found to be inconsistent with the signatures in the voter registration database. Working under the statutory five-day deadline, the Recorder's personnel undertook to contact each of those 16,000 voters, using a script that started with "did you vote?" They used non-public information in the voter registration records -- last four digits of Social Security number, mother's maiden name -- to confirm that they were speaking to the right people. They ultimately enabled 14,200 citizens to "cure" their signatures and make their votes count in the election. The remaining 1,800 ballot affidavit envelopes were never opened. Those votes went uncounted.

The legal compliance and factual accuracy of the Maricopa County Recorder's signature verification process are not at issue in this case. That said, it matters as context that Ms. Lake presented her legal and factual case against the Maricopa County Recorder's signature verification process in her election contest earlier this year. Judge Thompson found by "clear and convincing evidence that the elections process for the November 8, 2022 General Election did comply with A.R.S. section § 16-550 and that there was no misconduct in the process to support a claim under [the election contest statute,] A.R.S. § 16-672." *Lake v. Hobbs*, Maricopa County No. CV2022-095403, Under Advisement Ruling dated May 22, 2023, at 2. Judge Thompson's final order denying the election contest is now on appeal.

Ms. Lake formally asked Mr. Richer to allow her to inspect "all 2022 General Election Ballot Affidavit Envelopes, including mail-in, early voting and late early ballot envelopes" on March 25, 2023, while the election contest was ongoing before Judge Thompson. Her letter said she was making the request "in anticipation of continued litigation in *Lake v. Hobbs*, and pursuant to A.R.S. § 39-121 *et seq.*," the Arizona public records law. The Recorder's Office denied the request "pursuant to A.R.S. 16-168(F) and [the] in the best interest of the state exception to the Public Records Act . . . because they contain voters' signatures."

On April 25, 2023, Ms. Lake initiated this case by filing her Verified Complaint for Statutory Special Action to Secure Access to Public Records against Mr. Richer in his official capacity as Maricopa County Recorder. She asks this Court to compel the Recorder to disclose the ballot affidavit envelopes from the 2022 general election.

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The Facts Supporting Richer's Denial of the Public Records Request

At trial, the Recorder presented evidence to explain why, in response to Lake's demand for disclosure of the ballot affidavit envelopes, he invoked section 16-168(F) and the "best interests of the state" exception to the public records law. Ms. Lake had a full and fair opportunity to contest that evidence. The following findings are gleaned from the Recorder's trial presentation.

The Recorder uses the private identifying information in his possession, including voter signatures, for the purpose of verifying early ballots. As a matter of election administration, the public release of that private information, including voter signatures, undermines the verification process. Unauthorized people could use the information to impersonate real voters. "Voter impersonation" fraud is exceedingly rare at present, in part because it is difficult to scale up that kind of activity enough to make a difference in an election. A key barrier is that potential bad actors have no large-scale source of sample voter signatures from which to create fraudulent ballots that might survive the signature verification process and get counted. The ballot affidavit envelopes from the 2022 election include the signatures of some 1.3 million Maricopa County voters, each conveniently presented with the voter's name, address, and telephone number on the same page. Disclosure of the ballot affidavit envelopes therefore would create a risk of widespread fraud where none exists at present.

The release of the ballot affidavit envelopes would also create a real possibility of voter harassment. Two voter witnesses testified at the hearing that strangers appeared at their homes after the 2022 election, asking intrusive questions about who lived in the home, the manner in which they had voted, and whom they had voted for. Some of the questions ("did you receive extra ballots?") and comments ("hundreds of people who were dead ... voted," and those votes "may have come from [your] house, [your] neighborhood") showed a belief that fraud had tainted the election. The voters testified, credibly, that they regarded this activity as both an invasion of the privacy of the voting booth and an implicit attack on the integrity of their individual votes. Public disclosure of the ballot affidavit envelopes, most of which include phone numbers that may be non-published or otherwise not readily available to the public, would facilitate this kind of offensive behavior at least, and turbocharge it at worst. That in turn would have a corrosive effect on public confidence in the electoral process.

The witnesses also expressed concern about identity theft. Because our modern economy commonly uses signatures as both a marker of consent and a form of self-identification, the risk that mass disclosure of ballot affidavit envelopes will enable identity theft is both self-evident and significant. But even if that does not happen, the mere *perception* of risk among potential voters like these, especially those who are elderly or otherwise vulnerable, would have serious adverse consequences. One of the witnesses said that she and her husband would hesitate to vote by mail if they thought their signatures might thereby become public records. She expressed particular

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concern about the potential disenfranchisement of her elderly spouse, who cannot vote in person because of his poor health.

