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8 **ARIZONA SUPERIOR COURT**

9 **MARICOPA COUNTY**

10 LAURIE AGUILERA, a registered voter in) No. CV2020-014083
11 Maricopa County, Arizona; DONOVAN)
12 DROBINA, a registered voter in Maricopa)
13 County, Arizona; DOES I-X, ON THEIR) **SECRETARY OF STATE’S AMICUS**
14 OWN BEHALF OF ALL THOSE) **CURIAE BRIEF**
15 SIMILARLY SITUATED,)
16 Plaintiffs,)
17 v.) (Assigned to The Hon. Margaret Mahoney)
18 ADRIAN FONTES, in his official capacity as)
19 Maricopa County Recorder; FRAN)
20 McCARROLL, in her official capacity as Clerk)
21 of the Maricopa County Board of Supervisors;)
22 CLINT HICKMAN, JACK SELLERS, STEVE)
CHUCRI, BILL GATES, STEVE)
GALLARDO, in their official capacities as)
members of the Maricopa County Board of)
Supervisors; MARICOPA COUNTY, a)
political subdivision of the State of Arizona,)
Defendants.)

23 Katie Hobbs, in her official capacity as Arizona Secretary of State (“Secretary”), files this
24 short brief as *amicus curiae* to provide the Court with information relevant to its setting of a
25 schedule in this expedited election matter. The Secretary is Arizona’s Chief Election Officer,
26 A.R.S. § 16-142, and thus has an interest in this litigation because she must ensure that the results

1 of the 2020 General Election are finalized on the strict timelines dictated by the Legislature in
2 the Arizona Revised Statutes.

3 Each county must canvass the results of this week’s election “not less than six days nor
4 more than twenty days following the election.” A.R.S. § 16-642(A). This means that the
5 Maricopa County Board of Supervisors (“Board”) must approve its canvass on or before
6 Monday, November 23, 2020. See *Hunt v. Campbell*, 19 Ariz. 254, 279 (1917) (describing a
7 board of supervisors’ duty to canvass an election). The Board’s timely completion of the canvass
8 is critical, as the Secretary must, “[o]n the fourth Monday following a general election . . .
9 canvass all offices for which the nominees filed nominating petitions and papers with the
10 secretary of state.” A.R.S. § 16-648(A). This year, that deadline is November 30, 2020, and the
11 Secretary has already secured an appointment with the Governor, the Attorney General, and the
12 Chief Justice to complete the canvass on that date. Beyond that, the overlay of a presidential
13 election means the United States Constitution (Article II, § 1 and the Twelfth Amendment) and
14 the Electoral Count Act, 3 U.S.C. § 15, impose additional deadlines and requirements on the
15 Secretary. In short, time is of the essence.

16 For these reasons, the Secretary respectfully requests that the Court resolve this matter
17 promptly, and in a way that does not delay the Board’s completion of its canvass as required by
18 A.R.S. § 16-642(A).¹ As one district court has explained, to delay a canvass is to “delay[] state
19 processes from occurring,” which in turn “will delay resolution of this election.” *Ron Barber for*
20 *Cong. v. Bennett*, No. CV-14-02489-TUC-CKJ, 2014 WL 6694451, at *9 (D. Ariz. Nov. 27,
21 2014). Doing so would not be in the public interest, would interfere with the Secretary’s ability
22 to carry out her duties, and perhaps above all else, would also impose a hardship on Arizona
23 voters who deserve finality.

24 _____
25 ¹ Though the Secretary does not currently seek to intervene as a party pursuant to Rule
26 24, Ariz. R. Civ. P., she reserves the right to do so if it appears that her ability to complete her
statutory duties will be impaired in any way.

