

1 Roopali H. Desai (024295)
D. Andrew Gaona (028414)
2 Kristen Yost (034052)
3 **COPPERSMITH BROCKELMAN PLC**
2800 North Central Avenue, Suite 1900
4 Phoenix, Arizona 85004
T: (602) 381-5478
5 rdesai@cblawyers.com
agaona@cblawyers.com
6 kyost@cblawyers.com
7 *Attorneys for Intervenor*
Arizona Secretary of State Katie Hobbs

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9 **ARIZONA SUPERIOR COURT**
10 **MARICOPA COUNTY**

11 ARIZONA REPUBLICAN PARTY,) No. CV2020-014553
12)
Plaintiff,)
13)
v.) **ARIZONA SECRETARY OF STATE**
14) **KATIE HOBBS' REPLY IN SUPPORT**
ADRIAN FONTES, as Maricopa County) **OF APPLICATION FOR ATTORNEYS'**
15 Recorder; and the MARICOPA COUNTY) **FEES**
BOARD OF SUPERVISORS, by and through)
16 CLINT HICKMAN, JACK SELLERS, STEVE)
CHUCRI, BILL GATES, and STEVE)
17 GALLARDO,) (Assigned to The Hon. John Hannah)
18)
Defendants.)
19)
KATIE HOBBS, in her official capacity as)
20 Arizona Secretary of State; ARIZONA)
DEMOCRATIC PARTY,)
21)
Intervenors.)
22)
23)

24 Arizona Secretary of State Katie Hobbs ("Secretary") submits this reply in support of her
25 application for attorneys' fees under A.R.S. § 12-349, as directed by the Court's November 19,
26 2020 Order dismissing this matter with prejudice.

1 **Introduction**

2 Plaintiff Arizona Republican Party (“ARP”) filed this lawsuit seeking to disrupt
3 democratic processes and delay Maricopa County’s official canvass of its election results. It did
4 so as part of a broader strategy carried out by ARP’s Chair, Dr. Kelli Ward, to undermine
5 Maricopa County’s election results. Ward was a plaintiff in at least three other frivolous lawsuits
6 challenging the results of the presidential election. *See Ward v. Jackson et al.*, Maricopa County
7 Superior Court No. CV2020-015285; *Bowyer et al. v. Ducey et al.*, 2:20-cv-02321-DJH (D.
8 Ariz.); *Gohmert et al. v. Pence*, 6:20-cv-00660-JDK (E.D. Texas). They all failed.

9 ARP’s claims here were objectively groundless based on the plain text of the hand count
10 audit statute, unambiguous legislative history, and the Secretary’s Elections Procedures Manual
11 (“EPM”). ARP also failed to seek appropriate relief and brought its (baseless) claims far too late.
12 It claimed it wanted to prevent Maricopa County from conducting the hand count audit, even
13 though it knew or should have known that the audit was complete, and it challenged a procedure
14 Maricopa County used in two prior elections under the watch of ARP’s Maricopa County
15 affiliate. Worse yet, ARP’s obvious motives were to delay final election results and sow doubt
16 about the integrity of Arizona’s elections system.

17 The Secretary’s Application showed that ARP sued “without substantial justification” and
18 “solely or primarily for delay or harassment” under A.R.S. § 12-349(A). In its Response, ARP
19 accuses the Court of “bias” and “open hostility,” admonishes the Court not to “dream” of
20 awarding attorneys’ fees, and raises a bizarre and half-hearted First Amendment claim. None of
21 its arguments are persuasive. ARP had no basis for its claims, and its bad-faith motives for
22 bringing them are obvious. The Secretary is thus entitled to recover her attorneys’ fees under
23 A.R.S. § 12-349(A).

24 **Argument**

25 A.R.S. § 12-349 requires a fee award if an attorney or party engages in certain forms of
26 misconduct, including bringing a claim “without substantial justification” or “solely or primarily

1 for delay or harassment.” A.R.S. § 12-349(A)(1) & (2). ARP and its counsel meet both
2 requirements, and they fail to show otherwise in their Response.

3 **I. ARP Lacked Substantial Justification to Bring Its Claim.**

4 A person brings a claim “without substantial justification” when the claim “is groundless
5 and is not made in good faith.” A.R.S. § 12-349(F). “Groundlessness is determined objectively
6 whereas harassment and bad faith are subjective determinations.” *Rogone v. Correia*, 236 Ariz.
7 43, 50 ¶ 22 (App. 2014). “‘Groundless’ and ‘frivolous’ are equivalent terms, and a claim is
8 frivolous ‘if the proponent can present no rational argument based upon the evidence or law in
9 support of that claim.’” *Id.* (quotation omitted).