Recognizing that similar concerns are likely commonplace, Mr. Richer testified that he believes the “chilling effect” of public disclosure would significantly affect voter participation. Mr. Richer also anticipates that a significant number of voters would try to cast their votes without signing the ballot affidavit envelopes. That development would threaten the ability of the Office of the Recorder to contact each voter and attempt to “cure” the defective ballots. So would the confusion and mistrust created by unauthorized “vote checkers” using private telephone numbers to make inquiries like those the Recorders’ employees’ make when curing ballots. Again, voter disenfranchisement would likely result.

The Court credits Mr. Richer’s testimony that disclosure of the ballot affidavit envelopes would create election integrity issues and depress voter participation. As the elected Maricopa County Recorder, Mr. Richer is responsible for the early voting process in Maricopa County. Planning and executing that process requires knowledge of voter behavior. That knowledge makes Mr. Richer’s evaluation of the risks of voter information disclosure authoritative enough, and his predictions about the consequences of disclosure reliable enough, to carry substantial weight in the balancing of interests that a contested public records request like this one requires.

CONCLUSIONS OF LAW

The Arizona Public Records Law, A.R.S. section 39-121 et seq.

The parties here agree that ballot affidavit envelopes are “public records” pursuant to A.R.S. section 39-121. Ms. Lake’s right of access to the documents therefore “is not conditioned on [a] showing, or a court finding, that the documents are relevant to anything.” *Bolm v. Custodian of Records of Tucson Police Dept.*, 193 Ariz. 35 ¶¶ 10-11 (App. 1998). When the denial of a public records request is challenged in court, the court must start from the presumption, based on the policies underlying the public records law, that disclosure of public records is in the public interest. *Griffis v. Pinal County*, 215 Ariz. 1 ¶ 8 (2007).

“While access and disclosure is the strong policy of the law, the law also recognizes that an unlimited right of inspection might lead to substantial and irreparable private or public harm.” *Carlson v. Pima County*, 141 Ariz. 487, 491 (1984). Thus, a custodian of public records may refuse inspection when “the interests of confidentiality, privacy or the best interests of the state in carrying out its legitimate activities outweigh the general policy of open access.” *Id.* at 491. “The burden of showing the probability that specific, material harm will result from disclosure, thus justifying an exception to the usual rule of full disclosure, is on the party that seeks non-disclosure rather than on the party that seeks access.” *Phoenix Newspapers, Inc. v. Ellis*, 215 Ariz. 268 ¶¶ 22

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(App. 2007) (citations omitted). That rule does not apply, however, when a statute establishes an exception to the public right of inspection for a specific category of records. *See Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297 ¶ 9 (1998) (cataloguing examples).

Section 16-168(F) and the Public Records Law

Early in this litigation, the Recorder moved to dismiss Ms. Lake’s petition on the ground that A.R.S. section 16-168(F) prohibits disclosure of the voter signatures contained in the ballot affidavit envelopes. The motion to dismiss was denied because the parties debated whether the ballot affidavit envelopes are “voter registration records” without offering a clear legal or factual definition of that term.

Having now considered the matter further, the Court concludes that the Recorder correctly relied on section 16-168(F) as a basis for refusing to disclose the ballot affidavit envelopes. As a matter of law, section 16-168(F) presumptively forecloses wholesale disclosure of the ballot affidavit envelopes to Ms. Lake because they are “records containing a voter’s signature,” and because the Recorder in fact makes them part of the “voter registration record” and uses them for signature verification in subsequent elections.

Section 16-168 generally directs the county recorder to create compilations of election-related records for electoral use by political party representatives. A.R.S. § 16-168(A)-(D). The statute prohibits the use of compilations and “other lists and information derived from registration forms” for non-political activity; and it assesses a fee for users other than political party representatives. A.R.S. § 16-168(E).

Subsection (F) of section 16-168, the provision at issue here, attempts to limit the dissemination of voter registration information. The relevant portion of the statute says (with emphasis added):

Nothing in this section shall preclude public inspection of voter registration records at the office of the county recorder for the purposes prescribed by this section, except that the month and day of birth date, the social security number or any portion thereof, the driver license number or nonoperating identification license number, the Indian census number, the father's name or mother's maiden name, the state or country of birth and *the records containing a voter's signature* and a voter's e-mail address *shall not be accessible or reproduced* by any person other than the voter, by an authorized government official in the scope of the official's duties, for any purpose by an entity designated by the secretary of state as a voter registration agency pursuant to the national voter registration act of 1993 (P.L. 103-31; 107

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Stat. 77), for signature verification on petitions and candidate filings, for election purposes and for news gathering purposes by a person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station or pursuant to a court order. Notwithstanding any other law, a voter's e-mail address may not be released for any purpose. A person who violates this subsection or subsection E of this section is guilty of a class 6 felony.

