

SUPREME COURT OF ARIZONA

KARI LAKE,

Appellant/Petitioner,

v.

KATIE HOBBS, et al.,

Appellees/Respondents.

No. CV-23-0046-PR

Court of Appeals Division One
(Consolidated)

No. 1 CA-CV 22-0779

No. 1 CA-SA 22-0237

Maricopa County Superior Court
No. CV2022-095403

**GOVERNOR KATIE HOBBS'S
REPLY IN SUPPORT OF
MOTION FOR SANCTIONS**

Abha Khanna

ELIAS LAW GROUP LLP

1700 Seventh Ave, Suite 2100

Seattle, WA 98101

Telephone: (206) 656-0177

Facsimile: (206) 656-0180

akhanna@elias.law

Alexis E. Danneman (AZ Bar No.
030478)

PERKINS COIE LLP

2901 North Central Avenue, Ste. 2000

Phoenix, AZ 85012

Telephone: (602) 351-8000

Facsimile: (602) 648-7000

adanneman@perkinscoie.com

Lalitha D. Madduri

Christina Ford

Elena Rodriguez Armenta

ELIAS LAW GROUP LLP

250 Massachusetts Ave, Suite 400

Washington, D.C. 20001

Telephone: (202) 968-4490

Facsimile: (202) 968-4498

lmadduri@elias.law

cford@elias.law

erodriguezarmenta@elias.law

Attorneys for Governor Katie Hobbs in her personal capacity

INTRODUCTION AND BACKGROUND

More than three months ago, Governor Katie Hobbs was sworn in after winning a majority of votes cast in the 2022 gubernatorial election. In the months since the election, Kari Lake has baselessly and relentlessly contested her loss and sought to overturn the will of Arizona's voters and sow distrust in our election processes and officials. Because she continues to peddle frivolous conspiracy theories *without any factual basis*, prolonging and expanding these proceedings, Lake and her attorneys should be sanctioned.

In her initial Petition to this Court, Lake claimed that the Court of Appeals “ignored” “the undisputed fact that 35,563 unaccounted for ballots were added to the total number of ballots at a third party processing facility[.]” Pet. at 3. As this Court rightly observed, “the record does not reflect” this. Order at 4. Indeed, Lake's lengthy response fails to identify any factual support in the record for the 35,563 ballots she contends were “injected into the election at Runbeck.” Sanctions Opp'n at 2. Instead, Lake blatantly misrepresents the significance of two trial exhibits to cobble together this outlandish claim. Additionally, Lake admits that she failed to properly develop or preserve this new argument by raising it for the first time in her reply brief before the Court of Appeals. *Id.* at 2. Nevertheless, Lake persists in arguing that this baseless and untimely argument warrants wholesale reconsideration of her appeal. This Court should issue sanctions, as Lake's claims are “frivolous”

within the meaning of ARCAP 25, and an award of attorneys' fees, as they have been brought without substantial justification while unreasonably expanding and delaying these proceedings, A.R.S. § 12-349(A)(1), (3).

ARGUMENT

Lake's chain of custody claim has been a moving target. On December 9, 2022, she asserted in her complaint that "[t]here is no way to know whether 50 ballots or 50,000 ballots were unlawfully added into the election" at the Runbeck facility. App. at 64. At trial, the only "evidence" she could muster in support of this claim was a lone affidavit from a non-testifying "whistleblower" who stated that she was aware of "about 50" ballots submitted by Runbeck employees—the same "whistleblower" who the trial court declined to credit. App. at 106; *see also* App. at 13. On December 24, 2022, the trial court promptly rejected Lake's chain of custody claim as unsupported by the record evidence. App. at 106. On appeal, Lake once again argued that some 50 ballots were introduced at Runbeck, and further contended that the difference between the County Recorder's "initial estimate of election-day early ballot packets received . . . and the precise count after the vendor scanned those packets . . . somehow rendered at least 25,000 votes illegal." App. at 12. The Court of Appeals also rejected the claim, citing Lake's "[q]uestionable mathematics." App. at 12. Lake would now have this Court believe that she has finally stumbled upon a bullseye, having uncovered an "undisputed fact" of 35,563

unaccounted-for ballots lurking in the trial court record that her counsel and three Arizona courts had somehow missed. But once again Lake's claims are not supported by the evidence.