10 *First*, ARP’s claim was groundless. ARP chides the Court [at 4] for “even
11 contemplat[ing] sanctions” in this case, because in ARP’s view, its arguments are “debatable.”
12 Not so. Contrary to ARP’s argument [at 3] that its claim “rests on simply quoting what the statute
13 plainly says,” the plain text of the hand count audit statute debunks ARP’s claim. It requires
14 counties to conduct the hand count audit “as prescribed by this section and in accordance with
15 hand count procedures established by the secretary of state in the official instructions and
16 procedures manual adopted pursuant to § 16-452.” A.R.S. § 16-602(B) (emphasis added). A
17 simple review of the legislative history and the statutes themselves would have revealed that the
18 Legislature amended the law in 2011 to add this language authorizing the Secretary to adopt
19 hand count audit procedures in the EPM for counties that use vote centers. And the EPM
20 provision at issue has been on the books for nearly a decade, including a draft EPM during ARP’s
21 counsel’s tenure as Deputy Secretary of State. Any reasonable party or attorney could have –
22 and should have – identified the meritless nature of ARP’s claims with even a cursory review of
23 these materials. Yet ARP and its counsel didn’t do so here.

1 Even more, the Republican Party has known about and participated in this procedure in
2 prior elections, including the August 2020 Primary Election.¹ As the Court explained in its
3 ruling, ARP’s “case is a textbook example of unreasonable delay that calls for the application of
4 laches. The plaintiff could have gone forward with the case months ago. Instead it waited until
5 after the election, after the statutory deadline for commencing the hand count audit, and (as it
6 turned out) *after the completion of the audit.*” [Dec. 21, 2020 ME at 8] Indeed, ARP could have
7 challenged the procedure in the EPM any time in the last decade. This election cycle, it could
8 have challenged the procedure in the Primary Election, or any time after September 16 when
9 Maricopa County announced that it would use the same procedure for the General Election.
10 [Dec. 21, 2020 ME at 5]

11 ARP and its counsel also knew or should have known that Maricopa County already
12 completed its hand count audit when they filed the verified complaint on November 12. ARP’s
13 counsel claims he “believed that a hand count would occur in the days or week(s) following
14 November 11th,” and that the Secretary had not yet posted Maricopa County’s hand count results
15 on her website on November 11. [Wilenchik Decl. ¶ 6] But a quick internet search would have
16 revealed that Maricopa County already completed its hand count audit days earlier. On
17 November 9 – three full days before ARP sued – the Maricopa County Elections Department
18 tweeted: “It’s official. We completed our hand count audit and had a 100% match! Thank you
19 to all 3 Maricopa County political parties, who appointed members to participate!”² On
20 November 11 – a day before ARP sued – the Elections Department tweeted a link to its official
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22 ¹ See 2020 Primary Election, Maricopa County Hand Count Results,
23 https://azsos.gov/sites/default/files/Maricopa_County_Hand_Count_2020_Primary_2.pdf
24 (conducting hand count of “2% of the polling places (vote centers),” and the three political
parties selected the vote centers).

25 ² Maricopa County Elections Department, Twitter (Nov. 9, 2020),
26 <https://twitter.com/MaricopaVote/status/1325924447065305088>, screenshot attached as
Exhibit A.

1 hand count audit report.³ Rule 11 requires litigants and their attorneys to conduct a “reasonable
2 inquiry” before making factual or legal representations to the Court. Neither ARP nor its counsel
3 did that here.

4 ARP spills much ink claiming that this Court’s decision was wrong and reiterating
5 arguments the Court already rejected. [*E.g.*, Resp. at 7 (“Plaintiff’s legal position was ‘debatable’
6 at the minimum and of course Plaintiff still maintains that it is correct.”); 5 (“the county has
7 never performed a hand count in strict accordance with the law, even as of today”); 6-7 (the
8 Court “should not [have] characterized” ARP’s “litigation choices” “as somehow fatal to any
9 claim or claims in the case”); 7 (ARP “is loathe to turn this into any more of a ‘draft appeal’ or
10 critique of the Court’s rulings than it needs to be”)]. ARP’s threats of appeal don’t make its
11 claims any less groundless; they prove it. ARP felt so strongly about the merits of its claims that
12 it didn’t appeal this Court’s dismissal of those claims. That aside, ARP also attempts [at 4] to
13 justify its frivolous action because its counsel “had to write up the Complaint and Application
14 for Order to Show Cause, *on the same night in between 6 PM and midnight*, on November 11,
15 2020.” That is no excuse. Election litigation is no doubt fast-paced, but litigants and their counsel
16 still must comply with their ethical obligations, the Rules of Civil Procedure, and A.R.S. § 12-
17 349(A).