1 Specifically, the Secretary urges the Court to set a hearing in this matter no later than 72
2 hours from this date, which is a considerably longer schedule than every other election case that
3 has been filed in other states across the country. For example, courts around the country have
4 moved expeditiously to resolve cases brought on the eve of the election and immediately
5 thereafter, often in oral orders following expedited hearings. *See, e.g., Donald J. Trump for*
6 *President, Inc. v. Philadelphia Cty. Bd. of Elections*, No. 2:20-cv-05533-PD (E.D. Pa. Nov. 5,
7 2020) (dismissing a Trump campaign suit without prejudice in federal court seeking to enforce
8 an order of the same day by a state court concerning campaign observer access, following a
9 same-day hearing in which the court confirmed that Trump observers were, in fact, already
10 present); *Miller v. Delaware Cty. Bd. of Elections*, No. CV-2020-007458 (Ct. C.P. Del. Cty.
11 Nov. 3, 2020) (dismissing an Election Day suit the same day without prejudice as speculative
12 after plaintiffs alleged on information and belief that the county’s use of drop boxes violated
13 election codes because the county had not instituted procedures to ensure that ballots would not
14 be deposited after polls closed at 8:00 p.m.); *In re Pre-Canvass of Absentee and Mail-in Ballots*
15 *of Nov. 3, 2020 Gen. Election*, No. CV-2020-05627 (Ct. C.P. Bucks Cty. Nov. 3, 2020)
16 (dismissing Election Day suit the same day where plaintiffs argued that the Board of Elections
17 permitted the disclosure of pre-canvass results by sharing certain information about deficient
18 ballots in violation of Pennsylvania law); *In re: Enf’t of Election Laws and Securing Ballots Cast*
19 *or Received After 7:00PM on November 3, 2020*, No. SPCV20-00982 (Ga. Super. Ct. filed Nov.
20 4, 2020) (dismissing a case filed by the Georgia Republican Party and Trump campaign after a
21 hearing the next day, in which plaintiffs argued that some elections officials may be confused
22 about whether ballots that arrive after 7:00 p.m. on Election Day could be counted, and sought
23 an order to collect, secure, and safely store all absentee ballots received after 7:00 p.m. on
24 Election Day and provide a list of the names of the voters and the time the ballot was received
25 to the plaintiffs, when according to an affidavit in support of the complaint, the plaintiffs were
26 only concerned about 53 potential inter-mixed ballots); *Donald J. Trump for President, Inc. v.*

1 *Benson*, No. 20-000225-MZ (Mich. Ct. Cls. filed Nov. 4, 2020) (denying relief following a
2 hearing on November 6 in Trump campaign suit seeking to halt the counting of mail-in ballots
3 until they were granted “meaningful access” to observe the opening and counting process); *Hotze*
4 *v. Hollins*, No. 20-20574 (5th Cir. Nov. 3, 2020) (denying appeal of district court’s dismissal for
5 lack of standing of suit filed by a state representative, two candidates for state office, and a Texas
6 voter challenging Harris County’s policy of allowing registered voters to use drive-thru voting
7 sites).

8 Plaintiffs in this matter filed an expedited election case and sought a speedy resolution. It
9 is unheard of in cases such as these for Plaintiffs to seek broad discovery, especially when the
10 requested discovery is not tied to actual facts. The Court should not permit Plaintiffs to now
11 conduct a fishing expedition and prolong the litigation in a transparent effort to upend the orderly
12 completion of this election. Instead, the Court should require Plaintiffs to immediately present
13 the evidence they purport to have to support their claims.

14 Indeed, Plaintiffs do not and cannot support their claims. The crux of Plaintiffs’ claim –
15 that the use of Sharpie brand markers at voting centers in Maricopa County somehow
16 disenfranchised them and other voters – is patently false. After an inquiry made by the Attorney
17 General [Exhibit A], the Maricopa County Board of Supervisors [Exhibit B], the Secretary
18 [Exhibit C] and the Maricopa County Elections Department [Exhibit D] explained in no
19 uncertain terms that Plaintiffs’ allegations are baseless. And late last night, the Attorney General
20 [Exhibit E] concluded that the “mere use of Sharpie brand markers at voting centers in Maricopa
21 County did not result in disenfranchisement.” [*See also Exhibit F* (transcript of Attorney General
22 12 News interview stating that he “believe[s] what the election officials have said”)] Given all
23 this, Plaintiffs’ case should be resolved promptly to head off the disinformation and distrust in
24 the system it was clearly intended to sow.

1 RESPECTFULLY SUBMITTED this 6th day of November, 2020.

2 **COPPERSMITH BROCKELMAN PLC**

3 By /s/ Roopali H. Desai

4 Roopali H. Desai

5 D. Andrew Gaona

6 Kristen Yost

7 *Attorneys for Arizona Secretary of State*

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9 ORIGINAL efiled and served via email
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