By its plain terms, section 16-168(F) is not a source of authority for public access to election-related records. The provision merely affirms the right of public inspection provided in the public records law. What it adds to the public records law is an overlay of special restrictive rules that apply specifically to voter registration information. “The legislature has determined that voter registration information should have more protection from public access than other types of information.” *Primary Consultants, LLC v. Maricopa County Recorder*, 210 Ariz. 393 ¶ 16 (App. 2005). Accordingly, subsection (F) “establish[es] parameters within which the records may be accessed while maintaining their status as public records.” *Id.*, ¶ 16. By providing for access “pursuant to a court order,” the statute affirms the responsibility of the courts for deciding how the public records law generally, and the special “parameters” for disclosure of voter information specifically, will apply in individual cases like this one.

When construing a statute, a court must attempt to determine and achieve the legislature's intent. *Industrial Commission of Arizona Labor Department v. Industrial Commission of Arizona*, 253 Ariz. 425 ¶ 11 (App. 2022). That inquiry begins with the language of the statute. *Id.* The statute here directs that information commonly used for personal identification, including voter signatures as well as social security numbers, drivers' license numbers and the like, “shall not be accessible or reproduced,” except in specific defined circumstances. It does not limit the scope of that directive. It does not say that such information should be protected when it appears in a voter registration form, but not when it appears on a ballot affidavit envelope. The legislature obviously meant for section 16-168(F) to protect the privacy of voters' sensitive personal information. Construing the statute to protect all election records containing a voter's signature advances that legislative purpose. Affording protection to voter registration and change-of-address cards but not ballot affidavit envelopes would manifestly defeat the statute's purpose.

Moreover, nothing elsewhere in section 16-168, or anywhere in Title 16 for that matter, suggests that the Legislature intended a narrow technical definition of the term “voter registration records” for purposes of subsection (F). “Voter registration records” is not a defined term in Title 16. Elsewhere in the election statutes the term “voter registration records” is used interchangeably with more inclusive terms like “voter records,” as shorthand for “all the records in the Recorder's hands that contain personal identifying information.” *See* A.R.S. section 16-153 (providing a process for certain public employees to obtain a court order prohibiting public disclosure of

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personal information). A similarly broad definition of “voter registration records” makes sense in the context of section 16-168(F).

Alternatively, the Legislature could have intended a functional definition of “voter registration records,” for purposes of section 16-168(F), that requires the Recorder to keep confidential those records are *in fact* used for “voter registration” purposes. That reading of the statute likewise leads to the conclusion that section 16-168(F) presumptively bars public access to the ballot affidavit envelopes.

As previously noted, the Maricopa County Recorder treats ballot affidavit envelopes bearing verified voter signatures as part of the voter’s permanent registration record. The Recorder uses images of the envelopes, along with other records, as exemplars for signature verification in subsequent elections. Almost every county recorder in Arizona does the same, pursuant to the regulations in the Arizona Secretary of State’s Election Procedures Manual. In short, the ballot affidavit envelopes are “voter registration records” in the Arizona election process as it currently exists.

As Mr. Richer pointed out in his testimony, the confidentiality requirement of section 16-168(F) protects not only the privacy and security interests of individual voters but also the integrity of the election process itself. It does so by keeping the private information the Recorder uses to identify each individual voter out of the hands of anyone other than that voter. Since the information the Recorder maintains for that purpose includes the ballot affidavit envelopes, it follows that the Recorder should – indeed, he *must* – treat the ballot affidavit envelopes as “voter registration records” that are presumptively unavailable for public inspection.

The plaintiff would respond that the Secretary of State and the County Recorders have been violating Title 16 by using the ballot affidavit envelopes as “voter registration records” for signature verification purposes. That issue is not before the Court in this case. It requires interpretation of a different statute (A.R.S. section 16-550) that addresses a different issue (election administration) and uses different terminology (“registration record”) that could well mean something different than the statutory language at issue here. The Court will take judicial notice, as requested by the plaintiff, that a declaratory judgment action requesting interpretation of section 16-550 is pending before Judge Napper in Yavapai County. Judge Napper has denied a motion to dismiss that suit. But that decision and that case will have no bearing on this one unless, and until, an authoritative final judgment changes what the county recorders actually use as “voter registration records.” Until then, the present case must be decided on the facts as they now exist, not on the hypothetical facts of the world the plaintiff would prefer.

