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11	ARIZONA SUPERIOR COURT	
11	MARICOPA COUNTY	
13	KARI LAKE,) No. CV2022-095403
14	Contestant/Plaintiff,	ARIZONA SECRETARY OF
15		STATE'S OBJECTION TO VERIFIED AMENDED PETITION
16	KATIE HOBBS, personally as Contestee and in her official capacity as the Secretary of	TO INSPECT BALLOTS
10	State; et al.,	
17		(Assigned to Hon. Peter Thompson)
18	Defendants.)
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20	Introduction and Background	
21	Defendant Katie Hobbs, in her official capacity as Arizona Secretary of State objects to	
22	Plaintiff Kari Lake's ("Plaintiff) Amended Petition to Inspect Ballots Pursuant to A.R.S. § 16-	
23	677 ("Amended Petition"). In connection with her Complaint in Special Action and Verified	
24	Statement of Election Contest Pursuant to A.R.S. § 16-672, Plaintiff filed a Verified Petition to	
25	Inspect Ballots Pursuant to A.R.S. § 16-677 on December 13 and then filed the Amended	
26	Petition on December 14. The Secretary asks the	is Court to deny the Amended Petition for the

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reasons stated in Defendant Maricopa's County's Response to Petitioner's Verified Petition to 1 2 Inspect Ballots Pursuant to A.R.S. § 16-672 and in Defendant Maricopa County's Response to 3 Petitioner's Amended Verified Petition to Inspect Ballots Pursuant to A.R.S. § 16-672 ("Maricopa County's Responses"). Additionally, as detailed in the motion to dismiss just filed 4 5 by the Secretary, Plaintiff's election contest fails to state any cognizable claims for relief and should be dismissed, thereby mooting Plaintiff's petition to inspect ballots under A.R.S. § 16-6 677 7

Argument

9 The Secretary joins in full the arguments set forth in Maricopa County's Responses, and files this Objection to raise one additional and independent reason to reject Plaintiff's Amended 10 Petition: because discovery should not be granted in connection with an invalid election contest. 11

An election contest must meet threshold pleading requirements to proceed. *See Hancock* 12 v. Bisnar, 212 Ariz. 344, 348 ¶ 17 (2006) (assessing election contest under Rule 8(a) notice 13 pleading requirements); Griffin v. Buzard, 86 Ariz. 166, 169-70 (1959) (election contest subject 14 to dismissal if it fails to state a claim upon which relief can be granted). For all the reasons 15 16 detailed in the Secretary's Motion to Dismiss, Plaintiff's election contest fails to clear that bar and should be dismissed. 17

18 A plaintiff is not entitled to use an invalid pleading as a springboard for discovery. See Lakewood Cmtv. Ass'n v. Orozco, No. 1 CA-CV 19-0194, 2020 WL 950225, at *1 (Ariz. Ct. 19 20 App. Feb. 27, 2020) (holding that "[a] motion to dismiss under Rule 12(b)(6) tests the allegations 21 of a pleading by assuming the truth of the well-pleaded facts in the complaint *before* the parties 22 engage in discovery" and "[t]hus, no discovery was necessary or appropriate" before a trial court rules on such a motion) (emphasis added). 23

24 Although Arizona appellate courts have not addressed the specific question of whether 25 an election contest statement that fails to clear the pleading threshold may be used to justify a 26 ballot inspection, many other courts have made amply clear that it cannot. For instance, the

Minnesota Supreme Court recently denied a defeated candidate the opportunity to inspect ballots 1 2 under an inspection provision similar to Arizona's because the contest allegations failed to state 3 a cognizable claim. See Bergstrom v. McEwen, 960 N.W.2d 556, 565-66 (Minn. 2021). The candidate alleged that "irregularities" in the conduct of the election and in the absentee ballot 4 5 canvass "raised questions over who received the largest number of votes legally cast in the election," and argued that "transparency and public confidence in the integrity of the election 6 7 require[d]" that she be allowed to inspect the ballots. *Id.* at 558 & 566 (internal quotation marks 8 omitted). The court rejected the argument that the mere filing of an election contest created an 9 "absolute right" to ballot inspection, holding that inspection was only allowed if the contest 10 notice stated a claim upon which relief could be granted. Id. at 565.

The highest courts of many other states agree. See, e.g., Zahray v. Emricson, 182 N.E.2d 11 756, 757-58 (Ill. 1962) (election contest "cannot be employed to allow a party, on mere 12 suspicion, to have the ballots opened and subjected to scrutiny to find evidence upon which to 13 make a tangible charge"); McClendon N. McKeown, 323 S.W.2d 542, 545 (Ark. 1959) ("It is not 14 the duty, or within the power, of the Court within the scope of the allegations and prayer of the 15 16 Petition herein, to impound and open the ballot box or boxes, and, in effect *canvas* the votes cast 17 for Mayor in order to declare the nominee" merely on the allegation "that after said cancellation 18 and retabulation, the Petitioner verily believes that he will have received more votes[.]") 19 (Emphasis in original); Cruse v. Richards, 37 P.2d 382, 383-84 (Colo. 1934) ("In a contest 20 proceeding it is always necessary to allege facts which will enable the court to determine that a 21 different result would follow in the vote by reason of such alleged facts. . . . Courts cannot 22 properly embark on a mere fishing expedition by opening up ballot boxes when there is an utter 23 lack of specific allegations as to the distribution of the votes."); Gollmar's Election, Case of, 175 24 A. 510, 513 (Pa. 1934) ("The pleadings before us would seem only an effort to place the situation" 25 in such a light as to justify a voyage of exploration into a large number of ballot boxes, in the hope of an ultimate discovery. Such is not province of a contest[.]") 26

These courts were all cognizant of the harm that would follow the too-careless
deployment of the election contest process, and the need to ensure that every election contest
would not involve the re-opening of ballot boxes and judicial review of the work performed by
election officials. As the Louisiana Supreme Court stated nearly a century ago:

It can not be disputed that elections are conducted by duly appointed and sworn election officials and not by the courts. These officials are presumed to do their duty. Their official acts are entitled to respect. In the absence of specific allegations of fraud, mistake, error or misconduct, the returns which they make under oath, showing the results of an election, will not be inquired into by the courts.

* * * * *

There is nothing in plaintiff's allegations that any defeated candidate could not set up after his defeat and thereby throw an election into the courts. If this were permitted it is easy to see that in every case in which a candidate was defeated by a small margin of the votes, two elections would inevitably be held—one at the polls and the other in the courts.

13 Landry v. Ozenne, 195 So. 14, 23 (La. 1940).

Because, as in *Landry*, Plaintiff cannot point to specific facts indicating that the alleged irregularities changed the result of the Governor's race, the Secretary's Motion to Dismiss is likely to be granted, and will thus moot Plaintiff's Amended Petition. *See* 195 So. at 22 ("It is axiomatic that the irregularities charged would in fact alter the result of the election before a contest can be entertained.") (Internal citation and quotation omitted). The Secretary therefore asks this Court to deny Plaintiff's Amended Petition for this additional reason.

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DATED this 15th day of December, 2022.

COPPERSMITH BROCKELMAN PLC

By <u>/s/ D. Andrew Gaona</u> D. Andrew Gaona

STATES UNITED DEMOCRACY CENTER Sambo (Bo) Dul

Attorneys for Defendant Arizona Secretary of State Katie Hobbs

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