STATECRAFT
LAW · GOVERNMENT · CRISIS MANAGEMENT
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

of State's motion to consolidate *Aguilera v. Fontes*, CV2020-014083 (the "First Action") with *Trump v. Hobbs*, CV2020-014248 (the "Second Action").

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

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

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

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

CONCLUSION

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

RESPECTFULLY SUBMITTED this 9th day of November, 2020.

STATECRAFT PLLC

By: /s/ *Thomas Basile*
Kory Langhofer
Thomas Basile
649 North Fourth Avenue, First Floor
Phoenix, Arizona 85003

Attorneys for Republican Intervenors

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

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

Phoenix, AZ 85012
Alexander.Kolodin@KolodinLaw.com
CViskovic@KolodinLaw.com
CFord@KolodinLaw.com

Sue Becker
Public Interest Legal Foundation
32 E. Washington Street, Suite 1675
Indianapolis, IN 46204
sbecker@publicinterestlegal.org
Attorneys for Plaintiffs

Joseph LaRue
Maricopa County Attorney's Officee
Deputy County Attorney
222 N. Central Ave., Suite 1100
Phoenix, AZ 85004
laruej@mcao.maricopa.gov
Attorneys for the Maricopa Defendants

Sarah R. Gonski
PERKINS COIE LLP
2901 North Central Avenue, Suite 2000
Phoenix, Arizona 85012-2788
SGonski@perkinscoie.com

Marc E. Elias
PERKINS COIE LLP
700 Thirteenth Street NW, Suite 600
MElias@perkinscoie.co

Roy Herrera
Daniel A. Arellano
BALLARD SPAHR LLP
1 East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
HerreraR@ballardspahr.com
ArellanoD@ballardspahr.com
Attorneys for the Arizona Democratic Party

Roopali Desai
COPPERSMITH BROCKELMAN PLC
2800 North Central Ave.

Phoenix, Arizona 85004
rdesai@cblawyers.com