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**APPLICATION OF LAW TO FACTS:
BALANCING THE POLICY OF OPEN ACCESS AGAINST COMPETING INTERESTS**

The public records analysis does not end with the application of section 16-168(F). By the terms of the statute, the voter information non-disclosure mandate does not apply to

any person other than the voter, by an authorized government official in the scope of the official's duties, for any purpose by an entity designated by the secretary of state as a voter registration agency pursuant to the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77), for signature verification on petitions and candidate filings, for election purposes and for news gathering purposes by a person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station or pursuant to a court order.

In a case that involves persons or circumstances specified in the statute, it is necessary to proceed to the public records balancing test established in *Carlson v. Pima County. Primary Consultants, LLC v. Maricopa County Recorder*, 210 Ariz. 393 ¶¶ 11-16. Here it is also prudent to do so, because the public records analysis yields the same result – denial of Ms. Lake’s statutory special action petition pursuant to the Arizona public records law, A.R.S. section 39-121 – even if section 16-168(F) does not apply because the ballot affidavit envelopes are not “voter registration records” or for some other reason.

The Privacy Exception to the Public Records Law

The privacy interest that sometimes weighs against public access encompasses “the individual's control of information concerning his or her person.” *Scottsdale Unified School Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297 ¶ 14 (1998). Information is “private,” for purposes of the Arizona public records law, if it is intended for or restricted to the use of a particular person or group or class of persons, and not freely available to the public. *Id.*

Applying this test, our Supreme Court held in *Scottsdale Unified* that public school teachers’ birth dates in the school district’s employment records are private information. Importantly for purposes of this case, the Court squarely rejected the contention that “a person's privacy interest in information is eliminated simply because that information may be available from some other public source.” *Id.*, ¶¶ 10-12. “[T]he public availability of birth dates does not negate privacy interests. All it means is that there are some temporary or specific situations where we willingly waive that interest.” *Id.*, ¶ 16. Among those situations, the Court observed, is the use of birth dates as proof of age for voter registration records. *Id.*, ¶ 16 n.1.

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Scottsdale Unified defeats Ms. Lake’s argument that voters have no privacy interest in the signatures on the ballot affidavit envelopes because signatures are “common currency” or because voters “waive” the expectation of privacy when they place the signed affidavits into the “stream of commerce.” An individual has a privacy interest in his or her signature precisely *because* the signature serves as a badge of personal identification for legal documents and in commercial transactions. Just like the Scottsdale teachers who gave their private date-of-birth information to their public-school employer, Maricopa County voters placed their signatures on the ballot affidavit envelopes for the limited, specific purpose of enabling the Office of the Recorder to verify their votes. It does not follow that they gave up the right to control that private information.

As to the broader question of whether voters’ privacy interest in the personal identification information held by the Maricopa County Recorder outweighs the public interest in access to public records, the Arizona Legislature staked the path for this Court when it enacted section 16-168(F). Whether or not section 16-168(F) technically applies to ballot affidavit envelopes, the statute unequivocally establishes the importance of the individual privacy interest in personal identification information. It also offers clear guidance concerning the specific circumstances in which personal privacy interests might or might not give way to the public interest in disclosure. The courts typically follow this kind of statutory policy lead when applying laws like the public records law that have a public policy component. *Cf. Gipson v. Kasey*, 214 Ariz. 141 ¶¶ 23-31 (2007) (directing courts to look to public policy expressed in statutes to determine whether a tort duty of care exists in given circumstances).

The Legislature’s guidance makes this a straightforward case as a matter of public records law. Section 16-168(F) puts the personal privacy interest in “records containing a voter’s signature” on a par with sensitive personal identification data like Social Security number, drivers’ license number and mother’s maiden name. It indicates that the harms to which the release of that private information would expose the affected individuals, such as identity theft, outweigh the general policy of open access to public records in most circumstances. The Office of the County Recorder therefore acted lawfully and appropriately when it refused the plaintiff’s public records request for the ballot affidavit envelopes.

Ms. Lake argues that her interest in disclosure of the ballot affidavit envelopes carries extra weight, under subsection (F), because she is requesting the records for “election purposes” That argument invokes the right provision of the law, but it fails on the facts. Ms. Lake suggests that she needs the records as evidence for the election contest action, but it is far too late for that now that judgment has been entered against her and the case is on appeal. Moreover, it appears that Ms. Lake did not even argue to the trial court, in the election contest, that the recorder had erroneously verified any individual ballot through a faulty signature match. *Lake v. Hobbs*, Maricopa County No. CV2022-095403, Under Advisement Ruling dated May 22, 2023, at 2-3.

