



649 North Fourth Avenue, First Floor
 Phoenix, Arizona 85003
 (602) 382-4078
 Kory Langhofer, Ariz. Bar No. 024722
 kory@statecraftlaw.com
 Thomas Basile, Ariz. Bar. No. 031150
 tom@statecraftlaw.com

*Attorneys for Proposed Intervenors Donald J. Trump for President, Inc.
 and Republican National Committee*

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA**

LAURIE AGUILERA, *et al.*,
 Plaintiffs,

v.

ADRIAN FONTES, *et al.*,
 Defendants.

 DONALD J. TRUMP FOR PRESIDENT,
 INC., *et al.*,
 Intervenors.

No. CV2020-014083

**RESPONSE OF REPUBLICAN
 PARTY INTERVENORS TO THE
 SECRETARY OF STATE’S MOTION
 TO TRANSFER AND
 CONSOLIDATE**

(Before the Hon. Margaret Mahoney)

Intervenors Donald J. Trump for President, Inc. and the Republican National Committee (together, the “Republican Intervenors”) submit this response to the Secretary

1 of State’s motion to consolidate *Aguilera v. Fontes*, CV2020-014083 (the “First Action”)
2 with *Trump v. Hobbs*, CV2020-014248 (the “Second Action”).

3 Consolidation is impossible because the First Action was dismissed prior to the
4 initiation of the Second Action. On November 7, 2020, the Plaintiffs in the First Action
5 filed a notice of dismissal, pursuant to Arizona Rule of Civil Procedure 41(a)(1)(A)(i),
6 which permits unilateral voluntary dismissal without consent of the other parties or leave
7 of the Court “before the opposing party serves either an answer or a motion for summary
8 judgment.” The Maricopa County Defendants have not filed any answer to the Complaint
9 in the First Action. Although the Republican Intervenors and Intervenor Arizona
10 Democratic Party lodged *proposed* answers with their respective motions to intervene,
11 none of the intervenors subsequently *filed* any answers. The distinction is important, and
12 recognized by Rule 24(c)(2), which instructs that: “[u]nless the court orders otherwise, an
13 intervenor must file and serve the pleading in intervention within 10 days after entry of the
14 order granting the motion to intervene.” In other words, the mere lodging of a proposed
15 answer is not tantamount to the filing of an operative answer. Because none of the parties
16 had filed or served an answer, the Plaintiffs could—and did—dismiss their claims
17 unilaterally, pursuant to Rule 41(a)(1)(A)(i).

18 In sum, the “voluntary dismissal of the . . . action, by filing notice of dismissal in
19 accordance with Rule 41(a)(1), ended the matter and the court lost all jurisdiction to enter
20 any further orders or take any other action with regard thereto. ‘The dismissal is completely
21 effective upon the filing of a written notice of dismissal.’” *Spring v. Spring*, 3 Ariz. App.
22 381, 383 (1966). Because there is no extant First Action with which the Second Action
23 can be consolidated, the Motion is moot and must be denied.

24 Even if the First Action had not been terminated, there are insufficient grounds for
25 consolidation. The Motion’s statement that both actions related to “alleged problems
26 related to the use of Sharpie brand markers,” Motion at 4, is not accurate. The Complaint
27 in the Second Action (a copy of which is attached as Exhibit A) contains not a single
28 reference to Sharpie markers (or any other writing instrument). Rather, the gravamen of

1 the Second Action is that systemic poll worker error relating to the operation of polling
2 place tabulation machines has resulted in the disenfranchisement of substantial numbers of
3 Maricopa County voters. The use of Sharpie markers has no direct relevance to the Second
4 Action’s claims or requested remedies. Further, the nature of the relief sought in the
5 Second Action—which entails the manual adjudication of ballots containing potential
6 “overvotes” and other facial irregularities—is entirely different from the remedies
7 requested in the First Action, which focused primarily on public observation of the
8 tabulation process. These significant incongruities between the two cases would impel
9 denial of the Motion in any event, even if the First Action were still pending.

10 **CONCLUSION**

11 For the foregoing reasons, the Court should deny the Motion.

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15 RESPECTFULLY SUBMITTED this 9th day of November, 2020.

16
17 STATECRAFT PLLC

18 By:

19 /s/ Thomas Basile
20 Kory Langhofer
21 Thomas Basile
22 649 North Fourth Avenue, First Floor
23 Phoenix, Arizona 85003

24 *Attorneys for Republican Intervenors*

25 ORIGINAL of the foregoing e-filed and
26 e-served via Turbocourt this 9th day of
27 November, 2020 to:

28 Alexander Kolodin
Christopher Viskovic
Chris Ford
KOLODIN LAW GROUP PLLC
3443 N. Central Ave. Ste. 1009

1 Phoenix, AZ 85012
2 Alexander.Kolodin@KolodinLaw.com
3 CViskovic@KolodinLaw.com
4 CFord@KolodinLaw.com

4 Sue Becker
5 **Public Interest Legal Foundation**
6 32 E. Washington Street, Suite 1675
7 Indianapolis, IN 46204
8 sbecker@publicinterestlegal.org
9 *Attorneys for Plaintiffs*

9 Joseph LaRue
10 Maricopa County Attorney's Office
11 Deputy County Attorney
12 222 N. Central Ave., Suite 1100
13 Phoenix, AZ 85004
14 laruej@mcao.maricopa.gov
15 *Attorneys for the Maricopa Defendants*

14 Sarah R. Gonski
15 **PERKINS COIE LLP**
16 2901 North Central Avenue, Suite 2000
17 Phoenix, Arizona 85012-2788
18 SGonski@perkinscoie.com

18 Marc E. Elias
19 **PERKINS COIE LLP**
20 700 Thirteenth Street NW, Suite 600
21 MElias@perkinscoie.co

21 Roy Herrera
22 Daniel A. Arellano
23 **BALLARD SPAHR LLP**
24 1 East Washington Street, Suite 2300
25 Phoenix, Arizona 85004-2555
26 HerreraR@ballardspahr.com
27 ArellanoD@ballardspahr.com
28 *Attorneys for the Arizona Democratic Party*

27 Roopali Desai
28 **COPPERSMITH BROCKELMAN PLC**
29 2800 North Central Ave.

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Phoenix, Arizona 85004
rdesai@cblawyers.com

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