18 **Second**, ARP brought its claim in bad faith, as shown by the inexcusable delay, the
19 claim’s lack of merit, and its place as part of a larger scheme carried out by ARP’s Chair to
20 spread disinformation about the election in Maricopa County (and use of this Court to aid that
21 effort). ARP’s motives are clear. It filed this lawsuit to cause delay and plant baseless seeds of
22 doubt in the electorate’s mind about the integrity and security of the General Election in
23 Maricopa County. As the Court noted in its ruling, “[t]he plaintiff could have pursued the

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25 ³ Maricopa County Elections Department, Twitter (Nov. 11, 2020)
26 <https://twitter.com/MaricopaVote/status/1326590360575827968>, screenshot attached as Exhibit B.

1 declaratory judgment claim to determine how to audit future voting center elections. That it did
2 not do so demonstrates that its real interest was not the audit procedure as such. The real issue,
3 evidently, was the outcome of the 2020 election.” [Dec. 21, 2020 ME at 10]

4 What’s more, ARP didn’t challenge the procedure in any other county. Multiple Arizona
5 counties used a voting center model for the 2020 General Election, and many others used a
6 hybrid model. Yet ARP challenged the procedure only in Arizona’s largest county, where
7 Donald Trump lost. If this lawsuit was about ensuring that Arizona conducted election
8 procedures “by the book,” then why didn’t ARP challenge the hand count of vote centers in, say,
9 Yavapai County, where Donald Trump significantly outperformed Joe Biden?⁴ This case has
10 always been about undermining the results of a presidential election that didn’t go ARP’s way.
11 ARP’s obvious attempt to use the courts for that purpose merits sanctions under A.R.S. § 12-
12 349(A)(1).

13 **II. ARP Brought Its Claims Solely or Mostly to Delay and Sow Doubt About the**
14 **Integrity of the Election.**

15 Even worse, for many of the same reasons, ARP brought and continued to pursue this
16 claim “solely or primarily for delay or harassment.” A.R.S. § 12-349(A)(2). Despite ARP’s
17 claims [at 13] that it merely wanted to ensure that Maricopa County conducts its hand count
18 “completely by the book,” ARP also claims [at 14] that “[p]ublic mistrust following this election
19 motivated this lawsuit.” But as the Court pointed out in its ruling, ARP’s post-election request
20 for “another audit with different rules” – based on mere suspicion about potential fraud – “would
21 only have amplified public distrust.” [Dec. 21, 2020 ME at 9] Indeed, ARP and its Chair’s
22 baseless claims of “fraud” and relentless requests for “audits” created the very “mistrust” about
23

24 ⁴ See Yavapai County Hand Count Results,
25 https://azsos.gov/sites/default/files/2020_General_Yavapai_Hand_Count.pdf; Yavapai County
26 Canvass, [https://azsos.gov/sites/default/files/2020.11.18-Yavapai-
General_Election_Canvass.pdf](https://azsos.gov/sites/default/files/2020.11.18-Yavapai-General_Election_Canvass.pdf).

1 which ARP complains, and have only added fuel to the fire. During a violent invasion of the
2 nation’s Capitol by Trump supporters on January 6, Ward responded: “You know what could
3 have prevented this? #ElectionIntegrity and full transparent investigations into 2020 fraud.
4 Audits, eyes on paper ballots, full audit of ALL digitally adjudicated and all duplicated ballots,
5 full evaluation of Dominion machines. Remember: Democrats refused.”⁵

6 There must be consequences for ARP’s bad faith. The Court can and should find that
7 ARP sued mainly to undermine election integrity and delay certification of the results. That
8 doesn’t mean, as ARP claims [at 14], that the Court is “openly hostile to anyone who dares to
9 even question an election.” To the contrary, the Court recognized that Arizona has mechanisms
10 for challenging election results under various circumstances, but ARP “did not even allege facts
11 that cast doubt on the reliability of the hand count audit, let alone the outcome of the election or
12 the honesty of the officials who administered it.” [Dec. 21, 2020 ME at 12] The Court correctly
13 found that ARP’s election integrity theory rested on vague “suspicion,” and it failed to allege
14 any “specific, facially credible facts.” [*Id.*]

15 ARP also argues [at 9-10] that it didn’t intend to delay certification of the results because
16 it didn’t request that specific relief in its original complaint. But counties cannot certify the
17 canvass until after they complete the hand count audit. A.R.S. § 16-602(I). A lawsuit seeking to
18 invalidate the hand count audit and force the county to do another one is by a definition an
19 attempt to prevent certification, no matter if ARP made a fatal procedural error in its complaint.
20 ARP next argues [at 10-11] that “delaying the certification date would have absolutely no
21 practical benefit for Plaintiff” because many of ARP’s down-ballot candidates won their
22 elections. The same logic applies to ARP’s relentless claims that Arizona’s 2020 General
23 Election was fraudulent, but here we are. *See, e.g.,* Arizona Republican Party, Twitter (Jan. 3,
24 2021) <https://twitter.com/AZGOP/status/1345917480401682432> (calling on the state

25 ⁵ Kelli Ward, Twitter, (Jan. 6, 2021)
26 <https://twitter.com/kelliwardaz/status/1346917946170306563>.

