

1 Roopali H. Desai (012434)  
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 Defendant*  
8 *Arizona Secretary of State Katie Hobbs*

9 **ARIZONA SUPERIOR COURT**

10 **MARICOPA COUNTY**

11 LAURIE AGUILERA, a registered voter in )  
Maricopa County, Arizona; DONOVAN )  
12 DROBINA, a registered voter in Maricopa )  
County, Arizona; DOES I-X, ON THEIR )  
13 OWN BEHALF OF ALL THOSE )  
SIMILARLY SITUATED, )

14 Plaintiffs, )

15 v. )

16 ADRIAN FONTES, in his official capacity as )  
Maricopa County Recorder; FRAN )  
17 McCARROLL, in her official capacity as Clerk )  
of the Maricopa County Board of Supervisors; )  
18 CLINT HICKMAN, JACK SELLERS, STEVE )  
CHUCRI, BILL GATES, STEVE )  
19 GALLARDO, in their official capacities as )  
members of the Maricopa County Board of )  
20 Supervisors; MARICOPA COUNTY, a )  
21 political subdivision of the State of Arizona, )

22 Defendants. )

23 DONALD J. TRUMP FOR PRESIDENT, INC.; )  
and REPUBLICAN NATIONAL )  
24 COMMITTEE; and ARIZONA DEMOCRATIC )  
25 PARTY, )

26 Intervenors. )

No. CV2020-014083

**SECRETARY OF STATE'S MOTION  
TO TRANSFER AND CONSOLIDATE  
RELATED CASES**

(Assigned to The Hon. Margaret Mahoney)

1 DONALD J. TRUMP FOR PRESIDENT, ) No.  
 2 INC., a federal political committee; )  
 3 REPUBLICAN NATIONAL COMMITTEE; a )  
 4 federal political party committee; and the )  
 5 ARIZONA REPUBLICAN PARTY, a )  
 6 political party committee, )  
 7 )  
 8 Plaintiffs, )  
 9 )  
 10 v. )  
 11 )  
 12 KATIE HOBBS, in her official capacity as the )  
 13 Secretary of State of Arizona; ADRIAN )  
 14 FONTES, in his official capacity as the )  
 15 Maricopa County Recorder; and JACK )  
 16 SELLERS, STEVE CHUCRI, BILL GATES, )  
 17 CLINT HICKMAN, AND STEVE )  
 18 GALLARDO, in their respective official )  
 19 capacities as members of the Maricopa County )  
 20 Board of Supervisors, )  
 21 )  
 22 Defendants. )  
 23 )

14 Pursuant to Rule 42, Ariz. R. Civ. P., Defendant Katie Hobbs, in her official capacity as  
 15 Arizona Secretary of State (“Secretary”) moves to consolidate *Aguilera, et al. v. Fontes, et al.*,  
 16 CV2020-014083, currently pending before the Hon. Margaret Mahoney (“*Aguilera*”) with  
 17 *Donald J. Trump for President, et al v. Hobbs et al.* (“*Trump*”)<sup>1</sup> because the two matters involve  
 18 “common question[s] of law or fact.” In the alternative, the Secretary moves under Rule 3.1(c)(1)  
 19 of the Maricopa County Local Rules of Practice to transfer *Trump* to Judge Mahoney because  
 20 *Trump* and *Aguilera* are “related cases”; that is, they arise from the same set of alleged facts,  
 21 involve substantially the same parties, and require consideration of the same questions of law.

24 <sup>1</sup> The Secretary understands that the *Trump* case was electronically filed on the afternoon  
 25 of November 7, 2020, and has not been given a case number or assigned to a judge as of the  
 26 filing of this Motion. The Secretary will promptly lodge a copy of this Motion in the *Trump* case  
 as soon as possible to comply with Rule 3.1(c)(1), Maricopa County Local Rules of Practice.

1 And given the extremely compressed timeframe in which this matter must be decided, having  
2 Judge Mahoney consider the newly filed case will be efficient and conserve judicial resources.

### 3 **Factual Background**

4 On November 4, 2020, the *Aguilera* litigation was filed.<sup>2</sup> In *Aguilera*, the Plaintiffs  
5 (“*Aguilera* Plaintiffs”) seek relief arising out of alleged problems from the use of Sharpie brand  
6 markers on ballots cast by voters in Maricopa County on Election Day. Shortly after *Aguilera*  
7 was filed, Donald J. Trump for President and the Republican National Committee (“RNC  
8 Intervenors”) filed a motion to intervene as a defendant, and attached a proposed answer to the  
9 *Aguilera* Plaintiffs’ Verified Complaint. That the RNC Intervenors sought status as a defendant  
10 suggests that their interests did not necessarily align. The Democratic National Committee  
11 “DNC”) also filed a motion to intervene.

