

NOV 29 2022 11:20a.m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2022-015455

11/29/2022

HONORABLE RANDALL H. WARNER

CLERK OF THE COURT
A. Meza
Deputy

ABRAHAM HAMADEH, et al.

TIMOTHY A LASOTA

v.

KRIS MAYES, et al.

DANIEL C BARR

COCHISE COUNTY BOARD OF
SUPERVISORS
NO ADDRESS ON RECORD
GREENLEE COUNTY BOARD OF
SUPERVISORS
NO ADDRESS ON RECORD
DAVID ANDREW GAONA
KIMBERLY HUNLEY
KORY A LANGHOFER
SAMBO DUL
CELESTE MARIE ROBERTSON
MARK D BYRNES
JEFFERSON R DALTON
CEPHAS A PERKINS
RYAN N DOOLEY
KAREN HARTMAN-TELLEZ
RYAN ESPLIN
JASON MOORE
DANIEL JURKOWITZ
CRAIG C CAMERON
COLLEEN CONNOR
WILLIAM J KEREKES
COURT ADMIN-CIVIL-ARB DESK
DOCKET CV TX
JUDGE WARNER

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MINUTE ENTRY

Under advisement are two motions to dismiss this election contest, and Plaintiffs' response. The Court concludes that this matter is premature under the election contest statute, and therefore dismisses it without prejudice to the filing of an election contest after the canvass and declaration of election results have occurred.

Plaintiff Hamadeh is the Republican Party candidate for Attorney General. He and the Republican National Committee filed this election contest on November 22, 2022, challenging the election of the Democratic Party candidate for Attorney General, Defendant Mayes.

Arizona law allows any elector of the State to file an election contest "of any person declared elected to a state office." A.R.S. § 16-672(A). The contest must be filed "within five days after completion of the canvass of the election and declaration of the result thereof by the secretary of state or by the governor." A.R.S. § 16-673(A). Under these statutes there can be no election contest until after the canvass and declaration of results because, until then, no one is "declared elected." It is undisputed that the canvass and declaration of results for the November 2022 election have not occurred.

Plaintiffs argue that the result of the election is now known, and the declaration of results is just a ministerial act. But an election contest is a statutory remedy, and the Court is required to follow the statutes' requirements.

Plaintiffs also argue that this lawsuit is, in addition to an election contest, a special action in the nature of mandamus. Special action relief, however, is available only where there is no adequate legal remedy. Here the election contest statute provides the remedy and process for challenging an election. *See Donaghey v. Attorney General*, 120 Ariz. 93, 95 (1978) (a mandamus action could not be brought when the "gravamen" of the complaint was that the election was improperly conducted).

For these reasons, Plaintiffs' lawsuit is premature. That does not mean Plaintiffs must wait to file suit until after a recount, which everyone agrees will be needed for this race. Rather, A.R.S. § 16-667 contemplates that an election contest might be filed despite a pending recount, and directs that "upon the initiation of such a contest, a proceeding begun under this article shall abate."

Based on this ruling, it is unnecessary to decide the remaining issues raised in the motions to dismiss.

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IT IS ORDERED granting Defendant Kris Mayes' Motion To Dismiss and Arizona Secretary Of State Katie Hobbs' Motion To Dismiss Statement Of Election Contest. This matter is dismissed without prejudice.



JUDGE OF THE SUPERIOR COURT