1 Legislature to (despite its lack of authority) “DE-CERTIFY the false results of the 2020
2 election”).

3 In its last-ditch effort to avoid sanctions, ARP argues (without citation) [at 12] that the
4 Court is “troublingly close to engaging in very serious interference with the First Amendment.”
5 According to ARP [at 12-14], the First Amendment shields it from sanctions because it asserted
6 “political beliefs” in this lawsuit. That is nonsense. No matter what a party’s political “beliefs”
7 may be, court filings require a good faith factual and legal basis.⁶

8 At bottom, the Secretary is entitled to a fee award under A.R.S. § 12-349. “Section 12–
9 349 was enacted with the express purpose of reducing groundless lawsuits,” *Phoenix*
10 *Newspapers, Inc. v. Dep’t of Corr., State of Ariz.*, 188 Ariz. 237, 244 (App. 1997), and this is
11 one of them.

12 **III. The Secretary Seeks a Reasonable and Appropriate Fee Award.**

13 The Secretary established in her Application that she is entitled an award of fees under
14 A.R.S. § 12-349(A), and she submitted an affidavit establishing “the type of legal services
15 provided, the date the service was provided, the attorney providing the service . . . and the time
16 spent in providing the service.” *Cook v. Grebe*, 245 Ariz. 367, 370 ¶ 11 (App. 2018) (quotation
17 omitted). The burden thus shifted to ARP “to demonstrate the impropriety or unreasonableness
18 of the requested fees.” *Id.* (quotation omitted). ARP doesn’t dispute the reasonableness of the
19 requested fees, and thus concedes the issue. The Secretary is entitled to a fee award of
20 \$18,237.59.

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24 ⁶ As a District Court judge held in dismissing one of Dr. Kelli Ward’s other lawsuits,
25 “[a]llegations that find favor in the public sphere of gossip and innuendo cannot be a substitute
26 for earnest pleadings and procedure in federal court.” *Bowyer v. Ducey*, __ F. Supp. 3d __, 2020
WL 7238261, at *16 (D. Ariz. Dec. 9, 2020).

1 Finally, at the end of a 15-page legal brief, ARP inexplicably asks [at 15] for “notice and
2 opportunity to be heard” if the Court decides to award the Secretary’s fees. The Court already
3 gave ARP that opportunity, and it need not give ARP another chance to respond.

4 **Conclusion**

5 ARP filed this lawsuit to air out its political grievances, not to resolve a good faith dispute
6 between the parties. The Court should award the Secretary \$18,237.59 in attorneys’ fees under
7 A.R.S. § 12-349, jointly and severally against ARP and its counsel.

8 RESPECTFULLY SUBMITTED this 11th day of January, 2021.

9 **COPPERSMITH BROCKELMAN PLC**

10 By /s/ Kristen Yost

11 Roopali H. Desai
12 D. Andrew Gaona
13 Kristen Yost

14 *Attorneys for Intervenor*
15 *Arizona Secretary of State Katie Hobbs*
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25
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1 ORIGINAL efiled and served via email
2 this 11th day of January, 2021, upon:

3 Dennis I. Wilenchik (admin@wb-law.com)
4 John "Jack" D. Wilenchik (jack@wb-law.com)
5 Lee Miller
6 Wilenchik & Bartness
7 2810 North 3rd Street
8 Phoenix, AZ 85004
9 admin@wb-law.com
10 *Attorneys for Plaintiff*

11 Thomas P. Liddy (liddy@mcao.maricopa.gov)
12 Emily Craiger (craigere@mcao.maricopa.gov)
13 Joseph I. Vigil (vigil@mcao.maricopa.gov)
14 Joseph J. Branco (brancoj@mcao.maricopa.gov)
15 Joseph LaRue (laruej@mcao.maricopa.gov)
16 Maricopa County Attorney's Office
17 225 West Madison Street
18 Phoenix, AZ 85003
19 *Attorneys for Maricopa County Defendants*

20 Sara R. Gonski (sgonski@perkinscoie.com)
21 Perkins Coie LLP
22 2901 North Central Avenue, Suite 2000
23 Phoenix, AZ 85012

24 Roy Herrera (herrerar@ballardspahr.com)
25 Daniel Arellano (arellanod@ballardspahr.com)
26 Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004
Attorneys for Intervenor Arizona Democratic Party

27 /s/ Sheri McAlister