12 On November 6, 2020, Judge Mahoney held a return hearing and granted both motions  
13 to intervene. Because the RNC Intervenors attached a proposed answer, that document was filed  
14 and became part of the record when intervention was granted. The following day, the parties  
15 submitted a Joint Scheduling Statement that contained wildly divergent views about how the  
16 case should proceed; for her part, the Secretary submitted a brief as *amicus curiae* to impress  
17 upon the Court the urgency of the case and the need for a resolution that does not delay the  
18 Maricopa County Board of Supervisors’ completion of its canvas as required by A.R.S. § 16-  
19 642(A). Later that day, Judge Mahoney entered a scheduling order setting a schedule for  
20 dispositive motions and a hearing for Friday, November 13 at 10:00 AM.

21 On the morning of November 7, the *Aguilera* Plaintiffs filed a Notice of Voluntary  
22 Dismissal pursuant to Rule 41(a), Ariz. R. Civ. P. (“Notice”). The Notice was not joined by the

23 \_\_\_\_\_  
24 <sup>2</sup> This Court can take judicial notice of the docket of other proceedings before it. *See In re*  
25 *Sabino R.*, 198 Ariz. 424, 425 ¶ 4 (App. 2000) (“It is proper for a court to take judicial notice of  
26 its own records or those of another action tried in the same court”) Because of the public interest  
in *Aguilera*, all documents referenced herein are publicly available at  
<https://www.clerkofcourt.maricopa.gov/records/election-2020/-folder-263>.

1 RNC Intervenors, and they have not yet sought a stipulation from the parties to dismiss the case.  
2 Of course, the *Aguilera* Plaintiffs were right to seek voluntary dismissal of that case; they need  
3 only take a few more procedural steps to achieve that goal. In any event, mere hours later, the  
4 RNC Intervenors – joined by the Arizona Republican Party – filed *Trump* against Maricopa  
5 County officials and the Secretary seeking certain relief arising out of alleged issues related to  
6 “overvotes” at voting centers in Maricopa County, again arising out of alleged problems related  
7 to the use of Sharpie brand markers.

### 8 **Argument**

9 Both *Aguilera* and *Trump* arise out of same nucleus of operative facts; Sharpie pens  
10 causing bleeding or streaking on ballots, and the impact on ballot counting using tabulation  
11 machines. Both *Aguilera* and *Trump* involve essentially the same parties; the only differences  
12 are that the Arizona Republican Party has joined the fray and the Secretary is now a named  
13 Defendant. And both *Aguilera* and *Trump* raise common legal questions about how these  
14 allegedly “overvoted” ballots should be treated, and whether Maricopa County officials and the  
15 Secretary can proceed with their statutory duties. On these facts, consolidation or transfer are  
16 entirely appropriate.

17 Under Rule 42, “cases may be consolidated in the trial court’s discretion.” *Hancock v.*  
18 *McCarroll*, 188 Ariz. 492, 495 (App. 1996). The Court should exercise that discretion here,  
19 particularly considering Judge Mahoney’s familiarity with the issues and election deadlines.

#### 20 **I. THE NOTICE WAS NOT EFFECTIVE TO TERMINATE *AGUILERA*.**

21 Initially, the Notice filed by Plaintiffs did not technically terminate *Aguilera* because an  
22 answer had been filed before that point by the RNC Intervenors. Though the filing of a notice of  
23 voluntary dismissal is normally effective to dismiss a suit without a further order, *see, e.g., Vicari*  
24 *v. Lake Havasu City*, 222 Ariz. 218, 222 (App. 2009), that is only true “before the opposing party  
25 serves either an answer or a motion for summary judgment.” Because the RNC Intervenors filed  
26 a proposed answer that became a part of the record when Judge Mahoney granted their motion

1 to intervene, *Aguilera* remains pending unless and until the Court enters an order of dismissal.  
2 Because Plaintiffs in *Aguilera* have elected not to proceed with their claims, it is possible (and  
3 likely) that the RNC is not interested in proceeding in that case. The correct procedural  
4 mechanism to seek dismissal of that action, therefore, is for the parties to file a stipulation to  
5 dismiss. At the time of this filing, it does not appear that has occurred.

6 **II. THE COURT SHOULD CONSOLIDATE THESE CASES OR TRANSFER**  
7 ***TRUMP* TO JUDGE MAHONEY**

8 Because these two expedited election proceedings arise out of the same facts, involve the  
9 same parties, and involve common legal questions, they should be consolidated (or transferred).

10 Rule 42(a)(2) provides that “[i]f actions before the court involve a common question of  
11 law or fact, the court may [] consolidate the actions.” This standard is minimal and easily met  
12 here. Both *Aguilera* and *Trump* rest on fundamentally the same facts (*i.e.*, the use of Sharpie  
13 pens and their effect on ballot counting – particularly overvotes – in Maricopa County) and legal  
14 questions (*i.e.*, whether there is any remedy related to this alleged issue under Arizona law). That  
15 the main defendants – Maricopa County officials – are identical only intensifies the propriety of  
16 consolidation. *See Hancock*, 188 Ariz. at 495 (trial court did not abuse discretion by  
17 consolidating cases “both concerning the availability of the initiative process” filed against the  
18 clerk of a county board of supervisors because both “arose out of related facts”). And perhaps  
19 above all else, Judge Mahoney’s familiarity with the facts and claims and her understanding of  
20 the acute timing needs of these expedited proceedings means that consolidation will be seamless.