Lake's new theory is premised on two trial exhibits, which she claims prove that tens of thousands of presumably unlawful ballots were "injected" into the count at Runbeck. Sanctions Opp'n at 3-4. Specifically, Lake asserts that Runbeck Receipt of Delivery forms (Exhibit 82) show a total of 263,379 Election Day early ballots, while Runbeck Incoming Scan Receipts (Exhibit 33) reflect 298,942 Election Day early ballots. *Id.* at 5. Taking the difference between the two, Lake concludes that 35,563 ballots were added by unknown and unidentified actors into the count at Runbeck and tabulated at MCTEC. *Id.*; Pet. at 5. But Lake blatantly misrepresents what these exhibits actually are. Exhibit 82 does not reflect a precise count of "*all*" early ballots received by Maricopa and delivered to Runbeck, Sanctions Opp'n at 5; it is an estimate derived from the number of trays of early ballots delivered to Runbeck. *See* App. At 605-606 (Co-Director of Elections Ray Valenzuela describing Exhibit 82 as reflecting "estimated quantit[ies]" based on ballots that are "sleeved and trayed and in cages"); App. At 607 (Mr. Valenzuela testifying that because they "can't count [the ballots] at the dock," they "accept the tray count, the estimated weight count" and "take it to that next detail inbound scan count to get the exact amount"). Exhibit 33, by contrast, is the precise count calculated after each ballot

was individually scanned. App. at 647:7-652:17 (Co-Director of Elections Scott Jarrett describing the forms shown at Exhibit 33 as reflecting an exact, “one-for-one” record of ballot envelopes scanned at Runbeck). The numerical difference between the two totals is nothing more than the difference between the initial *estimate* of ballots delivered to Runbeck based on the number of trays and the *precise count* of individual ballots scanned at Runbeck thereafter.

Lake has repeatedly refused to grasp this basic distinction between estimated and exact amounts. The face of the exhibits themselves makes plain that while Exhibit 82 includes only a count of “# of trays/tubs,” App. at 732, Exhibit 33 includes fields for specific quantities of ballots, including “provisionals,” “over[weight packets],” “under[weight packets],” and “unreadable” ballot packets, App. at 741-42. Governor Hobbs explained in her answering brief before the Court of Appeals that “an estimate of ballots [] derived based on the number of trays” is “recorded on ‘Inbound Receipt of Delivery’ forms” *before* “ballot envelopes are scanned and counted” to record the precise count on “Incoming Scan Receipts.” Sec. Supp. App. at 48-50. And the Court of Appeals noted Lake’s failure to explain “how the difference between an initial estimate and a final, precise figure invalidates any vote.” App. at 12. While Lake’s “questionable mathematics” keep shifting, her fundamentally flawed conflation of estimates with exact amounts has remained constant.

Even if Lake's claim regarding 35,563 "injected" ballots were substantiated, it is not properly before this Court. Lake admits that she raised this argument for the first time in her reply brief on appeal. Sanctions Opp'n at 2-4. As Lake's counsel is undoubtedly aware, new claims may not be raised for the first time on appeal. *See McDowell Mountain Ranch Land Coal. v. Vizcaino*, 190 Ariz. 1, 5 (1997) (citing *McDowell Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503 (1987) (because "challenges were not properly raised below," the court would "not consider them here").

Finally, Lake flouts this Court's explicit instruction to limit briefing to "only" the factual claim at issue, Order at 4, and seeks reconsideration of her entire election contest. But parties may not file motions for reconsideration of "an order denying a petition for review" unless "permitted by specific appellate court order." ARCAP 22(f). Lake's latest procedural Hail-Mary is yet another baseless attempt to prolong and multiply these proceedings.

Because Lake's claim of election tampering has *no* justification, let alone "substantial justification," and her continued pursuit of this argument—now including a procedurally improper request for reconsideration of her petition—"unreasonably expands or delays the proceeding," an award of attorneys' fees is mandatory. A.R.S. § 12-349(A). In addition to the complete dearth of evidence in support of Lake's belated theory, making her claim "objectively" groundless, her

misrepresentation of the evidence in this case supports a finding by this Court of bad faith. *Takieh v. O'Meara*, 252 Ariz. 51, 61, ¶ 37 (App. 2021), *review denied* (Apr. 7, 2022); A.R.S. § 12-349(F); *see also Phoenix Newspapers, Inc. v. Dep't of Corr.*, 188 Ariz. 237, 243 (App. 1997) (under A.R.S. § 12-349, fee awards are mandatory for frivolous lawsuits). For the same reasons, her claims are frivolous and sanctionable under ARCAP 25.

CONCLUSION

For the foregoing reasons, Governor Hobbs respectfully requests the imposition of sanctions. *See* SOS's Reply in Supp. of Mot. for Sanctions at 4-5 (suggesting various means of sanctions against Lake and her counsel).

DATED: April 12, 2023

By: /s/ Abha Khanna

Abha Khanna
ELIAS LAW GROUP LLP
1700 Seventh Ave, Suite 2100
Seattle, WA 98101
Telephone: (206) 656-0177
Facsimile: (206) 656-0180
akhanna@elias.law

Lalitha D. Madduri
Christina Ford
Elena Rodriguez Armenta
ELIAS LAW GROUP LLP
250 Massachusetts Ave, Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
Facsimile: (202) 968-4498
lmadduri@elias.law
cford@elias.law
erodriguezarmenta@elias.law

Alexis E. Danneman (AZ Bar No.
030478)
PERKINS COIE LLP
12345 Main St
2901 North Central Avenue, Ste. 2000
Phoenix, AZ 85012
Telephone: (602) 351-8000
Facsimile: (602) 648-7000
adanneman@perkinscoie.com

Attorneys for Governor Katie Hobbs