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Instead, she argued that the Recorder in effect did not perform a “signature review” at all. *Id.* That argument failed. She does not get to start over with a different argument now.

The “Best Interests of the State” Exception to the Public Records Law

By contrast to the individualistic “privacy” interest, the “best interests of the state” standard speaks broadly to “the overall interests of the government and the people.” *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344 ¶ 18 (App. 2001). The “best interests of the state” inquiry may account for a particular agency’s administrative interests, including consideration of how disclosure would adversely affect the agency’s mission. The inquiry also may touch on the broader public impact of disclosure or non-disclosure. *Id.*

Ms. Lake, of course, presses the importance of “transparency” in election administration. Invoking the “election purposes” exception to section 16-168(F), she says that, because she was a candidate for governor, her records request “is intrinsically linked to the election process. She seeks to verify the integrity of the election process, a core election purpose that goes to the heart of our government.” Plaintiff’s Response Opposing Maricopa County Defendants’ Motion to Dismiss at 11.

Ms. Lake regards the electoral process much like the villagers in the famous fable regarded the goose that laid the golden egg, except that her goose failed to lay the egg she expected. She insists that something must have gone wrong. If only she could cut open the electoral process and examine each of its 1.3 million pieces, she says, she would be able to figure out what happened and show that the prize has been there waiting for her all along. And even if she doesn’t find what she’s looking for, she suggests, the act of disassembly will strengthen everyone’s confidence that the machinery produces reliable outcomes. We will know it lays the right eggs.

This view misses the big picture of democratic self-governance. Democratic self-governance by its nature requires counting votes, to make sure as best we can that the right egg comes out, but it is about much more than that. At the hearing, one of the citizen witnesses who got a visit from the election skeptics took a crack at expressing what it means to her. She shared that her father, a Second World War veteran, had “always instilled in my sister and I the importance ... the value of living in this country, of living in a democracy, of having the opportunity and the responsibility to vote, to believe that our vote counted.” “I have always believed voting is a highly symbolic and reverent act, that it involves thoughtfulness and, in fact, privacy, I don’t share information about who I vote for.¹ ... I keep it an important part of my life.”

¹ Despite this testimony, Ms. Lake’s attorney proceeded to ask the witness on cross-examination, point blank, who she had voted for in the 2020 presidential election.

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Our Constitution and our laws express these fundamental values. “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 535 (1964). The State of Arizona therefore has a compelling interest in the right of its citizens to vote freely for the candidates of their choice, and in protecting voters from confusion and undue influence. *Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846, 1851 (1992). One of the key safeguards of election integrity is the right to keep one’s vote private, which originated from efforts to curb voter intimidation and election fraud in the Nineteenth Century. 112 S.Ct. at 1852-1855.² In *Burson*, the Supreme Court found these interests “compelling” enough to justify a restricted-speech zone around a polling place – a very rare case of a legally permissible limitation on the core First Amendment right of political expression. *Id.* at 1855-1858.

Here, likewise, the broad right of electoral participation outweighs the narrow interests of those who would continue to pick at the machinery of democracy. The public release of 1.3 million ballot affidavit envelopes signed by Maricopa County voters would undermine the process of verifying those voters’ ballots in future elections. It would create a significant risk of widespread voter fraud where none now exists. It would expose voters to harassment and potentially force them to defend the integrity of their own votes. Some number of voters would stop participating entirely, out of fear of identity theft or concern about privacy. But those individuals have exactly the same interest in being heard through the electoral process as those who voted for unsuccessful candidates in past elections. Their frustration and disillusionment are every bit as harmful to democratic self-government as the frustration and disillusionment of those who have come to doubt the “integrity” of the electoral process. The Court therefore “cannot sanction a result which tends to reduce citizen participation in the election process. That is too high a price to pay in a participatory democracy.” *Huggins v. Navajo County Superior Court*, 163 Ariz. 348, 351 (App. 1990) (cleaned up).

² The drafters of the Arizona Constitution, for their part, took the right of secrecy in voting so seriously that they enshrined it as a constitutional right. Ariz. Const. Art. 7, Sec. 1 (“All elections by the people shall be by ballot, or by such other method as may be prescribed by law; Provided, that secrecy in voting shall be preserved.”).