21 If the Court concludes that consolidation isn’t warranted, or if consolidation is  
22 unnecessary because the parties stipulate to dismiss *Aguilera*, then for similar reasons, the Court  
23 should order that *Trump* be transferred to Judge Mahoney for further proceedings. Rule 3.1(c)  
24 of the Maricopa County Local Rules of Practice provides as follows

25 Whenever two (2) or more cases are pending before different judges and any party  
26 believes that such cases: (A) arise from substantially the same transaction or event;  
(B) involve substantially the same parties or property; (C) call for determination  
of substantially the same questions of law; or (D) for any other reason would entail

1 substantial duplication of labor if heard by different judges, any party may file a  
2 motion to transfer the case or cases involved to a single judge.

3 For all the reasons outlined above, *Aguilera* and *Trump* easily satisfy the factors identified in the  
4 rule. They arise from “substantially the same transaction or event” (the processing of certain  
5 ballots at voting centers in Maricopa County), they involve “substantially the same parties” (the  
6 RNC Intervenors and Maricopa County officials), and “call for the determination of substantially  
7 the same questions of law (whether any relief can be afforded arising out of the use of Sharpie  
8 markers). Beyond that, there is no need for a new division of this Court to incur “substantial  
9 duplication of labor” where Judge Mahoney has already familiarized herself with the underlying  
10 facts.

### 11 **Conclusion**

12 For all these reasons, *Trump* and *Aguilera* should be consolidated for consideration and  
13 trial. In the alternative, *Trump* should be transferred to Judge Mahoney to conserve judicial  
14 resources.

15 RESPECTFULLY SUBMITTED this 8th day of November, 2020.

16 **COPPERSMITH BROCKELMAN PLC**

17 By /s/ Roopali H. Desai

18 Roopali H. Desai

19 D. Andrew Gaona

Kristen Yost

20 *Attorneys for Defendant*

*Arizona Secretary of State Katie Hobbs*

1 ORIGINAL efiled and served via email  
2 this 8th day of November, 2020, upon:

3 Alexander Kolodin ([alexander.kolodin@kolodinlaw.com](mailto:alexander.kolodin@kolodinlaw.com))  
4 Christopher Viskovic ([cviskovic@kolodinlaw.com](mailto:cviskovic@kolodinlaw.com))  
5 Chris Ford ([cford@kolodinlaw.com](mailto:cford@kolodinlaw.com))  
6 Kolodin Law Group PLLC  
7 3443 North Central Avenue, Suite 1009  
8 Phoenix, AZ 85012

9 Sue Becker ([sbecker@publicinterestlegal.org](mailto:sbecker@publicinterestlegal.org))  
10 Public Interest Legal Foundation  
11 32 East Washington Street, Suite 1675  
12 Indianapolis, IN 45204  
13 *Attorneys for Plaintiff*

14 Thomas P. Liddy ([liddy@mcao.maricopa.gov](mailto:liddy@mcao.maricopa.gov))  
15 Emily Craiger ([craigere@mcao.maricopa.gov](mailto:craigere@mcao.maricopa.gov))  
16 Joseph I. Vigil ([vigil@mcao.maricopa.gov](mailto:vigil@mcao.maricopa.gov))  
17 Joseph J. Branco ([brancoj@mcao.maricopa.gov](mailto:brancoj@mcao.maricopa.gov))  
18 Joseph La Rue ([laruej@mcao.maricopa.gov](mailto:laruej@mcao.maricopa.gov))  
19 Maricopa County Attorney's Office  
20 225 West Madison Street  
21 Phoenix, AZ 85003  
22 *Attorneys for Maricopa County Defendants*

23 Kory Langhofer ([kory@statecraftlaw.com](mailto:kory@statecraftlaw.com))  
24 Thomas Basile ([tom@statecraftlaw.com](mailto:tom@statecraftlaw.com))  
25 Statecraft  
26 649 North 4th Avenue, 1st Floor  
Phoenix, AZ 85003

Brett W. Johnson ([bwjohnson@swlaw.com](mailto:bwjohnson@swlaw.com))  
Eric H. Spencer ([espencer@swlaw.com](mailto:espencer@swlaw.com))  
Snell & Wilmer  
400 East Van Buren, Suite 1900  
Phoenix, AZ 84004-2202  
*Attorneys for Donald J. Trump for President, Inc.;*  
*Republican National Committee; and Arizona Republican Party*

Sarah R. Gonski ([SGonski@perkinscoie.com](mailto:SGonski@perkinscoie.com))  
Perkins Coie LLP  
2901 North Central Avenue, Suite 2000  
Phoenix, Arizona 85012-2788

1 Roy Herrera (HerreraR@ballardspahr.com)  
2 Daniel A. Arellano (ArellanoD@ballardspahr.com)  
3 Ballard Spahr LLP  
4 1 East Washington Street, Suite 2300  
5 Phoenix, Arizona 85004-2555  
6 *Attorneys for Arizona Democratic Party*

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/s/ Sheri McAlister